

# **Public Safety (Public Protection Orders) Bill**

Government Bill

As reported from the Justice and Electoral  
Committee

## **Commentary**

### **Recommendation**

The Justice and Electoral Committee has examined the Public Safety (Public Protection Orders) Bill and recommends by majority that it be passed with the amendments shown.

### **Introduction**

The Public Safety (Public Protection Orders) Bill seeks to protect the public from almost certain harm by a very small number of serious sexual or violent offenders. It would do this by creating a new legislative regime allowing the High Court to make public protection orders (PPOs) that would allow detention of a subject in a secure facility.

The bill sets out four principles that courts and other people exercising power under its provisions would need to have regard to: that a PPO is not imposed as punishment; that it should be imposed only if the magnitude of the risk justifies it; that it should not be imposed if the offender is eligible to be held under mental health or intellec-

tual disability legislation; and that people thus detained should have as much autonomy as possible.

Under the bill, applications for PPOs would be made by the chief executive of the Department of Corrections (the applicant) to the High Court in its civil jurisdiction. The applicant would need to prove that the offender (the respondent) met the threshold and test set out in the bill on the balance of probabilities. To meet the threshold a person would have to be 18 or older and fall within one of the following categories:

- Being within six months of being released from prison for a serious sexual or violent offence.
- Being subject to the most intensive form of extended supervision order.
- Being subject to a protective supervision order.
- Having arrived in New Zealand within six months of ceasing to be subject to any sentence for serious sexual or violent offending from an overseas court.

Once the threshold was met a High Court judge could make a PPO if satisfied that the respondent presented a very high risk of imminent serious sexual or violent offending and exhibited severe behavioural disturbance, evidenced by four characteristics exhibited to a high level. They are an intense drive or urge to commit a particular form of offending; limited self-regulatory capacity; absence of understanding and concern for the impact of offending on victims; and poor interpersonal relationships or social isolation. Clinical reports from health assessors would address whether a respondent exhibited these characteristics.

Where persons subject to PPOs posed an unacceptably high risk to themselves or others, the High Court could grant a prison detention order. If the High Court found on reviewing a PPO that there was no longer a very high risk of imminent serious sexual or violent offending, the PPO would be cancelled, and a protective supervision order imposed to support the resident in making a safe transition back into the community.

This commentary covers the main amendments we recommend to the bill; it does not cover minor or technical amendments.

## **Commencement**

We recommend amending clause 2 of the bill as introduced so that its provisions would come into force on a date appointed by the Governor-General by Order in Council; and so that multiple Orders in Council could be made bringing different provisions into force on different dates. To allow time for consent processes we also recommend amending clause 2 to provide for clause 99, which deals with the establishment of residences, to come into force the day after the Royal assent is granted. Any provision not brought into force earlier would come into force one year after the bill receives the Royal assent.

## **Standard of proof**

We recommend amending clause 13(1) of the bill to require that the court be satisfied “on the balance of probabilities” that the criteria are met before making a PPO. This would make it clear that the required standard of proof is the civil standard—the balance of probabilities. This is appropriate since the regime proposed by the bill would involve non-punitive civil detention, and applications for PPOs would be made to the High Court in its civil jurisdiction.

## **Suspension of PPO**

We recommend inserting new clause 96A to provide for the suspension of proceedings until the person is no longer detained in a hospital, facility, or prison; and new clause 123A, providing for the suspension of a PPO, prison detention order, or protective supervision order. We also recommend the consequential deletion of sub-clauses 12(5) and (6) regarding the discontinuation and resumption of PPO proceedings.

We consider that PPO applications and orders should be suspended, rather than discontinued, if a respondent is subsequently detained in a prison or under mental health or intellectual disability legislation. This would address our concern that a person could be released from the hospital, facility, or prison while still posing harm. We recognise that a person’s very high risk of imminent serious harm to the public may not flow from their mental disorder or intellectual disability. Also, we want to avoid creating a perverse incentive to break the law

in a moderate way to try to avoid being subject to a PPO, prison detention order, or a protective supervision order.

### **Review and oversight provisions**

For consistency with similar legislation, we recommend inserting new subclause 109(6), to allow the Minister of Justice to remove a review panel member for “just cause” without compensation. “Just cause” could include absence.

We also recommend inserting subclause 94(2) to make evidence in proceedings under the bill subject to subpart 8 of Part 2 of the Evidence Act 2006, and to any legislative provision governing legal professional privilege; this important principle would thus be upheld.

### **Review of PPOs, and making of protective supervision orders**

We recommend prescribing more detail about review of a PPO. We recommend adding clauses 17(2) and (2A) to require a court reviewing a PPO to consider whether the subject still poses a very high risk of imminent serious sexual or violent offending, taking into account the reports provided to the court.

We also recommend inserting subclause 17(2B) to provide that if the court finds the person no longer poses a very high risk it must make a finding to that effect. To clarify the process that would then apply, we recommend amending subclause 80(1) to require the court to cancel the PPO and impose a protective supervision order on the person. Our new subclause 80(1B) would require the person to be released from detention as soon as practicable after a protective supervision order was imposed.

### **Victim notification and participation**

We recommend amending the definition of victim in clause 3 (Interpretation) to include reference to their request for notice or advice and copies under section 31 of the Victims’ Rights Act 2002.

We consider it important that notification of victims be consistent with the victim notification register system provided for under the Victims’ Rights Act. This Act allows certain victims to register to remain informed about the person who offended against them. We

also consider that victims need to be informed at more stages in the process. Therefore, we recommend the addition of subclause 8(2) to provide for the chief executive to notify every victim as soon as practicable when an application is made for a PPO; new clause 13A providing for victims to be notified of the outcome after a PPO application is determined or suspended; new subclause 15(4) providing for victims to be notified when the chief executive has made an application for a review of a PPO; and new subclause 16(2) to provide for notification when the person subject to the PPO has applied for it to be reviewed. Similarly, we recommend inserting subclause 86(3) and subclause 87(2), imposing similar notification requirements regarding applications for review of a protective supervision order.

### **Legal aid**

We recommend inserting new clause 124B to insert subsection 4(1)(ca) into the Legal Services Act 2011, to make any proceedings under the act a “specified application”. This would treat these applications in a similar way to those relating to compulsory mental health and intellectual disability proceedings, making it easier to access legal aid than it is for standard civil proceedings.

### **Rights and management of residents**

We recommend amending clause 28 to give residents the right to participate in educational activities, and inserting subclause 38(2)(ca) to include educational needs in the needs assessment conducted of a resident. We consider there is value in explicitly providing for education as a right, and ensuring a person’s educational needs are determined.

We also recommend amending clause 30(1) to replace “access to newspapers” with “access to news media”. For the sake of clarity the amendment refers to a resident receiving a news media item and does not include by reference media representatives.

### **Visitors, deliveries and communications**

Provisions in the bill as introduced concerning people and items entering a residence were drafted in the expectation that residences would be located only inside the secure perimeters of prisons, and

people and items would enter through the main prison gatehouse and be subject to the requirements of the Corrections Act 2004. We understand there would be significant operational benefit in locating residences on prison land outside the prison wire but within their own secure perimeter fences. However, this would mean that the security provisions under the Corrections Act could no longer be relied upon, necessitating the following amendments to the bill as introduced.

### **Visits**

We recommend amending clause 31 to allow a resident to receive visits from permitted persons, subject to any conditions or restrictions imposed by the residence manager. New subclause (1A) would permit a visit to be unsupervised if the residence manager considered it would meet the resident's rehabilitative needs. New subclause (1B) would also exempt visits by inspectors, office-holders, or a resident's lawyer.

We also recommend including new subclause 56(1A) to require a residence manager not to allow a person under the age of 18 to visit a resident unless the visit is likely to meet the resident's rehabilitative needs.

### **Inspection of items**

We recommend inserting new clause 43A, which would allow the residence manager to inspect items delivered to the resident or intended to be sent by the resident, to determine whether they were prohibited, contravened the resident's management plan, or would be otherwise detrimental, and to deal with them accordingly.

### **Monitoring, seclusion, and restraint**

We recommend removing subclause 62(2), which would require physical restraint to be used before mechanical restraint. Removing this priority would allow the most appropriate means of restraint to be applied where necessary. We consider it would be safer not to assume the use of physical restraint as the first resort, as it is more likely to cause harm than the use of mechanical restraints.

## **Searches and prohibited items**

In order to allow the locating of residences on prison land outside the prison wire (rather than within as intended by the bill as introduced) the security provisions under the Corrections Act could no longer be relied upon in respect of residences, necessitating the following amendments to the bill.

### **Residents and residences**

Clause 57 provides for searches of residents and residences. For completeness we recommend inserting new subclauses 57(1)(ab) and (ba) to include searches of any items the resident has in the residence, or that are delivered to it.

We recommend amending clause 57(3) to provide that a resident “may”, rather than “must”, be strip-searched on entering or leaving the residence or the prison within which the residence is located. This would be consistent with the Corrections Act 2004, which provides some flexibility regarding the strip-searching of prisoners entering or leaving a prison.

We also recommend defining “rub-down search”, “scanner search”, “strip-search”, and “x-ray search” in clause 3 (Interpretation) of the bill as having the same meanings as they do in the Corrections Act 2004. We recommend that these searches be listed in clause 57(2), which concerns the form searches may take.

### **Search of persons other than residents**

We recommend inserting new clause 57A to provide for searches of people other than residents; new clause 57A(2) would allow a rub-down search with the person’s consent if there were reasonable grounds to suspect the person had a prohibited item; under new clause 57A(3) failure to consent to a scanner search or a rub-down search would result in entry being denied to the residence or the person being required to leave if they were already inside.

### **Search of property, use of dogs, and inspecting of prohibited items**

We recommend inserting new clause 57B which provides for the authority to search any items the respondent has, new clause 57C which

allows for a search dog to be used, and new clause 57D which allows a residence manager to take possession of an item, by force if necessary, and describes how items are to be dealt with.

