Corrections (Contract Management of Prisons) Amendment Bill

Government Bill

As reported from the Law and Order Committee

Commentary

Recommendation

The Law and Order Committee has examined the Corrections (Contract Management of Prisons) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The bill amends the Corrections Act 2004 to allow competitive tendering for contracts by private-sector organisations to manage prisons. The bill also specifies what a prison management contract must contain, the delegations, liabilities, and powers of the contractor to subcontract, and the reporting requirements of the contractors, and provides for the appointment of monitors to be responsible for assessing and reviewing the management of the prison.

This bill would require contractors to comply with the Bill of Rights Act 1990 and with international standards on the treatment and welfare of prisoners. It would also require them to fulfil any reporting

responsibilities as determined by the chief executive of the Department of Corrections.

We note that section 199I contains provisions for prison management contracts to be presented to the House of Representatives within 12 sitting days after a contract is entered into, or varied or renewed.

This commentary covers the key amendments that the majority of us recommend to the bill. It does not cover minor or technical amendments.

Clause 5—Contract management of prisons

A majority of us make recommendations to amend only clause 5 of the bill. This clause includes the management of prisons under contract, the requirements of prison management contracts, reporting responsibilities, and the use of prison monitors.

Contract relationships

A majority of us recommend amending clause 5 where it replaces section 199(1)(l) of the Act so that contractors would be required to comply with the instructions of the chief executive of the Department of Corrections as well as to cooperate with him or her when transferring the management of a prison following the expiration or termination of a contract. This amendment would facilitate an easy and orderly transfer of prison management between a contractor and the department whilst encouraging all parties to foster good working relationships.

Prison records

A majority of us recommend amending clause 5 by inserting into the Corrections Act new section 199(2)(ba), which would require contractors to comply with the Public Records Act 2005. This amendment would reflect the fact that, under the Public Records Act, the department is ultimately responsible for all records—including any that might be created or received by a privately-managed prison. A majority of us believe that this should be reflected in any management contract.

Staff training

We considered whether wording in clause 5 regarding section 199(1)(d) of the Act, "to a standard no lower than the standard of training received by staff members of prisons managed by the department", was satisfactory, as the standard of departmental training is an unknown quantity requiring interpretation. We were informed that linking privately-managed prison training standards to those of the department would establish a compliance benchmark, and that staff training would be continually monitored. A majority of us are satisfied that this would provide sufficient protection of training standards in privately and publicly-managed prisons.

Reporting responsibilities

A majority of us recommend amending clause 5 where it replaces section 199D(2) of the Corrections Act to increase the maximum reporting period from at least every three months to at least every four months. This amendment would give the chief executive the option of aligning the reporting cycles of privately-managed prisons with any cycle that the department might use.

A majority of us recommend amending clause 5 by inserting into the Act new sections 199D(2)(da) and 199D(2)(db), which would require contractors to provide reports to the chief executive on the provision of employment and skills development for prisoners. This amendment would separate the reporting responsibilities required for programmes and those for employment and skills development. Employment and skills development cannot be described as "programmes" as they are designed to teach prisoners vocational skills to help them maintain employment once their sentence has been served and as prisoners are paid for their employment, whereas "programmes" are more generally defined.

Monitors

A majority of us recommend amending clause 5 where it replaces section 199E(1) of the Act. This amendment would require the chief executive to appoint at least one monitor to each privately-managed prison, and allow the appointment of one or more additional monitors to assist that monitor.

A majority of us recommend amending clause 5 where it replaces section 199E(2)(b) of the Act to increase the maximum reporting period from at least every three months to at least every four months. This amendment would give the chief executive the option of aligning the reporting cycles of monitors with any cycle that the department might use.

A majority of us recommend amending clause 5 where it replaces section 199E(5) of the Act by removing the words "regularly alter the monitors" and substituting "ensure a regular change of monitor", for the sake of clarity.

A majority of us recommend amending clause 5 by inserting into the Act new section 199G(2A) to require additional monitors appointed to privately-managed prisons to investigate and report on any matter at the request of either the chief executive or the original monitor appointed to a prison under 199E(1)(a).

