

# **Corrections (Contract Management of Prisons) Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

It is Government policy to allow for the competitive tendering of prison management on a case-by-case basis. Amendments are required to the Corrections Act 2004 to allow this to occur.

Opening up prison management to contractors provides an opportunity for innovation and change in the way in which prisons in New Zealand are operated. Providing for prisons to be run effectively and efficiently by contract managers also enables the Government to look for cost savings in the overall delivery of prison services.

New Zealand already has some experience of contract managed prisons. Auckland Central Remand Prison (**ACRP**) was managed under contract from 2000 to 2005. During that time ACRP made a number of improvements that were subsequently adopted by the Department of Corrections (the **department**), and the experience is generally regarded as having been positive.

The Government wants to build on this experience and develop effective working relationships between private and public sector providers which facilitate the exchange of ideas and initiatives and provide for innovation and excellence in penal reform.

During its previous experience with the contract management of ACRP, the department did not experience any difficulty with the law, and found that it facilitated an effective contractual and working relationship. The legislative provisions that governed that relationship therefore provide the basis for this Bill. The Bill has updated the language of the previous legislation that permitted contract management of prisons (namely sections 4A to 4L of the Penal Institutions Act 1954) for consistency with the Corrections Act 2004 and to modernise some of the terminology and drafting.

There are 4 areas in which the Bill makes substantive changes to the previous law.

The Bill is silent as to the duration of the contract period, leaving this to be specified in the contract itself. This approach provides the bargaining parties with more flexibility and enables the chief executive of the department (the **chief executive**) to negotiate the duration of the contract alongside other contract variables such as cost, provision of programmes, risk management, and return on investment, rather than tying the parties into a legislative time frame that may not meet the Government's objectives.

The Bill requires the chief executive to impose a contractual obligation on any contractor to comply with all relevant international obligations and standards. This ensures that all New Zealand prisons will continue to meet international standards on the treatment and welfare of prisoners.

The Bill requires contractors to comply with instructions and guidelines issued by the chief executive under section 196 of the Corrections Act 2004. This replaces the previous requirement for contractors to comply with operational standards that have been phased out, and have consequently been revoked.

The Bill provides for existing staff who are members of the Government Superannuation Fund (the **GSF**) to continue their entitlements under that fund if they are required to transfer from a publicly run prison to a prison run by a private-sector provider. Because a small number of long-serving staff are currently members of the GSF, the Bill provides protection for those who transfer to a prison contract manager, and ensures that they are not unduly disadvantaged. This provision will apply only in the event that departmental staff who contribute to the GSF transfer to or between contract prisons.

The Bill also contains a small number of minor amendments that are consequential to the changes described above. No substantive changes to other Acts are proposed.

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* provides for the Bill to come into force on the day after the date on which it receives the Royal assent.

*Clause 3* states that this Act amends the Corrections Act 2004 (the Act).

## Part 1

### Amendments to allow contract management of prisons

*Clause 4* amends section 3(1) to insert a definition of prison management contract.

*Clause 5* repeals sections 198 and 199 (which prohibit the Crown entering into new prison management contracts or extending any existing prison management contracts) and substitutes *new sections 198 to 199K*. The substituted sections are largely based on equivalent provisions that existed in the Penal Institutions Act 1954 (some of which were carried forward into the principal Act as transitional provisions when that Act was repealed).

*New section 198* permits the chief executive, with the prior written consent of the Minister, to enter into a contract with any person for the management of a corrections prison. It also provides that the only persons who may manage prisons are the Crown and any person who has entered into a prison management contract.

*New section 199* prescribes details that must be covered in every prison management contract, including—

- objectives and performance standards (not lower than those applying to the department) for the management of the prison and the care of prisoners; and
- provisions for the appointment or engagement of a suitable prison manager (with the agreement of the chief executive), and for the appointment or engagement of suitable staff; and

- the training to be provided to prison staff; and
- provision for the co-ordination of prison services and processes with the rest of the prison service; and
- the insurance to be maintained by the contractor; and
- conflicts of interest avoidance provisions; and
- the provision of programmes designed to determine and address the causes of prisoners' offending and to assist their reintegration into society; and
- obligations to any voluntary organisations that work in the prison; and
- how the prison will be managed pending the resolution of any dispute between the chief executive and the contractor; and
- provision for the contract to be terminated for breach of contract; and
- the contractor's obligation to co-operate with the chief executive to ensure a smooth handover of prison management when the contract expires or is terminated; and
- a duty to comply with the requirements of the Act, regulations made under the Act, the New Zealand Bill of Rights Act 1990, relevant international instruments, and those parts of the State Sector Act 1988 that relate to equal opportunities and being a good employer.