We recommend inserting new clause 20A(1) to forbid residents from possessing prohibited items; and 20A(2) and (3) providing for the residence manager to take possession of a prohibited item and deal with it as they consider appropriate, including giving it to the Police or another person, or destroying it. This would clarify the powers of staff concerning prohibited items.

We recommend that the reference to drugs in the “prohibited item” list in clause 3 (Interpretation) be replaced by reference to any medicines, controlled drugs, or precursor substances except those prescribed for the resident, and psychoactive substances. This would be consistent with the Medicines Act 1981, which does not refer to “drugs”; and it would make the intent of the clause clearer by explicitly listing certain types of substances. We also recommend amending subclause 58(1), which provides for drug and alcohol testing, to reflect the revised wording.

We further recommend adding tobacco and equipment used for smoking substances as prohibited items (clause 3 (Interpretation)), which would reduce the risk of fire and promote a healthier environment; adding “any electronic or non-electronic material that the residence manager reasonably considers to be pornographic”, any electronic or non-electronic representation of inappropriate images of under-18-year-olds, any computer or other electronic device on which a prohibited item is stored; and adding “any live animal” to the list of prohibited items in clause 3. We consider this would remove any potential ambiguity as to the status of these items.

### **Inspectors and specified office holders**

To improve accountability and transparency we recommend inserting subclause 106(2) to require the Department of Corrections’ annual report to include a report on the activities of inspectors.

We recommend amending subclauses 68(2) and (3), and 70(2) to require inspectors to investigate, conduct an inquiry, and report on a matter “as soon as is reasonable in the circumstances” after receipt of a complaint or a direction to conduct an inquiry. This is consistent



with the timeframe allowed for prison inspectors to conduct investigations.

### **Regulations, guidelines and instructions**

Consistent with advice we received from the Regulations Review Committee, we recommend including a definition of “coercive power” in clause 3 (Interpretation) of the bill, to clarify that it means a power that authorises a residence manager or staff member, or a corrections officer, to use force, and that it includes the powers conferred by clauses 57 to 58 and 61 to 64. We also recommend inserting new subclause 122(2) to make it explicit that only the coercive powers conferred by the bill could be regulated, and no new coercive powers could be provided for by regulations.

We recommend inserting new subclause 104(6) specifying that rules made by the residence manager under clause 104(1) for the management of the residence are not disallowable instruments for the purposes of the Legislation Act 2012, and do not have to be presented to the House of Representatives under section 41 of that Act. New subclause 104(7) would provide that these rules could not confer any coercive powers.

We further recommend inserting subclause 105(1)(b)(ia) to provide for the chief executive to issue instructions and guidelines regarding the safe custody of residents, and amending clause 105(3) to specify that guidelines and instructions are also disallowable instruments for the purposes of the Legislation Act 2012.

### **Deducting amounts to cover the cost of care**

We recommend amending clause 37(2) so that money would be deducted from a resident’s employment earnings, rather than from their trust account. This would clarify an existing provision for a resident to be required to pay a contribution to their care while working in paid employment.

### **Including murder in the definition of “serious sexual or violent offence”**

We recommend including “murder” in the definition of “serious sexual or violent offence” by inserting a reference to sections 172 to 177

of the Crimes Act 1961 in clause 3 (Interpretation). This is necessary because PPOs would also apply to those returning to New Zealand after serving a sentence for a “serious sexual or violent offence” in an overseas jurisdiction. A person convicted of murder in New Zealand will be detained if they pose a continuing risk to the community.

### **Escape from lawful custody**

We recommend inserting new clause 124A to add new subsection 120(1)(bb) to the Crimes Act 1961, making it an offence for a person subject to a PPO to escape from a residence. This would authorise police to apprehend and arrest anyone who escaped from a residence.

## **Emergencies**

### **Civil defence emergencies**

The bill as introduced contains no provisions relating to civil defence emergencies, such as earthquake or fire. For the safety of residents, staff, and the general public we recommend inserting new clause 64A, giving the prison manager authority in a civil defence emergency. Although the management of a residence and the prison where it is situated would be kept separate under the bill, in a civil defence emergency it would be safer and more effective for a single line of command to coordinate the response for both the residence and the prison.

We also recommend inserting new clause 64B, to provide for the relocation of residents to prison if a residence is rendered uninhabitable. If the residents’ detention in prison exceeded 72 hours, new subclause 64B(2) would require the chief executive to apply for a transitional detention warrant authorising their continued detention. New clause 64C sets out the details that would be required for the issuing of such a warrant.

### **Security emergencies**

We recommend inserting clause 64(4A) to allow the court to make an interim prison detention order while an application for a prison detention order is pending, so that the resident could be detained in prison in the meantime. This would clarify the status of an individual detained in an emergency under clause 64, ensuring their safe man-

agement and the safety and security of the prison. Should the court decline to grant an interim order, the resident would be returned immediately to a residence.

### **Court procedure**

We recommend inserting new clause 90A to require an application for a PPO, or a prison detention order, and an application for a review of those orders or a review of a protective supervision order, to be made by originating application. Originating applications are appropriate where evidence would normally be by affidavit and the normal High Court Rules regarding settlement are not relevant.

### **Green Party Minority View**

The Public Safety (Public Protection Orders) Bill is intended to protect the public from harm that may be posed by the release from prison of what all parties agree is a very small number of individuals (possibly as few as five, no more than twelve) who have completed their sentences. It is the Green Party's view that many of the provisions in the bill are disproportionate and excessive in relation to the level of threat to public safety that actually exists.

The bill purports to be based on four principles, one of which is that orders "are not imposed to punish persons". It is nevertheless difficult to construe the application of orders as being anything other than a punitive regime, when it denies individuals subject to them their liberty and freedom of association; limits their rights to information, visitors, correspondence; makes them subject to strip searches, and much else. The form of detention is a continuation of an imprisonment regime in all but name, even though the subjects of orders have served the full term of a sentence handed down by the courts.

The regulatory impact statement, and a number of informed submitters, indicated that the legislation is likely to be found inconsistent with the Bill of Rights Act, in particular section 22 and section 26, in respect of arbitrary detention and double jeopardy.

The United Nations Working Group on Arbitrary Detention, who visited New Zealand in March to April this year (2014) stated unequivocally that this bill is not in compliance with international law.

The Law Society has questioned the need for the bill, pointing out that there are existing sentencing options for criminal offenders, in-

cluding the wider availability of preventive detention since 2002, extended supervision orders under the Parole Act 2002, and options for intellectually disabled offenders in the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. The Law Society also noted that even prior to these options being available the Law Commission concluded that a civil detention regime of the kind that would be established by this bill was not necessary in the public interest.

The Green Party continues to oppose this bill, and recommends that it not proceed.

## **Appendix**

### **Committee process**

The Public Safety (Public Protection Orders) Bill was referred to the committee on 18 September 2013. The closing date for submissions was 1 November 2013. We received 13 submissions from interested groups and individuals, and heard eight submissions. We received advice from the Ministry of Justice and the Department of Corrections. We also considered a report from the Regulations Review Committee on the regulation-making powers in the bill.

### **Committee membership**

Scott Simpson (Chairperson)

Paul Foster-Bell

Joanne Hayes

Raymond Huo

Alfred Ngaro

Denis O'Rourke

Hon Maryan Street

Holly Walker

Hon Kate Wilkinson

David Clendon replaced Holly Walker for this item of business.

---



**Public Safety (Public Protection Orders) Bill**

---

**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*

## **Public Safety (Public Protection Orders) Bill**

Government Bill

### **Contents**

	Page
1 Title	7
2 Commencement	7
<b>Part 1</b>	
<b>Detention and supervision of persons posing very high risk of imminent serious sexual or violent offending</b>	
Subpart 1—Interpretation, objective, and principles	
3 Interpretation	7
4 Objective of Act	12
5 Principles	13
6 Act binds the Crown	13
Subpart 2—Public protection orders	
<i>Imposition of public protection orders</i>	
7 Threshold for imposition of public protection order	13
8 Chief executive may apply for public protection order	14
9 Reports by health assessors	15
10 Right to independent expert assessment	15
11 Issue of summons to attend hearing	15
12 Assessment whether respondent mentally disordered or intellectually disabled	16
13 Court may make public protection order	17
13A Notification of victims	18

**Public Safety (Public Protection Orders) Bill**

---

<i>Review by review panel</i>		
14	Review of public protection order by review panel	18
<i>Review by court</i>		
15	Application by chief executive for review of public protection order	18
16	Application for review by person subject to public protection order	19
17	Review of public protection order	19
17A	Review of management plan	20
Subpart 3—Status of residents		
18	Detention of residents	21
19	Legal custody of residents	21
20	Residents must obey lawful directions	21
20A	Residents may not possess prohibited items	21
21	Transfers between residences	22
22	Information to be given to residents about transfers	23
23	Leave	23
<i>Rights of residents</i>		
24	Rights of residents	24
25	Earnings from work	25
26	Right to legal advice	25
27	Right to vote	25
28	Recreational and cultural activities	26
29	Right to receive and send written communications	26
30	Access to media	26
31	Visitors and oral communications with people outside residence	26
32	Right to medical treatment	27
33	Right to rehabilitative treatment	27
34	Right to information	27
35	Respect for cultural identity	27
36	Right to benefits	27
37	Receipts for residents to be paid into trust accounts	28
Subpart 4—Management of residents		
<i>Management plans</i>		
38	Needs assessment	28
39	Management plans	29
39A	Management plan may bar communications between resident and specified persons	30
40	Reviews and variations of management plan	30