We are aware of allegations that when Auckland Central Remand Prison (ACRP) was under private management (2000–2005) staff were encouraged to under-report issues so that contractual bonuses could be awarded, and that staff were encouraged to resign so as to avoid disciplinary proceedings and adverse publicity regarding such proceedings. We were concerned that, if such behaviour had in fact occurred at ACRP, it might recur in privately-managed prisons if corporate considerations were allowed to dominate the day-to-day decisions of staff members.

All monitors would be employees of the Department of Corrections and thus accountable to the chief executive. Furthermore, monitors would have free and unfettered access to all parts of the prison, prisoners, current staff (whilst at the prison), and records (excluding health information, unless the prisoner consented).[1]

Specialist monitors

A majority of us recommend amending clause 5 by inserting into the Act new section 199E(1A) to enable the chief executive to appoint specialist monitors from time to time to investigate specific issues. This amendment would allow the department's quality assur-

[1] See sections 199F(2)–(3).

ance functions to operate in all prisons, including those which were privately managed.

A majority of us recommend amending clause 5 where it replaces section 199E(2) of the Act to remove specialist monitors from the reporting and reviewing requirements in section 199G(1). This would reflect the different purposes of specialist monitors and prison-based monitors, and thus their different reporting requirements.

A majority of us recommend amending clause 5 by inserting into the Act new sections 199E(3A) and 199G(3). New section 199E(3A) would allow specialist monitors to make recommendations to the chief executive on matters relating to any prison; while new section 199G(3) would require specialist monitors to investigate and report on any matter at the request of the chief executive or on their own initiative. A majority of us consider that enabling the chief executive to appoint specialist monitors would strengthen the department's ability to hold a contractor accountable.

Independent monitors

We considered the possibility that there might be a lack of independent monitoring and mechanisms for auditing the activities and performance of a multi-national company—a part of which might be contracted to manage a New Zealand prison.

The Office of the Auditor-General may obtain information from a private company that is providing services to a public entity. It may not audit a private company as it would a public entity. We enquired into whether this might enable contractors to hide inappropriate or corrupt financial practices in accounts inaccessible to New Zealand monitors or auditors. We were advised that any extension of the Office of the Auditor-General's mandate would require legislation, and that such an extension to include privately-managed prisons might not lead to any substantive benefits, as the Office has considerable ability to obtain financial and performance information. Ultimately, the Department of Corrections is accountable for the delivery of any service it contracts out to a private company, and is responsible for ensuring that the private company complies with the terms of its contract. As it is a public entity, the department's financial and performance reporting is audited by the Office of the Auditor-General, and

audits would include information on the costs and performance of a privately-managed prison.

Under section 175 of the Corrections Act, privately-managed prisons would be subject to requests under the Official Information Act 1982. While requests would be made directly to the prisons, responses could be sent back through the department for quality assurance.

Section 175 of the Corrections Act also extends the jurisdiction of the Office of the Ombudsmen to every contract prison. The Office also has the power and authority to examine and monitor the treatment of persons detained in prisons under the Crimes of Torture Act 1989.

The activities of the Inspector of Corrections and of Visiting Justices would also continue, and the rights of Justices of the Peace and members of Parliament to visit any prison would remain intact.

Release of prisoner information

A majority of us recommend amending clause 5 by inserting into the Corrections Act new sections 199J(1) and 199J(3) to allow the exchange of information regarding the management and treatment of prisoners between the Department of Corrections, contractors, and third-party agencies. These amendments would allow existing information exchange agreements to be extended to privately-managed prisons. For example, information may currently be exchanged between the Department of Corrections and the Ministry of Social Development for social security purposes. New section 199J(3) would also authorise privately-managed prisons to disclose to the department any information on prisoners it requested.

We considered the potential for breaches of prisoners' privacy if information otherwise protected from disclosure under the Official Information Act were made available to employees of privately-managed prisons. The primary purpose of the Official Information Act is to facilitate the release of information, and although there are provisions in the Act to withhold information in order to protect the privacy of natural persons, prisoners' privacy is primarily protected by the Privacy Act 1993. The Privacy Act would apply to privately-managed prisons and their employees, as both private and public organisations are subject to the Act.