*New section 199A* applies sections 41 and 42 of the State Sector Act 1988 to a contractor under a prison management contract. Those sections permit the delegation of certain functions and powers.

*New section 199B* provides that the Crown is entitled to be indemnified by a contractor against claims arising from acts or omissions of the contractor or the contractor's employees and agents.

*New section 199C* allows a contractor to use subcontractors with the prior written approval of the chief executive.

*New section 199D* imposes certain reporting responsibilities on a contractor, including duties to report on training, prisoner complaints, acts of violence or self-harm in the prison, programmes provided and attendance at those programmes, the use of force, the exercise of search powers, disciplinary proceedings and their outcomes, the operation of random testing programmes, matters relating to financial management, and any other matters the chief

executive considers necessary. It also imposes a duty to promptly provide a written report after any escape or attempted escape by a prisoner, and after the death of a prisoner.

*New section 199E* requires the chief executive to appoint monitors to be responsible for assessing and reviewing the management of the prison.

*New section 199F* requires contractors to ensure that suitable accommodation is provided for monitors at the prison, and to ensure that monitors have access to every part of the prison, all prison records (except medical records without consent), all prisoners, and all persons who work at the prison while they are at work.

*New section 199G* imposes certain reporting requirements on monitors.

*New section 199H* provides for the control of a contract prison to revert to the chief executive in an emergency.

*New section 199I* requires all prison management contracts to be presented to the House of Representatives within 12 sitting days after they are entered into or varied.

*New section 199J* permits staff of contract prisons to have access to information held by the department relating to prisoners for the purposes of enabling the staff member to exercise or perform his or her powers, duties, or functions.

*New section 199K* allows prison staff to transfer to the employment of a contracted prison manager without ceasing to be members of the Government Superannuation Fund.

*Clause 6* repeals sections 209 to 220. With the exception of sections 209 and 211 (which relate to contract prisons established under the Penal Institutions Act 1954, none of which continue to exist), these provisions are all proposed to be substantially re-enacted as the new sections described above. The purpose of re-enacting these provisions is to ensure that they are logically located in the section of the Act that relates to the ongoing management of contract prisons, and not in a Part entitled “Transitional provisions”. The table below sets out the new section numbers that correlate to each repealed section—

<b>Old section number</b>	<b>New section number</b>
209: Existing management contracts must not be extended	N/A

<b>Old section number</b>	<b>New section number</b>
210: Delegation of powers and functions of contractor	<i>New section 199A</i>
211: References in existing management contracts altered	N/A
212: Liability of contractor	<i>New section 199B</i>
213: Subcontractors	<i>New section 199C</i>
214: Reporting responsibilities	<i>New section 199D</i>
215: Monitors	<i>New section 199E</i>
216: Accommodation and access	<i>New section 199F</i>
217: Monitors to report on certain matters	<i>New section 199G</i>
218: Control of contract prison in emergency	<i>New section 199H</i>
219: Variation to management contracts to be presented to House of Representatives	<i>New section 199I</i>
220: Release of prisoner information to contract prisons	<i>New section 199J</i>

## **Part 2**

### **Transitional provision and consequential amendments**

*Clause 7* is a transitional provision that allows matters and proceedings started before the management of a corrections prison is transferred between the department and a contractor to continue unaffected.

*Clause 8* and the *Schedule* make consequential amendments to the principal Act and to the District Courts Act 1947 and Juries Act 1981.

### **Regulatory impact statement**

#### *Executive summary*

It is Government policy to allow for the competitive tendering of prison management on a case-by-case basis. Amendments are needed to the Corrections Act 2004 to allow this to occur.

The legislation passed in 1995 that provided the statutory framework for the management of Auckland Central Remand Prison, under contract from 2000 to 2005, worked well. It has been used as the basis

for amendments to the Corrections Act 2004, with some updating to reflect changes to drafting terminology and the framework of the Act. A few substantive changes to the 1995 legislation are needed to—

- remove the legislative restriction on contract length:
- ensure that members of the Government Superannuation Fund who transfer to a private contract manager can continue to be members of the Fund:
- update references to “operational standards” in the 1995 legislation to “instructions and guidelines issued by the chief executive under section 196” of the Corrections Act 2004:
- ensure that the chief executive of the Department of Corrections imposes a contractual obligation on any contractor to comply with all relevant international obligations and standards.

### *Adequacy statement*

The Department of Corrections has reviewed this Regulatory Impact Statement according to the adequacy criteria and considers it to be adequate for the purposes of this policy.