**Public Safety (Public Protection Orders) Bill**

---

<i>Monitoring of written communications</i>		
41	Checking and withholding of written communications in certain cases	31
42	Written communications not to be withheld if sent by or to certain persons	31
<i>Approval and inspection of items</i>		
43	Delivery of items must be approved	33
43A	Items intended for, or intended to be sent by, resident may be inspected	33
<i>Written communications or items withheld or not sent</i>		
43B	Procedure where written communication or item withheld or not sent	33
<i>Telephone calls may be monitored</i>		
44	Interpretation	34
45	Purposes of monitoring resident calls	35
46	Resident calls that may be monitored	36
47	Certain resident calls must not be monitored	36
48	Only certain persons may monitor resident calls	37
49	Warnings	38
50	Authorised disclosure of information	39
51	Restrictions on disclosure of information	39
52	Application of Privacy Act 1993	40
53	Destruction of recordings	40
54	Notice to be given of intention to produce evidence of recording	41
55	Privileged evidence	42
<i>Restrictions on contacts with persons outside residence</i>		
56	Visits from, or oral communication with, certain persons may be excluded	42
<i>Searches</i>		
57	Search of residents and residence	43
57A	Search of persons other than residents	44
57B	Authority to search property	44
57C	Use of dogs for searching	45
57D	Taking and inspecting items appearing to be prohibited	46
<i>Drug or alcohol tests</i>		
58	Resident may be required to submit to drug or alcohol test	46
59	Resident must be informed of results of test	47

**Public Safety (Public Protection Orders) Bill**

---

60	Restrictions on use of result of test	47
	<i>Seclusion</i>	
61	Seclusion	47
	<i>Restraint</i>	
62	Restraint of residents	48
63	Escort of persons subject to detention orders	49
	<i>Emergencies</i>	
64	Responses to security emergencies	50
64A	Assumption of control by manager of prison during civil defence emergency	51
64B	Relocation of residents to prison where residence becomes uninhabitable	52
64C	Transitional detention warrants	53
	Subpart 5—Inspections and complaints into alleged breaches of rights	
65	Visits by inspectors	53
66	Inspectors’ access to persons and documents	54
67	Complaints about breaches of rights	54
68	Investigation by inspectors	54
69	Resident to be informed of outcome of investigation	55
70	Inquiries by inspector	55
71	Duty of manager to correct deficiencies	56
	Subpart 6—Prison detention orders	
72	Order for detention in prison	56
73	Rights and obligations of person subject to prison detention order	56
	<i>Review by review panel</i>	
74	Review of prison detention orders by review panel	57
	<i>Review by court</i>	
75	Application by chief executive for review of prison detention order	58
76	Application for cancellation by person subject to prison detention order	58
77	Court must be provided with relevant reports on person subject to prison detention order	58
78	Cancellation of prison detention order	58
79	Consequence of cancellation of prison detention order	59

**Public Safety (Public Protection Orders) Bill**

---

Subpart 7—Protective supervision		
80	Replacement of public protection order with protective supervision order	59
81	Requirements may be included in protective supervision order	59
82	Notification of requirements	60
83	Court may vary requirements of protective supervision order	60
84	Review panel may modify requirements to render them less restrictive	60
85	Notification of changes	61
86	Application by chief executive for review of protective supervision order	61
87	Application for review by person subject to protective supervision order	61
88	Review of protective supervision order	61
89	Cancellation of protective supervision order	62
90	Offence to breach protective supervision order	62

**Part 2**

**Procedural, administrative, and miscellaneous matters**

Subpart 1—Procedural matters

*Procedure governing applications to court*

90A	Applications to be made by originating application	63
91	Service of applications	63
92	Respondent who fails to appear may be brought to court	63
93	Court may order interim detention of, or interim imposition of conditions on, respondent	64
94	Evidence in proceedings under this Act	64
95	Court may determine whether hearings are held in open or closed court	65
96	Court may suppress evidence and submissions	65
96A	Suspension of proceedings in certain cases	65

*Matters governing reviews by review panel*

97	Reports to be provided to review panel	66
98	Interview of person	66

Subpart 2—Matters relating to management or administration

99	Establishment of residences	67
100	Appointment of residence manager	67
101	Powers and functions of residence managers	68

**Public Safety (Public Protection Orders) Bill**

---

102	Manager of residence may delegate powers and functions	68
103	Status of delegations	69
104	Manager may make rules for residence	69
105	Chief executive may provide guidelines or instructions	70
106	Matters to be included in annual report of department	71
	<i>Review panel</i>	
107	Establishment and constitution of review panel	72
108	Meetings of review panel	72
109	Term of appointment, and reappointment	73
110	Remuneration and expenses of members	73
111	Immunity of members	74
	<i>Appointment of inspectors</i>	
112	Inspectors	74
	<i>Visits by specified office holders</i>	
113	Right of specified office holders to visit residences	74
114	Crimes of Torture Act 1989 not limited	75
	<i>Residence management contracts</i>	
115	Management of residences under contract	75
116	Requirements of residence management contracts	75
117	Delegation of powers and functions of contractor	77
118	Liability of contractor	77
119	Control of contract residence in emergency	77
120	Residence management contracts to be presented to House of Representatives	79
121	Release of resident information to and by contract residences	79
	Subpart 3—Miscellaneous matters	
122	Regulations	80
123	Sentence of preventive detention not affected by this Act	80
123A	Suspension of orders in certain cases	80
124	Claims by persons subject to orders under this Act not affected by Prisoners' and Victims' Claims Act 2005	81
	<i>Escaping from residence</i>	
124A	Amendment to Crimes Act 1961	81
	<i>Legal aid</i>	
124B	Amendment to Legal Services Act 2011	81

	<i>Access to protection orders and restraining orders</i>	
124C	Amendments to Privacy Act 1993	81
125	Consequential amendments	82
	<b>Schedule</b>	83
	<b>Consequential amendments</b>	

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

**1 Title**

This Act is the Public Safety (Public Protection Orders) Act **2012**.

**2 Commencement**

5

This Act comes into force on the day that is 1 year after the date on which this Act receives the Royal assent unless it is brought into force on an earlier date appointed by the Governor-General by Order in Council.

(1) Except as provided in this section, this Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made bringing different provisions into force on different dates. 10

(2) Section 99 comes into force on the day after the date on which this Act receives the Royal assent. 15

(3) Any provision that has not earlier been brought into force comes into force on the day that is 1 year after the date on which this Act receives the Royal assent.

**Part 1**

**Detention and supervision of persons posing very high risk of imminent serious sexual or violent offending** 20

Subpart 1—Interpretation, objective, and principles

**3 Interpretation**

25

In this Act, unless the context otherwise requires,—

**chief executive** means the chief executive of the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act

**coercive power**—

- (a) means a power that authorises a residence manager, staff member of a residence, or a corrections officer to use force; and 5
- (b) includes the powers conferred by any of **sections 57 to 58 and 61 to 64**

**contract residence** means a residence that is for the time being managed under a residence management contract 10

**corrections officer** has the same meaning as the term officer in section 3(1) of the Corrections Act 2004

**court** means the High Court

**department** means the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Corrections Act 2004 15

**deputy residence manager** means a person appointed or engaged as the deputy manager of a residence under **section 100** 20

**determinate sentence** has the same meaning as determinate sentence of imprisonment in section 4(1) of the Sentencing Act 2002

**electronic communication device**—

- (a) means an electronic communication device (other than a device used to assist with a disability) that is capable of any or all of the following actions: 25
- (i) transmitting sound:
  - (ii) computing information:
  - (iii) functioning as a telephone: 30
  - (iv) communicating in any other way using any technology (including telecommunication, radiocommunication, Internet, and broadcasting technology); and
- (b) includes any part of an electronic communication device (for example, a SIM card) regardless of whether the part— 35



- (i) is capable of any of the actions specified in **paragraph (a)**; and
- (ii) is detachable and may be used in other electronic communication devices; and
- (c) includes any device that enables or facilitates the functioning of an electronic communication device (for example, a recharger or charging device) 5
- guidelines or instructions** means guidelines or instructions provided under **section 105**
- health assessor** means a health practitioner who— 10
- (a) is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine, and who is a practising psychiatrist; or 15
- (b) is a registered psychologist
- imminent**, in relation to the commission of serious sexual or violent offences by a person, means that the person is expected to commit such an offence as soon as he or she has a suitable opportunity to do so 20
- inspector** means an inspector appointed under **section 112**
- interim detention order** means an order made under **section 93**
- Judge** means a Judge of the High Court
- lawyer** has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006 25
- management plan**, in relation to a resident, means the plan prepared for the resident, under **section 39**, as varied from time to time under this Act
- mentally disordered** has the same meaning as in the Mental Health (Compulsory Assessment and Treatment) Act 1992 30
- Minister** means the Minister of the Crown for the time being responsible for the department
- prison** has the same meaning as in section 3(1) of the Corrections Act 2004 35
- prison detention order** means an order made under **section 72**

**probation officer** means an officer appointed by the chief executive in accordance with section 24 of the Corrections Act 2004

**prohibited item**, in relation to a resident, means—

- (a) any article that could, while in the possession of the resident, be harmful to that resident or to any other person: 5
- ~~(b) any drug other than drugs prescribed for the resident under the Medicines Act 1981:~~
- (b) any medicines (within the meaning of section 3 of the Medicines Act 1981), except for medicines prescribed for the resident under that Act: 10
- (ba) any controlled drugs and precursor substances (specified or described in Schedule 1, 2, 3, or 4 of the Misuse of Drugs Act 1975), except for medicines prescribed for the resident under the Medicines Act 1981: 15
- (bb) any psychoactive substance (within the meaning of section 9 of the Psychoactive Substances Act 2013):
- (c) any alcohol:
- (d) any other intoxicating substance:
- (da) any tobacco: 20
- (db) any equipment used for smoking tobacco or any other substance:
- (dc) any electronic or non-electronic material that the residence manager reasonably considers to be pornographic: 25
- (dd) any electronic or non-electronic representation, which the residence manager reasonably considers to be inappropriate, of a naked or partially naked person who is or appears to be under 18 years of age:
- (de) any computer or other electronic device on which a prohibited item is stored: 30
- (e) any electronic communication device:
- (f) any thing that could be used for the purpose of facilitating the escape from lawful custody of any person:
- (g) any article or substance that could be used for the purpose of altering the results of a drug or alcohol test: 35
- (ga) any live animal:

- (h) any other article or substance that the resident is not permitted to possess under rules made under **section 104**

**protective supervision order** means an order made under **section 80** 5

**public protection order** means an order made under **section 13**

**registered psychologist** means a health practitioner who is, or is deemed to be, registered with the Psychologists Board continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of psychology 10

**residence** means a residence established under **section 99**

**residence management contract** means a contract for the management of a residence entered into under **section 115** 15

**residence manager** or **manager** means a person appointed or engaged as the manager of a residence under **section 100**, and includes a deputy residence manager appointed under that section

**resident** means a person subject to a public protection order but not to a prison detention order 20

**respondent**, in relation to an application for a public protection order, means the person against whom the order is sought

**review panel** means the review panel established by **section 107** 25

**rub-down search** has the same meaning as in section 89 of the Corrections Act 2004

**scanner search** has the same meaning as in section 91 of the Corrections Act 2004

**serious sexual or violent offence** means an act committed before, on, or after the commencement of this section that— 30

- (a) is committed in New Zealand and is—
- (i) a sexual crime under Part 7 of the Crimes Act 1961 punishable by 7 or more years' imprisonment; ~~and includes, including~~ a crime under section 144A or 144C of that Act; or 35
  - (ii) an offence against any of sections ~~171, 173 to 176, 172 to 177,~~ 188, 189(1), 191, 198 to 199,

- 208 to 210, 234, 235, and 236 of the Crimes Act 1961; or
- (b) is committed overseas and would come within the description of **paragraph (a)** if it had been committed in New Zealand 5
- serious sexual or violent offending** means the commission of 1 or more serious sexual or violent offences
- staff member**, in relation to a residence, means a person appointed under **section 100(1)(c) or (2)(c)**
- strip search** has the same meaning as in section 90 of the Corrections Act 2004 10
- threshold**, in relation to a public protection order, has the meaning given to it by **section 7**
- victim** means a person ~~who is a victim of a serious sexual or violent offence committed by a person—~~ 15
- (a) ~~who is a respondent to an application made by the chief executive under this Act; or~~
- (b) ~~who is subject to an order made under this Act.~~
- (a) who is a victim of a serious sexual or violent offence committed by a person— 20
- (i) who is a respondent to an application made by the chief executive under this Act; or
- (ii) who is subject to an order made under this Act;  
and
- (b) who has asked for notice or advice of matters or decisions or directions, and copies of orders and conditions, and has given his or her current address, under section 31 of the Victims' Rights Act 2002 25
- x-ray search** has the same meaning as in section 92 of the Corrections Act 2004. 30

#### 4 Objective of Act

- (1) The objective of this Act is to protect members of the public from the almost certain harm that would be inflicted by the commission of serious sexual or violent offences.
- (2) It is not an objective of this Act to punish persons against whom orders are made under this Act. 35

**5 Principles**

Every person or court exercising a power under this Act must have regard to the following principles:

- (a) orders under this Act are not imposed to punish persons and the previous commission of an offence is only 1 5  
of several factors that are relevant to assessing whether there is a very high risk of imminent serious sexual or violent offending by a person:
- (b) a public protection order should only be imposed if the magnitude of the risk posed by the respondent justifies 10  
the imposition of the order:
- (c) a public protection order should not be imposed on a person who is eligible to be detained under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or the Intellectual Disability (Compulsory Care 15  
and Rehabilitation) Act 2003:
- (d) persons who are detained in a residence under a public protection order should have as much autonomy and quality of life as possible, while ensuring the orderly functioning and safety within the residence. 20

**6 Act binds the Crown**

This Act binds the Crown.

## Subpart 2—Public protection orders

*Imposition of public protection orders***7 Threshold for imposition of public protection order** 25

(1) A person aged 18 years or older meets the threshold for the imposition of a public protection order if—

- (a) the person—
  - (i) is detained in a prison under a determinate sentence for a serious sexual or violent offence; and 30
  - (ii) must be released from detention not later than 6 months after the date on which the chief executive applies for a public protection order against the person; or
- (b) the person is subject to an extended supervision order and— 35

- (i) is, or has been, subject to a condition of full-time accompaniment and monitoring imposed under sections 33(2)(c) and 107K(2) of the Parole Act 2002; or
- (ii) is subject to a condition of long-term full-time placement in the care of an appropriate agency, person, or persons for the purposes of a programme under sections 15(3)(b) and 16(c) of the Parole Act 2002; or
- (c) the person is subject to a protective supervision order; or
- (d) the person—
- (i) has arrived in New Zealand within 6 months of ceasing to be subject to any sentence, supervision conditions, or order imposed on the person for a serious sexual or violent offence by an overseas court; and
- (ii) has, since that arrival, been in New Zealand for less than 6 months; and
- (iii) resides or intends to reside in New Zealand.
- (2) For the purposes of this Act, a person meets the threshold for a public protection order if the person meets the threshold at the time that the chief executive applies for that order against the person.
- (3) In this section, **extended supervision order** means an order imposed, whether before, on, or after the commencement of this section, under section 107I of the Parole Act 2002 on a person who was an eligible offender (within the meaning of section 107C(1) of that Act) because the person had been sentenced to imprisonment for a relevant offence (within the meaning of that section) that is also a serious sexual or violent offence (within the meaning of **section 3**).
- 8 Chief executive may apply for public protection order**
- (1) The chief executive may apply to the court for a public protection order against a person who meets the threshold for such an order on the ground that there is a very high risk of imminent serious sexual or violent offending by the person.

- (2) As soon as practicable after an application is made under **subsection (1)**, the chief executive must advise every victim of the respondent that the application has been made.

## 9 Reports by health assessors

The application under **section 8** must be accompanied by at least 2 reports that—

- (a) have been separately prepared by health assessors, at least one of whom is a registered psychologist; and
- (b) address the questions whether—
  - (i) the respondent exhibits to a high level each of the 4 characteristics described in **section 13(2)**; and
  - (ii) there is a very high risk of imminent serious sexual or violent offending by the respondent.

## 10 Right to independent expert assessment

- (1) The court may, on its own initiative, direct a health assessor selected by the court to assess the respondent.
- (2) The respondent may request a health assessor selected by the respondent to assess the respondent.
- (3) A health assessor who assesses a respondent in accordance with a direction or request under this section must prepare a report that addresses the questions stated in **section 9(b)**.
- (4) The report may also comment on the reports of health assessors that the chief executive has served on the respondent.
- (5) Where the respondent has been granted legal aid for responding to the application for the public protection order, the fees and expenses of preparing the assessment report under this section must be met out of the grant of legal aid.
- (6) Where the court directs a health assessor under this section in a case where the respondent has not been granted legal aid, the fees and expenses of preparing the assessment report must be met out of public money appropriated by Parliament for the purpose.

## 11 Issue of summons to attend hearing

A Judge or the Registrar of the High Court may from time to time issue a summons requiring the respondent to an applica-

tion for a public protection order to attend at a specified date and time for the hearing of the application.

**12 Assessment whether respondent mentally disordered or intellectually disabled**

- (1) This section applies where a court is satisfied that it could make a public protection order against a respondent and it appears to the court that the respondent may be mentally disordered or intellectually disabled. 5
- (2) The court may, instead of making a public protection order, direct the chief executive to consider the appropriateness of an application in respect of the respondent under section 45 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or under section 29 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. 10
- (3) Where the court gives a direction under **subsection (2)**, the court must, if the respondent is not then detained under **section 93**, order the interim detention of the respondent under that section. 15
- (4) For the purposes of any application under section 45 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or under section 29 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 made as a result of the consideration directed under **subsection (2)** and for any determination arising out of such an application, the respondent is taken to be detained in a prison under an order of committal. 20 25
- ~~(5) If, following a direction given under **subsection (2)**, the respondent becomes subject to a compulsory treatment order under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or to a compulsory care order under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, the proceeding on the application under **section 8** must be discontinued. 30~~
- ~~(6) If the respondent does not, following the consideration directed under **subsection (2)**, become subject to a compulsory treatment order under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or to a compulsory care order 35~~



~~under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, the proceeding on the application under **section 8** must be resumed.~~

**13 Court may make public protection order**

- (1) After considering all of the evidence offered in a proceeding on an application for a public protection order, and, in particular, the evidence given by 2 or more health assessors, including at least 1 registered psychologist, the court may make a public protection order against the respondent if the court is satisfied, on the balance of probabilities, that—
- (a) the respondent meets the threshold for a public protection order; and
  - (b) there is a very high risk of imminent serious sexual or violent offending by the respondent if,—
    - (i) where the respondent is detained in a prison, the respondent is released from prison into the community; or
    - (ii) in any other case, the respondent is left unsupervised.
- (2) The court may not make a finding of the kind described in **subsection (1)(b)** unless satisfied that the respondent exhibits a severe disturbance in behavioural functioning established by evidence to a high level of each of the following characteristics to a high level:
- (a) an intense drive or urge to commit a particular form of offending;
  - (b) limited self-regulatory capacity, evidenced by general impulsiveness, high emotional reactivity, and inability to cope with, or manage, stress and difficulties;
  - (c) absence of understanding or concern for the impact of the respondent's offending on actual or potential victims (within the general sense of that term and not merely as defined in **section 3**);
  - (d) poor interpersonal relationships or social isolation or both.

**13A Notification of victims**

As soon as practicable after an application for a public protection order is determined or suspended, the chief executive must advise every victim of the respondent of the outcome of the application.