New Zealand Labour Party minority view

Labour members do not support the Corrections (Contract Management of Prisons) Amendment Bill.

Labour members are of the view that the incarceration of citizens is a core Crown responsibility and as such should be under the direct control of the Crown through the Department of Corrections.

Public prisons are morally and fiscally accountable to the taxpayers, whereas private prisons are accountable to their shareholders, with a binding obligation to maximise profits. There is a risk that the pressure to show profit for a private company may lead to compromised service quality, such as lower staff-to-inmate ratios, fewer rehabilitative services, reduced range of services, cuts in staff pay and conditions, cuts in staff quality, or all of the above.

There is also the potential for abuse when a profit-making company has authority to restrict basic civil liberties. Profit motives may supersede the safety of the public, staff, and inmates.

We are also concerned that the passage of this bill will weaken the ability of members of Parliament, the media, and the general public to hold the private contractor to account in respect of corrections outcomes. At the present time members of Parliament can directly question the department and hold it accountable through the use of select committee inquiries, the Official Information Act 1982, and the use of Parliamentary written and oral questions. These avenues are not available for a private company.

The Auditor-General presently has unfettered access to Government departments and agencies, and can inquire into any matter he or she feels appropriate. It is our belief that under this legislation the Auditor-General's power and ability to inquire directly into matters pertaining to the private-sector contractor will be limited. The Office of the Auditor-General reported to the committee that under this bill it would not have the power to audit a private company and provide an opinion on the performance of that company.

The lack of independence of the people employed to monitor these privately-managed prisons is also a concern. These prison monitors will be employees of the Department of Corrections rather than having an independent status. We also note with concern that there is no compulsory provision to require 24-hour, seven-days-a-week monitoring.

We do not believe that a good explanation has been given for why there is a need for private management of prisons. In relation to costs and efficiency, there is no evidence to suggest that the privatisation of prisons would be more cost-effective and efficient than the current Department of Corrections model. The committee received advice from the department that comparing the per-prisoner cost at the privately-managed Auckland Central Remand Prison (ACRP) with the per-prisoner cost for remand prisoners held in public prisons at the same time; and then the per-prisoner costs at ACRP the next year when it was managed by the department. In both cases, the privately-managed ACRP was more expensive per-prisoner than the public sector comparisons:[2]

ACRP under private management, 1 July 2004 to 30 June 2005	Remand prisoners held in public prisons, 1 July 2004 to 30 June 2005	ACRP under public management, 1 July 2005 to 30 June 2006
$35,700 (operating costs only) $57,280 (inclusive of property-related overheads)	$32,000 (operating costs only) $50,208 (inclusive of property-related overheads)	$33,900 (operating costs only) $55,853 (inclusive of property-related overheads)

Nor have we seen any evidence that private management of prisons would bring new, innovative ideas to our corrections system. Public prisons already exhibit a huge amount of innovative ideas. They are only limited by resources and will.

The bill, as drafted, requires contracted prisons to have "sufficient suitable staff members". During consideration the committee considered a language change to be specific on this requirement by writing "including the minimum number of staff members, or the minimum ratio of staff members to prisoners, that the contractor must maintain." By majority, the committee has adopted the original wording in the belief that the word "sufficient" in conjunction with the obligations of the contract provided for in clause 5, section 199(1)(a) places a sufficient obligation on the chief executive in letting a contract.

[2] Department of Corrections, Corrections (Contract Management of Prisons) Amendment Bill 2009: request for further information from the Law and Order Committee, CMP/ADV/2, dated 20 July 2009, p. 3.

Labour members were unconvinced and were firmly of the view that the legislation should be specific in its requirements setting out its expectations that the chief executive should set clear minimum staff numbers and a clear minimum ratio of staff to prisoners in any contract to ensure, among other things, staff safety and prisoner security.

Finally, Labour members have serious concerns about the Government members using their majority on this committee to block our access to Ministry of Justice officials. The Ministry of Justice had input into the departmental report and we believe that the committee would have benefited from hearing the views and insight of the Ministry. We question the motive for not allowing the committee access to these officials, and we are disappointed that this opportunity has been denied when we are considering such a significant shift in our justice system.