### *Status quo and problem*

Prior to the Corrections Act 2004, the prison system was governed by the Penal Institutions Act 1954. This was amended in 1995 to enable the Crown to enter into contracts for the management of prisons. In 1999 the Department of Corrections entered into a contract with the GEO Group for the management of Auckland Central Remand Prison (ACRP) for an initial period of 5 years from July 2000 to July 2005. The 1995 provisions were repealed by the Corrections Act 2004. Sections 198 and 209 of the Corrections Act 2004 explicitly prevent any person from extending the existing contract with the GEO Group, and from entering into any further contracts with the same or other providers. It is currently Government policy to allow for the competitive tendering of prison management.

Some overseas literature on publicly delivered prison services notes that there can be a lack of incentives to innovate, take risks in the delivery of programmes, and be cost-effective. Several jurisdictions have used contract prison management to attempt to improve outcomes and cost-effectiveness.

The Corrections Act 2004 must be amended to implement Government policy and allow the tendering of prison management on a case-by-case basis.

### *Objectives*

The objective of this policy is to allow the Department of Corrections to tender and contract for prison management on a case-by-case basis. This will allow the possibility of a contracted prison manager being able to introduce innovation, improve service performance, and be more cost-effective.

### *Alternative option*

The policy of allowing prison management to be contracted cannot be implemented other than by way of legislation. The only alternative to the measures in the Bill is to take no action, which would be inconsistent with Government policy.

### *Preferred option*

The preferred option is to repeal the provisions of the Corrections Act 2004 that prevent contract management of prisons and amend the Act to include similar provisions to those passed in 1995 to empower this. The experience of contract managed prisons internationally is varied, and comparisons are complicated by the variety of procurement methods used. In general, it is possible to say that cost savings have been gained from the use of the private sector in managing prisons in other jurisdictions, but empirical support for the service performance of contract prisons is mixed (even within jurisdictions). Overseas experience suggests that there is a link between the success of the contractor and the quality of the contracting and contract management process. There are a number of lessons from other jurisdictions that will assist in getting good contracting outcomes in New Zealand. In particular:

- it is important to have contractual performance measures that are clear and target the results wanted and a quality performance management regime; and
- procurement processes need to concentrate on quality as well as price; and



- contracts that are too long without being able to be refreshed can prevent new and effective best practice correctional practices from being introduced.

The experience internationally and at ACRP suggests that the ability to obtain benefits from contract prisons will lie in the implementation of the policy. While providing an appropriate legislative framework is important, what will determine the effectiveness of a contract prison policy is the quality of the procurement, contracting, and contract management process.

The department did not experience any difficulty with the previous law and found that it facilitated an effective contractual and working relationship with the contractor. The 1995 provisions, with appropriate transitional and consequential provisions, are therefore largely suitable as the basis for amending the Corrections Act 2004. The use of the 1995 provisions reduces some risks that might arise from legislating in a relatively new area in New Zealand law by using provisions that have worked well in the past.

Other important parts of the regulatory structure for the management of prisons contained in the Corrections Act 2004 will apply to prisons managed under contract, without further legislative change. These include the rights of access and powers of prison inspectors, Visiting Justices, and other statutory officers, and the process by which search and coercive powers are used.

There are some areas where changes from the 1995 legislation are needed. The first is that the 1995 amendment to the Penal Institutions Act 1954 required the contract to run for an initial period of 5 years, with an option to renew for a further 2 years if both parties agreed. This time period reflected a concern that this was the first contract prison in New Zealand and that a degree of care and prudence was needed. Given the experience with contracting between 2000 and 2005 at ACRP, this level of restriction on contract length is no longer needed.

The legislation is silent on contract length, and allows this to be dealt with in the contract itself. The major advantages of this are that—

- it provides the Crown and potential bidders with greater flexibility in negotiating contract length alongside other contract variables such as cost, staff transfer and management, and programme development:

- the Crown may receive a wider range of bids if there is seen to be some flexibility in contract length:
- the prison or prisons that might become contract managed have not yet been identified. At this stage it is not possible to be definitive that a term of 5 years will be sufficient to allow a bidder to address all of the issues that might arise at a given location. This will only become apparent when a greater degree of due diligence is carried out.

Staff transferring to a contract prison manager on the same terms and conditions should, where appropriate, continue to be members of the Government Superannuation Fund. Section 16 of the New Zealand Railways Corporation Restructuring Act 1990 has been used as the basis for a legislative provision to empower this.

The 1995 legislation required the contractor to comply with “operational standards”. These standards were a form of tertiary legislation that were not continued by the Corrections Act 2004. The legislation therefore provides that the contractor must comply with guidelines and instructions issued by the chief executive under section 196 of the Act.

There is one other substantive change from the 1995 legislation. This is to place an obligation on the chief executive of the Department of Corrections to impose a contractual obligation on any contractor to comply with all relevant international obligations and standards. This will ensure that any obligations and standards relating to prisons can be easily incorporated into a contract.