5

*Review by review panel*

**14 Review of public protection order by review panel**

- (1) During the currency of a public protection order, the review panel must review the continuing justification of the order—
- (a) within 1 year after the order is made; and 10
  - (b) then—
    - (i) within every succeeding year after the most recent previous review of the order by the review panel; but
    - (ii) if an application (other than an application for leave) under **section 15** or **16** is pending before the court, within 1 year after the date on which the application is determined or withdrawn. 15
- (2) If the review panel considers that there may no longer be a very high risk of imminent serious sexual or violent offending by the person subject to the public protection order, the review panel may direct the chief executive to apply to the court for a review of the order under **section 15**. 20
- (3) Where, in the case of a resident, the review panel does not give a direction under **subsection (2)**, the review panel— 25
- (a) must review the management plan of the resident to ascertain whether the plan continues to be appropriate; and
  - (b) may make any recommendations to the manager of the residence in which the resident is required to stay. 30

*Review by court*

**15 Application by chief executive for review of public protection order**

- (1) During the currency of a public protection order, the chief executive must apply to the court for a review of the continuing justification of the order— 35

- (a) within 5 years after the order is made; and  
 (b) then, within 5 years after the first review; and  
 (c) then, at intervals of not more than 5 years; and  
 (d) whenever the review panel directs the chief executive to apply. 5
- (2) Despite **subsection (1)(c)**, the court may direct that the chief executive apply for any subsequent reviews at intervals of not more than 10 years.
- (3) For the purpose of calculating any period specified in **subsection (1) or (2)**, if the court grants leave for an application under **section 16**, the period is suspended until the application is determined or withdrawn. 10
- (4) As soon as practicable after an application is made under **subsection (1)**, the chief executive must advise every victim of the person subject to the public protection order that the application has been made. 15
- 16 Application for review by person subject to public protection order**
- (1) A person who is subject to a public protection order may, with the leave of the court, apply to the court for a review of the order. 20
- (2) As soon as practicable after an application is made under **subsection (1)**, the chief executive must advise every victim of the person subject to the public protection order that the application has been made. 25
- 17 Review of public protection order**
- (1) On a review of a public protection order, the court must be provided with all reports provided to the review panel and may call for any further or supplementary reports from any person, including, without limitation, from— 30
- (a) the chief executive:  
 (b) if the person subject to the order is required to stay in a residence, the manager of the residence:  
 (c) if the person subject to the order is detained in a prison, the manager of the prison: 35  
 (d) any health assessor.

- ~~(2) The court must consider whether the person subject to the order is eligible for release under **section 80**.~~
- (2) The court must consider whether there still is a very high risk of imminent serious sexual or violent offending by the person subject to the public protection order. 5
- (2A) In its consideration under **subsection (2)**, the court must take into account whether the reports provided to the court indicate that the person continues to exhibit a severe disturbance in behavioural functioning of the kind described in **section 13(2)**.
- (2B) If, following its consideration under **subsection (2)**, the court is satisfied, on the balance of probabilities, that there no longer is a very high risk of imminent serious sexual or violent offending by the person subject to the public protection order, the court must make a finding to that effect. 10
- ~~(3) If the person subject to the order is a resident and is not to be released under **section 80**, the court—~~ 15
- ~~(a) must review the management plan of the resident to ascertain whether the plan continues to be appropriate; and~~
- ~~(b) may make any recommendations to the manager of the residence in which the resident is required to stay.~~ 20
- (4) The chief executive must advise every victim of the person subject to the public protection order of the outcome of the review.
- 17A Review of management plan** 25
- If, on a review of a public protection order relating to a resident, the court does not make a finding under **section 17(2B)**, the court—
- (a) must review the management plan of the resident to ascertain whether the plan continues to be appropriate; and 30
- (b) may make any recommendations to the manager of the residence in which the resident is required to stay.

Subpart 3—Status of residents

**18 Detention of residents**

A resident must stay in the residence that the chief executive designates by written notice given to the resident and to the manager of that residence.

5

**19 Legal custody of residents**

(1) The chief executive has the legal custody of every resident.

(2) Legal custody under **subsection (1)** of a resident commences as soon as a Judge pronounces an interim detention order or a public protection order and continues while the resident—

10

(a) is detained in a residence; or

(b) is for any reason outside the residence under the control or supervision of any of any of the following persons who is acting under the authority of the Act:

(i) the manager:

15

(ii) a staff member of the residence:

(iii) a corrections officer or Police employee acting under **section 63(1)**.

Compare: 2004 No 50 s 38(1)

**20 Residents must obey lawful directions**

20

A resident must comply with every lawful direction given to him or her by—

(a) the residence manager; or

(b) a staff member of the residence; or

(c) a corrections officer or Police employee acting under **section 63(1)**.

25

Compare: 2004 No 50 s 40

**20A Residents may not possess prohibited items**

(1) A resident may not possess a prohibited item.

(2) If the residence manager is satisfied that an item found in, or sent or delivered to, the residence, or found in the course of a search under **section 57 or 57A**, is a prohibited item, the manager must take possession of, and retain, the item.

30

- (3) The residence manager may deal with any item taken and retained under **subsection (2)** as the manager considers appropriate, including by—
- (a) giving it to the Police; or
  - (b) giving it to a person (other than a resident) who appears to be entitled to it; or 5
  - (c) destroying it.
- (4) This section does not apply to any item that is in the possession of, or that is delivered to, a resident who is permitted to possess the item in accordance with a permission given under rules made under **section 104**. 10

## 21 Transfers between residences

A resident may be transferred, on the direction of the chief executive given after considering the advice of the manager of the residence and any other advice the chief executive considers appropriate, from a residence to any other residence for 1 or more of the following reasons: 15

- (a) to ensure the safety of the resident or of other persons who are in, or who visit, the residence:
- (ab) where the residence in which the resident lived has been destroyed or has become uninhabitable: 20
- (b) where the risk posed by the resident has lessened, to allow the resident to live in a residence with fewer restrictions:
- (c) to place the resident in a residence closer to his or her family: 25
- (d) to respond to the needs of that resident, as identified in the management plan:
- (e) to facilitate medical or psychiatric care for the resident:
- (f) to reduce the risk of self-harm by the resident if he or she is identified as being at risk: 30
- (g) to reduce the risk to the resident if he or she is identified as being vulnerable to mistreatment by other residents:
- (h) to grant a request by a resident for a transfer. 35

Compare: 2004 No 50 s 54

**22 Information to be given to residents about transfers**

- (1) A resident must, at least 7 days before a proposed transfer, be informed of the location of the new residence to which the resident is to be transferred, and the reasons for the proposed transfer. 5
- (2) **Subsection (1)** does not apply if—
- (a) there are reasonable grounds to believe the resident to be transferred will create a management difficulty before the transfer is made or as a result of the transfer; or
  - (b) the transfer is being made because there are reasonable grounds to believe that the safety of the resident or others at the residence within which the resident currently resides is at risk. 10
- (3) If the resident has been transferred to a new residence without having been informed of the reasons beforehand, the resident must be informed of those reasons as soon as practicable after he or she is transferred to the new residence. 15
- (4) The resident may, not later than 1 month after he or she is transferred to a new residence, request the chief executive in writing to review the decision to transfer the resident. 20
- (5) On receiving a request under **subsection (4)**, the chief executive must review the decision to transfer the resident and inform the resident of the outcome of the review.

**23 Leave**

- (1) The chief executive may grant a resident leave of absence from the residence in which he or she is detained for a specified time for any of the following purposes: 25
- (a) to undergo or receive medical or dental examinations or treatment;
  - (b) to attend hearings in proceedings under this Act to which the resident is a party: 30
  - (c) to attend any other hearings in a proceeding if the attendance of the resident is required by the court or under an enactment;
  - (d) to attend a rehabilitation programme identified in the resident's management plan: 35
  - (e) for humanitarian reasons.

- (2) In deciding whether to grant leave under **subsection (1)(d) and (e)**, the chief executive must have regard to—
- (a) whether the risk of serious sexual or violent offending during the duration of the leave is reasonably manageable; and 5
  - (b) the extent to which the resident must be supervised while absent; and
  - (c) the benefit of the proposed leave to the resident and others.
- (3) During the resident’s absence from the residence, the resident must be escorted and supervised by a person who has been directed to do so under **section 63(1)**. 10

*Rights of residents*

**24 Rights of residents**

- (1) A resident has the rights of a person of full capacity who is not subject to a public protection order except to the extent that those rights are limited by— 15
- (a) this Act; or
  - (b) any rules, guidelines or instructions, or regulations made under this Act; or 20
  - (c) a decision of the manager taken in accordance with this section.
- (2) Without limiting the generality of **subsection (1)**, the rights of a resident include the rights set out in **sections 24 25 to 37**. 25
- (3) The manager may limit the rights of a resident to the extent reasonably necessary to prevent the resident from harming himself or herself or any other person or from disrupting the orderly functioning of the residence.
- (4) In making a decision that affects a resident, the manager must be guided by the following principles: 30
- (a) a resident must be given as much autonomy and quality of life as is compatible with the health and safety and well-being of the resident and other persons and the orderly functioning of the residence: 35



- (b) a decision that adversely affects a resident must be reasonable and proportionate to the objective sought to be achieved.
- (5) Residents must be given the opportunity to provide input into the making of rules for the residence and into the running of the residence for the purpose of the orderly functioning of the residence and the creation and maintenance of a residence community. 5
- 25 Earnings from work**
- (1) A resident who is able to earn money by working in the residence or in a prison, whether in a self-employed capacity or as an employee or a contractor, may perform that work— 10
- (a) in the residence, with the approval of the manager; or
- (b) in the prison in which the residence is physically located, with the approval of the manager of that prison and the manager of the residence. 15
- (2) A resident to whom **subsection (1)** applies may retain any money earned from that work, subject to **section 37**.
- 26 Right to legal advice**
- (1) A resident is entitled to obtain legal advice on his or her status as a resident and on any other relevant legal question. 20
- (2) A residence manager must, so far as is reasonably practicable and consistent with the safety and security of the residence,—
- (a) ensure that a resident is provided with adequate facilities to prepare for legal proceedings to which the resident is a party; and 25
- (b) facilitate contact between the resident and any person (other than another resident) who provides advice or other assistance to help the resident prepare for those proceedings. 30
- 27 Right to vote**
- A resident may be registered as an elector in accordance with the Electoral Act 1993 and may vote, within the residence, at elections in accordance with that Act, the Local Electoral Act 2001, or any enactment under which a referendum is held. 35

**28 Recreational and cultural activities**

A resident may participate in recreational, educational, and cultural activities within the residence.