More importantly, there are constitutional issues on this. The Government members, using their majority vote, have blocked opposition members from making legitimate inquiries of a Government ministry that has specialist knowledge of the matters being considered. Just as members have rights to free speech, we believe members must have rights, as select committee Members, of access to officials and information.

Green Party minority view

The Green Party is opposed to this legislation because it is contrary to good penal public policy by risking significant abuses of human rights, and imposing greater costs on the public than public provision, and will not alleviate the filters that have lead to a disproportionately high rate of Māori imprisonment.

Prison operates as the harshest possible penalty for crimes against the community. It is, as the Howard League for Penal reform described, among the most explicitly coercive instruments of the State. Such instruments should be used exclusively by the State, accountable to the public.

Prison officers exercise an extraordinary power over the lives of inmates. They are also in a very intense and often dangerous working environment. It is critical that both the officers and the prisoners are subject to the highest quality of oversight and management in order to prevent violence against staff and abuse of prisoners. The select

committee heard submissions from staff that reinforced the necessity for the greatest levels of transparency and caution in managing such an intensive environment in a privately-managed prison—for example, claims of 80 percent higher prisoner-to-prisoner violence and 60 percent higher levels of prisoner-to-staff violence.

The Green Party is extremely concerned by reports from human rights organisations who have shown that privately-run prisons and detention centres in the US, UK, and Australia have been the subject of legal action for human rights abuses and staff harassment. There are reports of higher levels of violence in such prisons and in some cases deliberate attempts to mislead Government officials to avoid scrutiny and legal action. In the US two judges were convicted of corruption for unjustifiably jailing up to 5,000 young people for kickbacks from the builders and owners of the private prisons.

It would be very difficult for such an extreme case to occur in Aotearoa; however, the Green Party believes that this bill and the contractual arrangements between the department and the private managers provides insufficient protection against any such corrupt influence. Penal policy is too important to leave any room for such influences.

It is the Green Party's view that this responsibility is of such importance to the safety of our communities and the principle of good governance that it can only rest with the State as the State agencies are only accountable to the public, through the machinery of Government.

Privately-run prisons, by contrast, are accountable to the Department of Corrections through a contract to manage services, but their primary responsibility is to the owners of the business. We heard from staff who had worked in privately-run prisons how conditions and contractual obligations had been massaged to reduce costs and avoid financial penalties imposed through the contract. These issues do not arise in the public provision of prisons, and where issues are raised, they are quickly the subject of public scrutiny through the process of Government.

Private prisons will not be subject to the same level of scrutiny by the public. Much of the financial information about the running of a private prison will be subject to confidentiality clauses in the contracts. This means that the public are unable to identify issues of importance to them before the contract is signed off.

Therefore the public will not access all the relevant information they need to hold the managers of these prisons to account as can be done currently.

Contrary to the views of some, privately-run prisons are not cheaper than public provision. We were told by officials that the cost of the private Auckland Central Remand Prison was $57,280 whereas the cost of public remand prisons was $52,280, inclusive of property overheads. There is no justification then for the claim that privately-run prisons are cheaper than public prisons. We were also told by submitters who had worked in private prisons that money was saved through the use of improperly trained casual staff, the moving of prisoners at risk in order to reduce staffing costs, and the constraining of career structures in order to reduce wages and conditions. The policy of providing for privately-run prisons has no economic benefit to the public and indeed may decrease the conditions and safety of staff and inmates.

This bill does not in any way provide for the involvement of iwi and hapū in the management of prisons or in the delivery of tikanga programs. The disproportionately high rate of Māori imprisonment is a disgrace and this does not address the causes nor prevent the high rate of recidivism. In the end such a policy lacuna leaves our communities less safe. The Green Party believes that the free market solution inherent in this bill simply provides a perverse incentive to encourage repeat customers. While that may not be the intent of the private managers or of the Government, this perverse incentive nonetheless exists and there is no policy solution to it. It is the Green Party's fear that such a perverse incentive will simply exacerbate the existing filters in the legal system that already lead to a disproportionate Māori imprisonment rate. Māori communities need support not further perversities that may lead to an increase in the imprisonment of rangatahi.