### ***Implementation and review***

It is intended that legislation be introduced by the end of March 2009 and passed this year. This would then allow competitive tendering for the management of prisons to be carried out.

The legislation contains provisions that place a requirement on the Department of Corrections to include objectives and performance standards in the management contracts, and to report on the management of every contract prison in the Department’s Annual Report. The legislation also contains a requirement that at least every 3 months the contractor is required to report to the chief executive of the Department of Corrections on a range of matters.

The contract bidding process and the subsequent reporting structure would allow an assessment to be made of the extent to which the contract management of prisons offers advantages over departmental management.

### *Consultation*

The Department of Corrections has consulted on this paper with the Ministry of Justice, State Services Commission, Department of Labour, Ministry of Economic Development, Ministry of Foreign Affairs and Trade, the Treasury, Te Puni Kōkiri, Ministry of Women's Affairs, New Zealand Police, Ministry of Social Development, Ministry of Health, Ministry of Pacific Island Affairs, and Government Superannuation Fund Authority. The Department of the Prime Minister and Cabinet has been informed.

Consultation has not been carried out with any other group.

The only issue raised during consultation was by Te Puni Kōkiri. Te Puni Kōkiri considered that, given the level of investment by the Government in prison management, explicit and measurable performance objectives and standards relating to the rehabilitation and reduction of recidivism of Māori inmates must be legislated for and regularly reported on.

The Department of Corrections does not consider that this change is necessary. The proposed legislation contains requirements that performance objectives should be specified in the contract, and already imposes significant reporting obligations on the contractor. No change to the legislation is recommended, and Te Puni Kōkiri has been advised of this view.

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*Hon Judith Collins*

**Corrections (Contract  
Management of Prisons)  
Amendment Bill**

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**Contents**

		Page
1	Title	2
2	Commencement	2
3	Principal Act amended	2
<b>Part 1</b>		
<b>Amendments to allow contract management of prisons</b>		
4	Interpretation	2
5	New sections 198 to 199K substituted	3
	198 Management of prisons under contract	3
	199 Requirements of prison management contracts	3
	199A Delegation of powers and functions of contractor	5
	199B Liability of contractor	6
	199C Subcontractors	6
	199D Reporting responsibilities	7
	199E Monitors	8
	199F Accommodation and access	9
	199G Monitors to report on certain matters	10
	199H Control of contract prison in emergency	11
	199I Prison management contracts to be presented to House of Representatives	12
	199J Release of prisoner information to contract prisons	13

	<b>Corrections (Contract Management of Prisons) Amendment Bill</b>	
cl 1		
	199K Transferring staff who are contributors to Government Superannuation Fund	13
6	Sections 209 to 220 and heading above section 209 repealed	14
	<b>Part 2</b>	
	<b>Transitional provision and consequential amendments</b>	
7	Transitional matters	14
8	Consequential amendments	15
	<b>Schedule</b>	16
	<b>Consequential Amendments</b>	

**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Corrections (Contract Management of Prisons) Amendment Act **2009**.
- 2 Commencement** 5  
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act amended**  
This Act amends the Corrections Act 2004.

- Part 1** 10  
**Amendments to allow contract management of prisons**
- 4 Interpretation**  
Section 3(1) is amended by inserting the following definition in its appropriate alphabetical order: 15  
“**prison management contract** means a contract for the management of a corrections prison entered into pursuant to **section 198(1)**”.

**5 New sections 198 to 199K substituted**

Sections 198 and 199 are repealed and the following sections substituted:

**“198 Management of prisons under contract**

- “(1) The chief executive may from time to time, in the name and on behalf of the Crown, enter into a contract with any other person for the management, by that other person, of a corrections prison. 5
- “(2) The chief executive must not, without the prior written consent of the Minister in each case,— 10
  - “(a) enter into a prison management contract; or
  - “(b) agree to an extension of the term of a prison management contract.
- “(3) No prison may be managed by a person other than the Crown except under a prison management contract. 15  
“Compare: 1954 No 51 s 4A

**“199 Requirements of prison management contracts**

- “(1) Every prison management contract must provide for—
  - “(a) objectives and performance standards for the contractor in relation to the management of the prison that are no lower than the standards applicable to prisons managed by the department; and 20
  - “(b) objectives and performance standards for the contractor in relation to the management and care of prisoners in the prison that are no lower than the standards applicable to prisoners in prisons managed by the department; and 25
  - “(c) the appointment or engagement by the contractor of—
    - “(i) a suitable person as manager of the prison, which appointment or engagement must be subject to approval by the chief executive; and 30
    - “(ii) sufficient suitable staff members to enable the contractor to carry out the contractor’s statutory and contractual obligations in relation to the prison; and 35
  - “(d) the training to be provided, at the expense of the contractor, to staff members of the prison, which training must be—