**29 Right to receive and send written communications and articles**

Subject to **section 41**, every resident is entitled to be promptly given any written communications ~~or articles~~ received for the resident and to the prompt dispatch of any written communications ~~or articles~~ put out by the resident for posting.

**30 Access to media**

(1) A resident must be given access to ~~newspapers~~ news media (for example, newspapers, television, or radio) and, if Internet facilities are available in the residence, to Internet sites approved by the manager.

(2) **Subsection (1)** does not entitle a resident to unsupervised access to the Internet or to the use of email.

**31 Visitors and oral communications with people outside residence**

~~(1) A resident may receive visits from persons who have been permitted by the manager to visit the resident.~~

(1) A resident may, subject to any conditions or restrictions imposed by the residence manager, receive visits from persons who are for the time being permitted by the manager to visit the resident.

(1A) All visits to residents must be supervised unless the residence manager permits a particular visit to be unsupervised in order to meet the resident's rehabilitative needs.

(1B) **Subsection (1A)** does not apply to a visit to a resident by an inspector, or a specified office holder within the meaning of **section 113(4)**, or a lawyer of the resident.

(2) A resident must be allowed access to a telephone or other electronic communication device to communicate with persons with whom such communications are permitted by the manager.

- (3) **Subsection (2)** is subject to **sections 44 to 56**.

Compare: SR 2005/53 r 112(1)

**32 Right to medical treatment**

- (1) A resident is entitled to medical treatment and other health care appropriate to his or her condition. 5
- (2) The standard of health care that is available to residents must be reasonably equivalent to the standard of health care available to the public.
- (3) The manager must ensure that—
- (a) an adequate record of the care or treatment provided to a resident is maintained; and 10
  - (b) full medical records (including dental records) of residents or former residents are kept securely; and
  - (c) the medical record of any resident or former resident is kept separate from other information relating to the resident. 15

**33 Right to rehabilitative treatment**

A resident is entitled to receive rehabilitative treatment if the treatment has a reasonable prospect of reducing the risk to public safety posed by the resident. 20

**34 Right to information**

A resident is entitled to be informed about rules, guidelines or instructions, entitlements, obligations, and decisions that affect the resident.

**35 Respect for cultural identity**

A resident is entitled to be dealt with in a manner that respects the resident's cultural and ethnic identity, language, and religious or ethical beliefs. 25

**36 Right to benefits**

A resident is not disentitled from obtaining a benefit (within the meaning of the Social Security Act 1964) and, for the purpose of calculating such benefit, the resident is taken to be a patient in a hospital within the meaning of section 75(1) of that 30

~~Act or section 19(1) of the New Zealand Superannuation and Retirement Income Act 2001, as the case requires.~~

- (1) A resident is not disentitled from obtaining a benefit within the meaning of the Social Security Act 1964.
- (2) For the purpose of calculating such benefit, the resident is taken to be a patient in a hospital (within the meaning of section 75(1) of the Social Security Act 1964 or section 19(1) of the New Zealand Superannuation and Retirement Income Act 2001, as the case requires) for more than 13 weeks. 5
- 37 Receipts for residents to be paid into trust accounts** 10
- (1) All money earned by a resident or due to the resident as a benefit must be paid into a trust account operated by the residence manager for the resident.
- (2) ~~The manager must deduct from a resident's trust account~~ Where any money that a resident earns from work is paid into the resident's trust account, the manager must deduct from that money any amount required to be deducted under guidelines or instructions to offset the cost of the resident's care. 15
- (3) Residents may have access to funds held on their behalf in the trust account to dispose of as they see fit, subject to any reasonable limitation imposed in accordance with this Act. 20
- (4) A resident must be paid all money held exclusively for that resident in a trust account when the resident is released from the residence under **section 80**. 25
- (5) If a resident dies while in legal custody, any money held for that resident in the trust account must be paid to the executor or administrator of the resident's estate.

#### Subpart 4—Management of residents

##### *Management plans*

- 38 Needs assessment** 30
- (1) As soon as practicable after a resident first commences to stay in a residence, the manager of the residence must assess the needs of the resident in consultation with the resident.
- (2) The assessment must identify— 35

- (a) any special medical requirements of the resident:
  - (b) any cultural or religious needs of the resident:
  - (c) any skills or capacities of the resident:
  - (ca) any educational needs of the resident:
  - (d) steps to be taken to facilitate the resident's rehabilitation and reintegration into the community. 5
- (3) The assessment must have regard to the resident's aspirations for his or her personal development, so far as those aspirations are compatible with his or her detention in the residence.
- 39 Management plans** 10
- (1) As soon as practicable after completion of the assessment under **section 38**, the manager must prepare a management plan for the resident.
  - (2) The plan must be prepared in accordance with any relevant guidelines or instructions. 15
  - (3) The plan must set out—
    - (a) the reasonable needs of the resident based on the assessment completed under **section 38**:
    - (b) the extent to which, and manner in which, those needs can reasonably be met within the residence: 20
    - (c) a personalised management programme for the goals of the resident that will contribute towards his or her eventual release from the residence and reintegration into the community:
    - (d) the nature and extent of supervision required to protect the health and safety of the resident and others within the residence, including staff: 25
    - (e) where any right of the resident is to be limited, the nature of, and the reasons for, the limit:
    - (f) any treatment and programmes that may be offered to the resident in accordance with **section 33**, and that the resident elects to receive or participate in: 30
    - (g) the intervals at which the manager must review the plan, which must not exceed 12 months:
    - (h) any other matter required to be included in guidelines or instructions: 35
    - (i) any matters, consistent with this Act and any regulations, rules, or guidelines or instructions made under it,

that the manager considers necessary to meet the needs of the resident.

**39A Management plan may bar communications between resident and specified persons**

- (1) A provision in a resident’s management plan may state that the resident— 5
- (a) is not to send written communications or items to a named person or a class of persons:
  - (b) is not to receive written communications or items from a named person or a class of persons. 10
- (2) However, no provision in a resident’s management plan may bar the resident from communicating in writing with a person described in **section 42(3)**.

**40 Reviews and variations of management plan**

- (1) The manager must review a resident’s management plan— 15
- (a) at the intervals stated in the management plan; and
  - (b) whenever the court, the review panel, an inspector, or an Ombudsman recommends that the management plan be reviewed or changed; and
  - (c) whenever the manager receives a request, made by or on behalf of the resident, that the management plan be changed, unless the manager is satisfied that the request is frivolous or vexatious or is not made in good faith; and 20
  - (d) whenever the manager considers that a change in the circumstances of the resident is likely to require a change to the management plan. 25
- (2) If, following a review under **subsection (1)**, the manager proposes to make a change to the management plan, the manager must consult the resident about the proposed change. 30
- (3) Where the review has been requested under **subsection (1)(c)** on behalf of the resident by another person, the consultation under **subsection (2)** must also include that other person.
- (4) After taking into account any views expressed in the course of the consultation under **subsection (2)**, the manager may 35

change any matter in the management plan that was the subject of that consultation.

*Monitoring of written communications ~~and~~  
articles*

- 41 Checking and withholding of written communications ~~and~~ articles in certain cases** 5
- (1) A provision in a resident's management plan may state that the resident—
- (a) is not to send written communications or articles to a named person or a class of persons: 10
- (b) is not to receive written communications or articles from a named person or a class of persons:
- (2) If there are reasonable grounds for believing that the receipt by, or the dispatch on behalf of, a resident of any written communication ~~or article~~ may contravene the resident's management plan or may otherwise be detrimental to the interests and treatment of the resident or of other persons, the manager of the residence may direct that the communication ~~or article~~ be checked. 15
- (3) If, on checking a written communication ~~or article~~ under **subsection (2)**, the manager considers that the receipt or dispatch of the communication ~~or article~~ contravenes the resident's management plan or may otherwise be detrimental to the interests of the resident or of other persons, the manager may direct that the communication ~~or article~~ be withheld from the resident or not be dispatched, as the case requires. 20 25
- Compare: 1992 No 46 ss 123(1), (2), 124(1)–(3)
- 42 Written communications ~~or articles~~ not to be withheld if sent by or to certain persons**
- (1) Despite **section 41**, a written communication ~~or an article~~ must not be checked or withheld from a resident if it is sent by, or on behalf of, any of the persons described in **subsection (3)**. 30
- (2) Despite **section 41**, a written communication ~~or an article~~ must be dispatched, without being checked, if it is addressed to any of the persons described in **subsection (3)**. 35

- (3) The persons referred to in **subsections (1) and (2)** are—
- (a) a member of Parliament:
  - (b) a Judge or an officer of the court, or a member or an officer of another judicial body:
  - (c) an Ombudsman: 5
  - (d) the Privacy Commissioner:
  - (e) the Health and Disability Commissioner:
  - (f) a Human Rights Commissioner:
  - (g) an inspector:
  - (h) a lawyer: 10
  - (i) a health professional:
  - (j) a minister of religion.
- Compare: 1992 No 46 s 123(3)

**43 Procedure where written communication or article withheld** 15

- (1) If the manager withholds a written communication or an article under **section 41** from a resident, the communication or article must be dealt with as follows:
- (a) if the address of the sender is known to the manager, it must be returned to the sender: 20
  - (b) if the address of the sender is not known to the manager, it must either be—
    - (i) sent to an inspector; or
    - (ii) produced to the inspector when he or she next visits the residence after the receipt of the communication or article: 25
- (2) If the manager directs, under **section 41**, that a written communication or an article not be sent, the communication or article must either be—
- (a) sent to an inspector; or 30
  - (b) produced to the inspector when he or she next visits the residence following the resident's request for the communication or article to be sent.
- (3) If a written communication or article is withheld or not sent under **section 41**, the resident must be informed of the fact, unless the manager is satisfied that to do so would be detrimental to the interests of the resident or of another person: 35



Approval and inspection of items

**43 Delivery of items must be approved**

An item may not be delivered to a residence for a resident unless the delivery is approved by the residence manager.