Aotearoa/New Zealand has one of the highest rates of imprisonment per capita in the world, and it is growing fast. Despite spending millions of dollars each year locking up offenders, we also have a high rate of recidivism, showing a strong correlation between rates of imprisonment and re-offending. If we are to create a genuinely safer society, prisons need to focus more on rehabilitation and re-integration of inmates into society. We need to provide additional support, including opportunities in education, meaningful work, and commu-

nity participation, and to help people to avoid a life of crime. This bill moves Aotearoa a significant step further away from this goal, by handing to the private sector a core public function upon which rests, in the most real way possible, the lives and safety of the community.

Appendix

Committee process

The Corrections (Contract Management of Prisons) Amendment Bill was referred to the committee on 26 March 2009. The closing date for submissions was 22 May 2009. We received and considered 51 submissions from interested groups and individuals. We heard 23 submissions, and undertook an official site visit to Rimutaka Prison.

We received advice from the Department of Corrections and the Office of the Auditor-General. The Department of Corrections conferred with the Ministry of Justice. The committee, by majority, elected not to seek advice directly from the Ministry of Justice.

Committee membership

Sandra Goudie (Chairperson)
Shane Ardern
Hon Rick Barker
Simon Bridges (until 24 June 2009)
Dr Cam Calder (from 24 June 2009)
Hon Clayton Cosgrove
David Garrett
Melissa Lee
Carmel Sepuloni
Metiria Turei
Jonathan Young

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Judith Collins

Corrections (Contract Management of Prisons) Amendment Bill

Government Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Corrections (Contract Management of Prisons) Amendment Act **2009**.

2 Commencement

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
Amendments to allow contract management of prisons

4 Interpretation

Section 3(1) is amended by inserting the following definition in its appropriate alphabetical order:

"**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.

"(2) The chief executive must not, without the prior written consent of the Minister in each case,—

"(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.

"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

"(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

"(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

"(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

"(d) the training to be provided, at the expense of the contractor, to staff members of the prison, which training must be—

"(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

"(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

"(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

"(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

"(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

"(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

"(l) the obligations of the contractor, ~~to co-operate with the chief executive~~ in the event of the termination or expiry of the contract, to co-operate with the chief executive and to comply with any instructions issued by the chief

executive 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

"(b) the requirements of the New Zealand Bill of Rights Act 1990, as if the prison were a prison managed by the department; and

"(ba) the requirements of the Public Records Act 2005, as if records relating to the prison and to prisoners in the prison were records created or received by the department; and

"(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.

"(3) A prison management contract may contain other provisions, as agreed between the chief executive and the contractor, that are not inconsistent with—

"(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.

"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—

"(a) the contractor were the chief executive of the department; ~~or~~and

"(b) each staff member of the prison were an employee of the department.

"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); 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 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 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 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.

"(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 196, in so far as those provisions relate to that management re-

sponsibility, 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)(a)**.

"(2) The manager of a contract prison must, at any intervals (not exceeding ~~3~~4 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)(a)**:

"(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:

"(b) the number and nature of complaints made by prisoners at the prison, and how those complaints were resolved:

"(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:

"(d) the programmes provided for prisoners at the prison, and the extent of attendance at, and completion of, those programmes by prisoners:

"(da) the employment provided for prisoners by or at the prison:

"(db) the skills gained by prisoners as a result of employment or education provided by or at the prison:

"(e) the compliance, by staff members of the prison, with the requirements of sections 83, 84, 85, 87, and 88:

"(f) the exercise, by officers of the prison, of the powers conferred by sections 98 to 101:

"(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:

"(h) the reasons for, and outcomes of, disciplinary proceedings or disciplinary actions, including any penalties imposed:

"(i) the operation of random-testing programmes in the prison:

"(j) any matters relating to the financial management of the prison that the chief executive from time to time determines, 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.

"(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)(a)**.