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- “(i) to the standard appropriate for the particular position; and
- “(ii) to a standard no lower than the standard of training received by staff members of prisons managed by the department; and 5
- “(e) the co-ordination of services and processes of the prison with those of prisons managed by the department and by other contractors, including any co-ordination necessary for the operation of any systems established to implement the requirements of sections 47 and 48; and 10
- “(f) the arranging and maintenance by the contractor of adequate insurance against the contractor’s liability for any claims arising out of, or in connection with, the contract; and
- “(g) the avoidance of conflicts of interest that might arise in relation to the exercise or performance, by the contractor or any staff member of the prison, of any power, duty, or function conferred or imposed by or under the contract, or by or under this Act or any regulations made under this Act; and 15 20
- “(h) the provision by the contractor of programmes designed—
- “(i) to ascertain and address the causes of prisoners’ offending; and
- “(ii) to assist the reintegration of prisoners into society; and 25
- “(i) the respective obligations (including financial obligations) of the parties to the contract in relation to any voluntary organisations that undertake work in the prison; and 30
- “(j) the management of the prison pending the resolution of any dispute between the chief executive and the contractor in relation to the prison; and
- “(k) the termination of the contract for breach of contract; and 35
- “(l) the obligations of the contractor to co-operate with the chief executive in the event of the termination or expiry of the contract, in order to ensure the orderly and efficient transfer of the management of the prison.



- “(2) Every prison management contract must impose on the contractor, in relation to the management of the prison, a duty to comply with—
- “(a) the requirements of this Act, of any regulations made under this Act, and of any instructions or guidelines issued by the chief executive under section 196, in so far as those requirements are applicable to contract prisons; and 5
  - “(b) the requirements of the New Zealand Bill of Rights Act 1990, as if the prison were a prison managed by the department; and 10
  - “(c) all relevant international obligations and standards; and
  - “(d) the requirements of sections 56(1) and (2) and 58(3) of the State Sector Act 1988 (which relate to personnel and equal employment policies), as if the contractor were the chief executive of a department within the meaning of that Act and as if those requirements applied, not only in respect of employees of a contractor, but in respect of all staff members of a contract prison. 15
- “(3) A prison management contract may contain other provisions, as agreed between the chief executive and the contractor, that are not inconsistent with— 20
- “(a) this Act; or
  - “(b) any regulations made under this Act; or
  - “(c) any instructions or guidelines issued by the chief executive under section 196 that are or will be applicable to the prison. 25

“Compare: 1954 No 51 s 4B

“**199A Delegation of powers and functions of contractor**

Without limiting sections 41 and 42 of the State Sector Act 1988, but subject to section 10 of this Act, those sections of that Act apply in relation to a contract prison as if— 30

- “(a) the contractor were the chief executive of the department; or
- “(b) each staff member of the prison were an employee of the department. 35

“Compare: 1954 No 51 s 3A

**“199B Liability of contractor**

- “(1) The Crown is entitled to be indemnified by a contractor—
- “(a) against any claim arising out of any act or omission of the contractor, or the contractor’s employees or agents, for which the Crown is held liable (in whole or in part); 5  
and
  - “(b) for any act or omission of the contractor, or the contractor’s employees or agents, that results in damage to, or loss of, any property of the Crown.
- “(2) For the purposes of determining the liability of the Crown or 10  
the contractor for any act or omission of a contractor or a contractor’s employees or agents, neither the contractor nor the contractor’s employees or agents are to be treated as agents of the Crown.
- “(3) This section does not limit any other right to indemnification 15  
that may be provided in a prison management contract.  
“Compare: 1954 No 51 s 4C

**“199C Subcontractors**

- “(1) A contractor may subcontract any of its management responsibilities under a prison management contract only with the 20  
prior written approval of the chief executive and only to the extent permitted by an approval of that kind.
- “(2) An approval granted by the chief executive under **subsection (1)** may be granted subject to any conditions that the chief executive thinks fit. 25
- “(3) If, with the approval of the chief executive, any management responsibility of a contractor under a prison management contract is subcontracted to any person, the provisions of this Act, of any regulations made under this Act, and of any instructions or guidelines issued by the chief executive under section 30  
196, in so far as those provisions relate to that management responsibility, apply to the subcontractor as if that subcontractor were the contractor.  
“Compare: 1954 No 51 s 4E