**43A Items intended for, or intended to be sent by, resident may be inspected** 5

- (1) The residence manager may inspect any item that is—  
(a) sent or delivered to the residence for a resident; or  
(b) intended to be sent by the resident.
- (2) The purpose of an inspection under **subsection (1)** is to ascertain whether— 10  
(a) the item is a prohibited item; or  
(b) the receipt of the item by, or the dispatch of the item on behalf of, the resident concerned may— 15  
(i) contravene the resident’s management plan; or  
(ii) be otherwise detrimental to the interests and treatment of the resident or of other persons.
- (3) If the manager is satisfied, under **subsection (2)**, that an item inspected is a prohibited item (other than an item that the resident concerned is permitted to possess under rules made under **section 104**), the manager must deal with the item in accordance with **section 20A(2) and (3)**. 20
- (4) If the manager considers that **subsection (2)(b)** applies to the item, the manager may direct that the item be withheld from the resident or not be dispatched, as the case requires. 25

Written communications or items withheld or not sent

**43B Procedure where written communication or item withheld or not sent**

- (1) If, under **section 41**, the residence manager withholds from a resident a written communication or, under **section 43A(4)**, withholds an item from a resident, the communication or item must be dealt with as follows: 30  
(a) if the address of the sender is known to the manager, it must be returned to the sender: 35

- (b) if the address of the sender is not known to the manager, it must either be—
- (i) sent to an inspector; or
  - (ii) produced to the inspector when he or she next visits the residence after the receipt of the communication or item. 5
- (2) If the manager directs, under **section 41** or **43A(4)**, that a written communication or an item not be dispatched, the communication or the item must either be—
- (a) sent to an inspector; or 10
  - (b) produced to the inspector when he or she next visits the residence following the manager’s direction.
- (3) The manager must inform the resident that a written communication or an item has been withheld or has not been dispatched unless the manager is satisfied that to do so would be detrimental to the interests of the resident or of another person. 15

*Telephone calls may be monitored*

**44 Interpretation**

In this section and in **sections 45 to 55**, unless the context otherwise requires,— 20

**completely erased** means erased so that it is not retrievable

**contracted provider** means a person engaged by the chief executive to provide services in connection with telephone monitoring

**device**, in relation to a telephone call, includes any answering machine, computer, fax, printer, tape recorder, or telephone 25

**disclose a resident call** means to disclose the substance, meaning, or purport of a resident call, or of any part of it; and includes—

(a) to allow any person to listen to or read a recording of a resident call; and 30

(b) to give or lend to any person a recording of a resident call

**eligible employee** means a person who is an employee of the chief executive, an employee of a contractor, an employee of a contracted provider, or a contracted provider 35

**exempt call** means a resident call to which **section 47** applies

**information** includes data in digital form

**monitor** means to do any or all of the following:

- (a) listen to, record, and take notes from:
- (b) listen to, read, and take notes from a recording of

**recording**, in relation to a resident call, means any means by which all or any part of the call has been captured; and includes—

- (a) a copy or printout of such a means:
- (b) a transcript, written translation, or written translation of a transcript, of the call: 10
- (c) a copy of a recording of a transcript, written translation, or written translation of a transcript, of the call

**resident call**—

- (a) means any information transmitted by means of a telephone call to which a resident is a party that is conducted while the resident is in the residence; and 15
- (b) includes part of a resident call

**telephone call** means a call made, using any part or parts of 1 or more telephone systems, between a device and any other device or devices 20

**telephone system** includes a telephone network

**translate** includes to decode and decrypt; and **translation** has a corresponding meaning.

Compare: 2004 No 50 s 111

#### **45 Purposes of monitoring resident calls** 25

- (1) The principal purpose of monitoring resident calls is to increase the safety of the community by making it easier to—
- (a) prevent and discourage the commission of offences by, for the benefit of, or with the help or encouragement of, residents; and 30
  - (b) detect and investigate offences committed by, for the benefit of, or with the help or encouragement of, residents; and
  - (c) prosecute, convict, and punish—
    - (i) residents who commit offences, or who help or encourage other people to commit offences; and 35

- (ii) people who commit offences for the benefit of, or with the help or encouragement of, residents; and
- (d) prevent and discourage escapes from residences.
- (2) Monitoring resident calls also has the purpose of making it easier to— 5
- (a) maintain the security, good order, and discipline of residences; and
- (b) protect the safety of residents.
- Compare: 2004 No 50 s 112
- 46 Resident calls that may be monitored** 10
- (1) Any resident call that is not an exempt call may be monitored under this Act.
- (2) An exempt call may be monitored under this Act if the person undertaking the monitoring does not have reasonable grounds to believe that it is an exempt call. 15
- (3) A person listening to a resident call or a recording of a resident call under this Act who forms the view that there are reasonable grounds to believe that it is an exempt call—
- (a) must promptly stop listening to it; and
- (b) must take all practicable steps to ensure that every 20 recording of it is destroyed or completely erased.
- (4) **Subsection (2)** is subject to **subsection (3)**.  
Compare: 2004 No 50 s 113
- 47 Certain resident calls must not be monitored**
- (1) A resident call to which **subsection (2)** applies is exempt 25 from monitoring under this Act.
- (2) This subsection applies to a resident call if, and only if, it is—
- (a) a call between a resident and a member of Parliament; or
- (b) a call, relating to the resident's legal affairs, between a 30 resident and a lawyer—
- (i) who acts for the resident; or
- (ii) with whom the resident is discussing the possibility of the person's acting for the resident; or
- (c) a call between a resident and a person acting, in respect 35 of the resident, in an official capacity as—

- (i) an Ombudsman; or
- (ii) an inspector; or
- (iii) the Health and Disability Commissioner; or
- (iv) the Privacy Commissioner; or
- (v) a member of the Human Rights Commission continued by section 4 of the Human Rights Act 1993, or an employee of the Commission; or 5
- (vi) a member of the Independent Police Conduct Authority; or
- (vii) the Children's Commissioner; or 10
- (viii) a Justice of the Peace; or
- (d) a call between a resident and a person acting, in his or her official capacity, on behalf of the International Criminal Court; or
- (e) a call between a resident and a person (other than a resident) who— 15
  - (i) is a person of a kind or description for the time being exempted from monitoring under this Act by the Governor-General by Order in Council (being an order specifying a purpose or purposes for which the exemption is granted); and 20
  - (ii) is acting for a purpose specified in the order; or
- (f) a call between a resident and a person (other than a resident) for the time being exempted from monitoring under this Act by the chief executive. 25

Compare: 2004 No 50 s 114

#### **48 Only certain persons may monitor resident calls**

- (1) No person other than the chief executive or a person who is an eligible employee authorised by the chief executive to monitor resident calls (in **subsection (2)**, and **sections 50, 51, and 53** referred to as an **authorised person**) may monitor a resident call under this Act. 30
- (2) A person authorised to monitor resident calls under **subsection (1)** ceases to be an authorised person if— 35
  - (a) the chief executive cancels the authority; or
  - (b) the person ceases to be an eligible employee.
- (3) A person to whom **subsection (4)** applies may listen to a resident call or a recording of a resident call, or read a transcript

of a resident call, if doing so is necessary for, or incidental to any other action or process necessary for, the effective undertaking of the work concerned.

- (4) This subsection applies to a person who is undertaking, with the chief executive's authority, work comprising the administration, installation, maintenance, repair, testing, or upgrading of a system— 5
- (a) by or from which recordings of resident calls are made; or
  - (b) in which recordings of resident calls are stored. 10

- (5) **Subsection (1)** is subject to **subsection (2)** and to **section 50(4) to (6)**.

Compare: 2004 No 50 s 115

#### 49 Warnings

The chief executive must take all practicable steps to ensure that,— 15

- (a) on or reasonably promptly after being admitted to a residence, residents are informed in writing—
  - (i) that some of their telephone calls may be monitored; and 20
  - (ii) which types of call are exempt from monitoring; and
  - (iii) the purposes for which information obtained from monitoring may be used; and
- (b) there are prominently placed in every residence, near telephones that residents are authorised to use, written notices— 25
  - (i) warning residents that their telephone calls (other than exempt calls) may be monitored; and
  - (ii) stating in general terms the purposes for which information obtained from monitoring may be used; and 30
- (c) at the start of every outward resident call that is being or is to be monitored, the resident hears, and there is transmitted to the device to which the call is made, a message to the effect that the call may be monitored. 35

Compare: 2004 No 50 s 116

**50 Authorised disclosure of information**

- (1) An authorised person may disclose a resident call for a purpose set out in **section 45** as a purpose of monitoring resident calls.
- (2) An authorised person may disclose a resident call if the authorised person believes on reasonable grounds that the disclosure—
- (a) is necessary to avoid prejudice to the maintenance of the law by a public sector agency (within the meaning of the Privacy Act 1993), including the prevention, detection, investigation, prosecution, and punishment of offences; or
  - (b) is necessary for the conduct of proceedings (already commenced or reasonably in contemplation) before a court or tribunal; or
  - (c) is necessary to prevent or lessen a serious and imminent threat to public health, public safety, or the life or health of any person; or
  - (d) has been authorised by the Privacy Commissioner under section 54(1) of the Privacy Act 1993.
- (3) An authorised person may disclose a resident call to the resident concerned.
- (4) An authorised person who is listening to a resident call may allow any eligible employee to listen to the call for the purpose of interpreting it.
- (5) An authorised person may allow any eligible employee to listen to a recording of a resident for the purpose of providing a transcript, a written translation, or both.
- (6) An authorised person may allow any eligible employee to read a transcript of a resident call for the purpose of providing a written translation.