"(4) The events are—

"(a) any escape or attempted escape by a prisoner:

"(b) the death of a prisoner.

"(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

"**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.~~

"(1) The chief executive—

"(a) must appoint, under the State Sector Act 1988, 1 monitor in respect of each contract prison; and

"(b) may appoint, under the State Sector Act 1988, 1 or more additional monitors in respect of a contract prison, to assist the monitor appointed under **paragraph (a)**.

"(1A) The chief executive may appoint, under the State Sector Act 1988, 1 or more monitors for particular purposes specified by the chief executive.

"(2) The monitor appointed under **subsection (1)(a)** 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~~ any intervals (not exceeding ~~3~~4 months) that are determined by the chief executive ~~determines~~, and at any other time that the monitor considers appropriate, on—

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

"(3) A monitor appointed under **subsection (1)(a)** 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.

"(3A) A monitor appointed under **subsection (1A)** may, at any time that he or she considers appropriate, make recommendations to the chief executive on any matters relating to any prison.

"(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.

"(5) The chief executive must ~~regularly alter the monitors~~ensure a regular change of the monitor or monitors appointed under **subsection (1)** in respect of each contract prison.

"Compare: 1954 No 51 s 4G

"**199F Accommodation and access**

"(1) Every contractor must ensure that there is available in the contract prison managed by that contractor suitable office accom-

modation for use by ~~a~~the monitor or monitors appointed under **section 199E(1)** in respect of that prison.

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

"(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

"(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.

"(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~~the monitor appointed in respect of a contract prison under **section 199E(1)(a)** must, for the purposes of the report under **section 199E(2)(b)**, review the following matters:

"(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:

"(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:

"(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

"(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:

"(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—

"(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):

"(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:

"(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)(a)** 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.

"(2A) A monitor appointed in respect of a contract prison under **section 199E(1)(b)** may, at the request of the monitor appointed in respect of the prison under **section 199E(1)(a)**, or at the request of the chief executive, investigate any matter relating to that prison, or any prisoner in that prison, and report to that person the results of that investigation.

"(3) A monitor appointed for a particular purpose under **section 199E(1A)** may, at the request of the chief executive or on the monitor's own initiative, investigate any matter relating to any 1 or more prisons, or any prisoner in any prison, and report to the chief executive the results of that investigation.

"Compare: 1954 No 51 s 4I

"**199H Control of contract prison in emergency**

"(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

"(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.

"(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—

"(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:

"(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 and by contract prisons**

"(1) For the purposes of enabling the chief executive or any staff member of the department to exercise or perform any of his

or her powers, duties, or functions, the chief executive or any staff member of the department may access any information that is held (or deemed for the purposes of the Official Information Act 1982 to be held) by a contract prison and that relates to that contract prison or to any prisoner.

"(2) 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.

"(3) If the department is authorised by any enactment to access or to disclose information relating to any prisoner,—

"(a) a staff member of a contract prison is authorised to access or disclose that information as if the contract prison were a part of the department; and

"(b) the chief executive may require the contractor to access or disclose that information.

"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

"(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.

"(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.

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

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

"(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 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.

"(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.

"(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."

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
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.

(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)**.

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.

Schedule

s 8

Consequential amendments

Part 1

Consequential amendments to principal Act

Section 3(1)

Definition of **contract prison**: omit "management contract entered into under section 4A of the Penal Institutions Act 1954" and substitute "prison management contract".

Definition of **contractor**: omit "management contract entered into under section 4A of the Penal Institutions Act 1954" and substitute "prison management contract".

Definition of **monitor**: omit "section 215" and substitute "**section 199E(1) or (1A)**".

Section 7(1)

Paragraph (e): omit and substitute:

"(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 **section 199I**:"

Section 10(j)

Omit "section 215" and substitute "**section 199E(1) or (1A)**".

Section 179(b)

Omit "a contract under section 4A of the Penal Institutions Act 1954" and substitute "a prison management contract".

Section 190(3)(a)(i)

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 "**section 199D(2) and (3)**".

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
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)

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)

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".

Legislative history

12 March 2009	Introduction (Bill 20–1)
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