**“199D Reporting responsibilities**

- “(1) If there is any variation of the controlling interests in a contractor, that contractor must promptly give notice of that variation to the chief executive and to the monitor appointed in respect of that prison under **section 199E(1)**. 5
- “(2) The manager of a contract prison must, at any intervals (not exceeding 3 months) that are determined by the chief executive, arrange for written reports on the following matters to be prepared and forwarded to the chief executive and to the monitor appointed in respect of that prison under **section 199E(1)**: 10
  - “(a) the training provided to staff members of the prison (including the amount and quality of that training), and the level of training achieved by those staff members: 10
  - “(b) the number and nature of complaints made by prisoners at the prison, and how those complaints were resolved: 15
  - “(c) the number and nature of any incidents in the prison involving—
    - “(i) violence against any person; or
    - “(ii) self-inflicted injuries to prisoners of the prison: 15
  - “(d) the programmes provided for prisoners at the prison, and the extent of attendance at, and completion of, those programmes by prisoners: 20
  - “(e) the compliance, by staff members of the prison, with the requirements of sections 83, 84, 85, 87, and 88: 20
  - “(f) the exercise, by officers of the prison, of the powers conferred by sections 98 to 101: 25
  - “(g) the number and nature of—
    - “(i) any disciplinary proceedings taken against prisoners at the prison; and
    - “(ii) any disciplinary actions taken against staff members of the prison: 30
  - “(h) the reasons for, and outcomes of, disciplinary proceedings or disciplinary actions, including any penalties imposed: 30
  - “(i) the operation of random-testing programmes in the prison: 35
  - “(j) any matters relating to the financial management of the prison that the chief executive from time to time de-

- termines, which may include the provision of financial forecasts and audited accounts:
- “(k) any other matters in respect of which the chief executive reasonably considers that information is necessary to enable the chief executive to carry out his or her responsibilities under this Act or any other enactment. 5
- “(3) The manager of a contract prison must, promptly after the occurrence in that prison of any of the events specified in **subsection (4)**, arrange for a written report on that occurrence to be prepared and forwarded to the chief executive and to the monitor appointed in respect of that prison under **section 199E(1)**. 10
- “(4) The events are—
- “(a) any escape or attempted escape by a prisoner:
- “(b) the death of a prisoner. 15
- “(5) Nothing in **subsections (1) to (4)** limits any other duty to report that is imposed by or under any prison management contract or by or under any other provision of this Act or of any other enactment.
- “Compare: 1954 No 51 s 4F 20
- “**199E Monitors**
- “(1) The chief executive must appoint, under the State Sector Act 1988, as many monitors as are required for the purposes of this Act, and each monitor must be appointed in respect of a particular contract prison. 25
- “(2) The monitor appointed in respect of a contract prison—
- “(a) is responsible to the chief executive for the assessment and review of the management of that prison; and
- “(b) must report to the chief executive, at the intervals (not exceeding 3 months) that the chief executive determines, and at any other time that the monitor considers appropriate, on— 30
- “(i) the management of that prison; and
- “(ii) whether or not the contractor responsible for the management of that prison is complying with that contractor’s prison management contract and with the provisions of this Act, and any regulations made under this Act, and any instructions 35

or guidelines issued by the chief executive under section 196 that are or will be applicable to the prison.

“(3) A monitor may, at any time that he or she considers appropriate, make recommendations to the chief executive on any matters relating to the contract prison in respect of which the monitor is appointed. 5

“(4) The office of monitor may be combined with any other office, appointment, or position if the chief executive is satisfied that the duties of that other office, appointment, or position are not incompatible with the duties of a monitor. 10

“(5) The chief executive must regularly alter the monitors appointed in respect of each contract prison.

“Compare: 1954 No 51 s 4G

“**199F Accommodation and access** 15

“(1) Every contractor must ensure that there is available in the contract prison managed by that contractor suitable office accommodation for use by a monitor.

“(2) Every contractor must ensure that any monitor has free and unfettered access at all times to— 20

“(a) every part of the contract prison managed by that contractor; and

“(b) all prisoners in that prison; and

“(c) all persons who work in that prison, but only when they are actually in the prison; and 25

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

“(i) that prison; or

“(ii) any prisoner or former prisoner; or

“(iii) any staff member or former staff member of that prison. 30

“(3) Despite **subsection (2)**, a monitor must not be given access to the medical records of any person unless that person consents to that access.

“Compare: 1954 No 51 s 4H

**“199G Monitors to report on certain matters**

- “(1) Without limiting **section 199E(2)**, a monitor appointed in respect of a contract prison under **section 199E(1)** must, for the purposes of the report under **section 199E(2)(b)**, review the following matters: 5
- “(a) determinations made under Part 1 of the Parole Act 2002 of—
- “(i) the start date, expiry date, non-parole period, and release date of sentences; and
- “(ii) the parole eligibility date and statutory release date of offenders: 10
- “(b) calculations made under Part 1 of the Parole Act 2002 of how much time an offender has served under a sentence of imprisonment, including records and determinations of how much time an offender has spent in pre-sentence detention: 15
- “(c) reports made by the manager of the prison for the purposes of section 43(1) of the Parole Act 2002:
- “(d) in respect of sections 57 to 61 of this Act,—
- “(i) compliance by officers of that prison with the requirements of those sections; and 20
- “(ii) if any function, duty, or power of the chief executive under those sections has been delegated to any officer or officers of that prison, the performance of that function or duty, or the exercise of that power: 25
- “(e) work undertaken by prisoners at the direction of the prison manager under section 66:
- “(f) decisions made by the prison manager (whether or not under delegated authority) under— 30
- “(i) sections 53 and 54 (which relate to the transfer of prisoners); and
- “(ii) sections 62 to 64 (which relate to the temporary release from custody of prisoners and the temporary removal of prisoners from prison): 35
- “(g) decisions of officers of the prison to apply, under section 45 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, for an assessment of a prisoner:
- “(h) the procedures in place to assess—

- “(i) the suitability of persons for appointment or engagement under section 11(2) and (4) in the prison; and
    - “(ii) the ongoing suitability of persons so appointed or engaged: 5
  - “(i) the matters in respect of which the monitor is entitled to receive a report under **section 199D(2) or (3)**.
- “(2) Without limiting **section 199E(2)**, a monitor appointed in respect of a contract prison under **section 199E(1)** may, at the request of the chief executive or on the monitor’s own initiative, investigate any matter relating to that prison, or any prisoner in that prison, and report to the chief executive the results of that examination. 10
- “Compare: 1954 No 51 s 4I
- “**199H Control of contract prison in emergency** 15
- “(1) This section applies if the chief executive believes, on reasonable grounds,—
  - “(a) that either—
    - “(i) there exists in respect of any contract prison an emergency affecting the safety or health of the prisoners or any class or group of prisoners, or the security of the prison; or 20
    - “(ii) there is an imminent threat of such an emergency; and
  - “(b) that the contractor responsible for the management of that prison is unwilling or unable to immediately deal with that emergency or, as the case requires, that threat to the satisfaction of the chief executive. 25
- “(2) If this section applies, the chief executive may take over the management of the contract prison from the contractor for any period that the chief executive considers necessary in order to deal with the emergency or threatened emergency, and for that purpose the chief executive— 30
  - “(a) has and may exercise and perform, in respect of the prison, all the powers, functions, and duties that would otherwise be exercisable or performed by the contractor: 35
  - “(b) has all other powers that are necessary or desirable.

- “(3) If the chief executive takes over the management of a contract prison under this section, the chief executive must immediately give written notice to the contractor of that action, and of the reasons for that action.
- “(4) Without limiting any other remedy available to the chief executive (whether under the prison management contract or otherwise), if the chief executive acts under **subsection (2)**, then, unless it would be unreasonable or unfair in the circumstances,—
- “(a) the chief executive is entitled to be reimbursed by the contractor for any costs and expenses incurred in taking that action; and
- “(b) those costs and expenses are recoverable as a debt due to the Crown.
- “(5) This section applies despite anything in any prison management contract, and nothing in this section limits or affects—
- “(a) any other right or remedy available to the chief executive or the Crown, whether under any prison management contract or otherwise; or
- “(b) any liability of the contractor under the prison management contract or otherwise.
- “(6) Neither the chief executive, nor the Crown, nor any other person acting by or under the authority of the chief executive is under any civil or criminal liability for anything the chief executive or any such person may do or fail to do in the course of the exercise or performance or intended exercise or performance of any powers, functions, or duties under this section, unless it is shown that the chief executive or that other person acted, or failed to act, in bad faith.
- “Compare: 1954 No 51 s 4J

**“199I Prison management contracts to be presented to House of Representatives**

- “(1) Within 12 sitting days after a prison management contract is entered into, the Minister must present a copy of that contract to the House of Representatives.
- “(2) Within 12 sitting days after a prison management contract is varied or renewed, the Minister must present a copy of the



terms of that variation or renewal to the House of Representatives.

“Compare: 1954 No 51 s 4L

“**199J Release of prisoner information to contract prisons**

For the purposes of enabling any staff member of a contract prison to exercise or perform any of his or her powers, duties, or functions, any staff member of a contract prison may have access to any information that is held (or deemed for the purposes of the Official Information Act 1982 to be held) by the department and that relates to any prisoner. 5 10

“Compare: 1954 No 51 s 41G

“**199K Transferring staff who are contributors to Government Superannuation Fund**

“(1) This subsection applies to any person who—

“(a) is employed by a contractor to work in a contract prison; and 15

“(b) immediately before that employment was a contributor to the Government Superannuation Fund under Part 2 or Part 2A of the Government Superannuation Fund Act 1956. 20

“(2) A person to whom **subsection (1)** applies is deemed to continue to be employed in the Government service, for the purposes of the Government Superannuation Fund Act 1956, for so long as that person continues to work in a contract prison.

“(3) The provisions of the Government Superannuation Fund Act 1956 apply to a person described in **subsections (1) and (2)** in all respects as if service with a contractor were Government service. 25

“(4) This subsection applies to any person who—

“(a) is employed by a contractor to work in a contract prison; and 30

“(b) immediately before that employment was a contributor to the Government Superannuation Fund under Part 6B of the Government Superannuation Fund Act 1956.

“(5) A person to whom **subsection (4)** applies is deemed to continue to be a member of the Prisons Service, for the purposes 35

of the Government Superannuation Fund Act 1956, for so long as that person continues to work in a contract prison.

“(6) The provisions of the Government Superannuation Fund Act 1956 apply to a person described in **subsections (4) and (5)** in all respects as if service with a contractor were service as a member of the Prisons Service. 5

“(7) Subject to the Government Superannuation Fund Act 1956, nothing in **subsections (1) to (6)** entitles a person to become a contributor to the Government Superannuation Fund after that person has ceased to be a contributor. 10

“(8) For the purposes of applying the Government Superannuation Fund Act 1956 to a person who is a contributor to the Government Superannuation Fund, and who is in the service of a contractor, the term **controlling authority**, in relation to that person, means that contractor.” 15

**6 Sections 209 to 220 and heading above section 209 repealed**

Sections 209 to 220 and the italicised heading above section 209 are repealed.

**Part 2** 20

**Transitional provision and consequential amendments**

**7 Transitional matters**

(1) Any transfer of the management of a prison between the department and a contractor does not affect the completion of a matter or thing that relates, or the bringing or completion of proceedings that relate, to an existing right, interest, title, immunity, or duty. 25

(2) Despite **subsection (1)**, the contractor and the chief executive, in the name and on behalf of the Crown, may make any arrangements that they consider necessary or desirable to determine the respective liabilities of the Crown and the contractor in relation to any matter referred to in **subsection (1)**. 30

**8 Consequential amendments**

- (1) The principal Act is consequentially amended in the manner set out in Part 1 of the Schedule.
  - (2) The enactments specified in Part 2 of the Schedule are consequentially amended in the manner set out in that Part of the Schedule. 5
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**Schedule**  
**Consequential Amendments**

**s 8**

**Part 1**

**Consequential amendments to principal Act**

<b>Section 3(1)</b>	5
Definition of <b>contract prison</b> : omit “management contract entered into under section 4A of the Penal Institutions Act 1954” and substitute “prison management contract”.	
Definition of <b>contractor</b> : omit “management contract entered into under section 4A of the Penal Institutions Act 1954” and substitute “prison management contract”.	10
Definition of <b>monitor</b> : omit “section 215” and substitute “ <b>section 199E(1)</b> ”.	
<b>Section 7(1)</b>	
Paragraph (e): omit and substitute:	15
“(e) presenting a copy of the terms of any prison management contract, and of the terms of any variation to a prison management contract, to the House of Representatives in accordance with <b>section 199I</b> .”	
<b>Section 10(j)</b>	20
Omit “section 215” and substitute “ <b>section 199E(1)</b> ”.	
<b>Section 179(b)</b>	
Omit “a contract under section 4A of the Penal Institutions Act 1954” and substitute “a prison management contract”.	
<b>Section 190(3)(a)(i)</b>	25
Omit “section 214(2) or (3) (and, if applicable, the reports forwarded to the chief executive under section 4F(2) or (3) of the Penal Institutions Act 1954)” and substitute “ <b>section 199D(2) and (3)</b> ”.	

Part 1—*continued*

**Section 190(3)(a)(ii)**

Omit “section 215(2)(b) (and, if applicable, the reports made to the chief executive under section 4G(2)(b) of the Penal Institutions Act 1954)” and substitute “**section 199E(2)(b)**”.

Part 2

5

Consequential amendments to other  
enactments

**Corrections Regulations 2005 (SR 2005/53)**

Regulation 6(3): insert “prison” before “management”.

**District Courts Act 1947 (1947 No 16)**

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Section 11B(2)(d): omit “management contract entered into under section 4A of the Penal Institutions Act 1954” and substitute “prison management contract entered into under **section 198(1)** of the Corrections Act 2004”.

**Juries Act 1981 (1981 No 23)**

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Section 8(ha): omit “management contract entered into under section 4A of the Penal Institutions Act 1954” and substitute “prison management contract entered into under **section 198(1)** of the Corrections Act 2004”.