Compare: 2004 No 50 s 117

**51 Restrictions on disclosure of information**

- (1) An authorised person must not knowingly disclose a resident call otherwise than under **section 50** or in accordance with the Privacy Act 1993.

- (2) An authorised person who is listening to a resident call must not knowingly allow any other person to listen to it, except under **section 50**.
- (3) An eligible employee (other than an authorised person) who, under **section 50**, has been allowed to listen to a resident call or a recording of a resident call, or to read a transcript of a resident call, must not knowingly disclose the call except to an authorised person. 5
- (4) A person who, under **section 50(2)**, has heard a resident call or a recording of a resident call, or read a transcript of a resident call, must not knowingly disclose the call except to an authorised person. 10

Compare: 2004 No 50 s 118

## 52 Application of Privacy Act 1993

The Privacy Act 1993 applies to the monitoring of resident calls under **sections 45 to 55**. 15

Compare: 2004 No 50 s 119

## 53 Destruction of recordings

- (1) The chief executive must take all practicable steps to ensure that every recording of a resident call held by the chief executive is destroyed, or completely erased,— 20
- (a) on or before the expiration of the period of 6 months after the call was made; or
- (b) as soon after that expiration as it appears that no information contained in it would be likely to be— 25
- (i) required for the purposes of an investigation into an offence or possible offence; or
- (ii) required for the purposes of an investigation into the possibility that an offence may be committed in the future; or 30
- (iii) required for evidence in a prosecution or possible prosecution for an offence; or
- (iv) required to be disclosed under the Privacy Act 1993.
- (2) Despite **subsection (1)**, if the Privacy Commissioner has notified the chief executive in writing that a complaint has been made under the Privacy Act 1993 in relation to the recording, 35



the recording must not be destroyed or erased in accordance with that subsection until the Privacy Commissioner has notified the chief executive in writing that the complaint has—

- (a) not been proceeded with; or
  - (b) been finally disposed of. 5
- (3) The Commissioner of Police or, as the case may be, the chief executive of a department of State specified in Schedule 1 of the State Sector Act 1988 must take all practicable steps to ensure that every recording of a resident call held by the Police or that department that was obtained by the monitoring of the call under this Act is destroyed, or completely erased, as soon as it appears that no proceedings (or no further proceedings) will be taken in which any information contained in it would be likely to be required to be produced in evidence. 10
- (4) Nothing in **subsections (1) and (3)** applies to any record of any information adduced in proceedings in any court or tribunal. 15
- (5) **Subsection (6)** applies if—
- (a) 2 or more recordings of resident calls are stored in such a way that it is not practicable to destroy or completely erase one without destroying or completely erasing the others; and 20
  - (b) **subsection (1)** requires the destruction or complete erasure of 1 or more, but not all, of them.
- (6) If this subsection applies, an authorised person may arrange for the recording or recordings that are not required to be destroyed or completely erased to be copied, so that the copy or copies may be retained and all the recordings may be destroyed or completely erased. 25
- (7) Any copy made in accordance with **subsection (6)** is admissible in evidence to the same extent that the destroyed recording it is a copy of would have been. 30

Compare: 2004 No 50 s 120

#### **54 Notice to be given of intention to produce evidence of recording**

Particulars of a recording of a resident call must not be received in evidence by any court against any person unless the

35

party intending to offer it has given the person reasonable notice of the party's intention to do so, together with—

- (a) either—
  - (i) a transcript of the recording, if the party intends to offer it in the form of a recording; or 5
  - (ii) a written statement setting out the full particulars of the recording, if the party intends to offer oral evidence of it; and
- (b) a statement of the time, place, and date of the call, and of the names and addresses of the parties to the call, if they are known. 10

Compare: 2004 No 50 s 121

## **55 Privileged evidence**

- (1) This subsection applies to evidence that—
  - (a) has been obtained by the monitoring of a resident call under **sections 45 to 54**; and 15
  - (b) but for the monitoring, would have been privileged by virtue of—
    - (i) any provision of subpart 8 of Part 2 of the Evidence Act 2004; or 20
    - (ii) any rule of law governing legal professional privilege.
- (2) Evidence to which **subsection (1)** applies remains privileged, and must not be given in any court except with the consent of the person entitled to waive the privilege. 25

Compare: 2004 No 50 s 122

### *Restrictions on contacts with persons outside residence*

## **56 Visits from, or oral communication with, certain persons may be excluded** 30

- (1) The residence manager may decline to permit a resident to receive visits from any person or to communicate orally with any person if there are reasonable grounds for believing that such visits or communications are likely to be harmful to the resident or to any other person or to the orderly functioning of the residence. 35

- (1A) The residence manager must not permit a person who is, or who appears to be, under the age of 18 years to visit a resident unless the manager considers that the visit is likely to meet the resident's rehabilitative needs.
- (2) Visits from, or oral communications with, a person specified in **section 42(3)** may not be declined, but any visit that, in the opinion of the residence manager unduly interferes with the programme of the residence, may be rescheduled to a reasonable time and date agreed on by the manager, the visitor, and the resident. 5 10
- (3) Any decision taken under **subsection (1) or (1A)** must be recorded in a register as prescribed in guidelines or instructions.

### *Searches*

- 57 Search of residents and residence** 15
- (1) For the purpose of detecting a prohibited item or an item that may endanger the health and safety of a resident or any other person, the residence manager, a staff member of the residence, or a corrections officer may conduct—
- (a) a search of any resident: 20
- (ab) a search of any item carried by, or in the possession of, any resident:
- (b) a search of the residence or any part of the residence;
- (ba) a search of any item that is in, or is taken or delivered to, the residence. 25
- (2) A search conducted under **subsection (1)(a)** may take the form of a rub-down search, a scanner search, or an x-ray search, but may only include a ~~strip-search~~ strip search of the resident if the person conducting the search has reasonable grounds for believing that the resident has in his or her possession any item of the kind referred to in **subsection (1)** prohibited item or an item that may endanger the health and safety of a resident or any other person. 30
- (3) Every resident ~~must~~ may be ~~strip-searched~~ strip searched by the residence manager, a staff member of the residence, or a corrections officer when the resident enters or leaves the resi- 35

dence or the prison within which the residence is physically located.

- (4) Despite **subsections (1) and (2)**, a corrections officer may not search a resident while the resident is in the residence.
- (5) Despite **subsection (2)**, a resident may not be strip searched 5 under that subsection by a person other than the residence manager without the prior approval of that manager.
- (6) Any search conducted under this section must comply with any guidelines or instructions issued that are relevant to the conduct of searches. 10

**57A Search of persons other than residents**

- (1) The residence manager or a staff member of the residence may, for the purpose of detecting any prohibited item, conduct a scanner search of any person who wishes to enter the residence or who is in the residence. 15
- (2) If the residence manager or a staff member of the residence has reasonable grounds to suspect that any person who wishes to enter a residence or who is in a residence has in his or her possession any prohibited item, the residence manager or the staff member may, with that person’s consent, conduct a rub-down search of that person. 20
- (3) Any person who refuses to submit to a scanner search or to a rub-down search—
  - (a) must be refused admission to the residence:
  - (b) if the person is already inside the residence, may be required to leave the residence. 25

Compare: 2004 No 50 s 99(1), (3), (4)

**57B Authority to search property**

- (1) Authority conferred by this Act to conduct a scanner search of any person includes the authority to search any item carried by, or in the possession of, that person. 30
- (2) Authority conferred by this Act to conduct a rub-down search of any person includes the authority to search—
  - (a) any item carried by, or in the possession of, that person:
  - (b) any outer clothing removed, raised, lowered, or opened for the purposes of the search: 35

- (c) any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search.
- (3) Authority conferred by this Act to conduct a strip search or x-ray search of any resident includes the authority to search—
- (a) any item of clothing removed, raised, lowered, or opened for the purposes of the search: 5
- (b) any item carried by, or in the possession of, that resident.
- (4) Authority conferred by this Act to search any item includes the authority to use any force that is reasonable in the circumstances for the purpose of breaking open that item. 10
- (5) Authority to search a residence or an item includes the authority to use an aid or aids such as a chemical substance or x-ray or imaging equipment or some other mechanical, electrical, or electronic device, or other similar aid. 15
- Compare: 2004 No 50 s 96(1)-(3), (6), (7)

### **57C Use of dogs for searching**

- (1) In exercising any power of search conferred by this Act, the residence manager, a staff member of the residence, or a corrections officer conducting the search may have with him or her, and use for the purposes of searching, any dog. 20
- (2) Any dog used for searching must be under the control of—
- (a) the residence manager, a staff member of the residence, or a corrections officer conducting the search; or
- (b) any other person (being a constable, an officer of Customs, or any member of the Armed Forces) who may accompany the person conducting the search for the purposes of that search. 25
- (3) When a dog is used for the purposes of searching any person, the person who has control of the dog must not allow that dog to come into physical contact with the person being searched. 30
- (4) The residence manager, staff member of the residence, or corrections officer who uses a dog for the purposes of searching a person must conduct the search with decency and sensitivity and in a manner that affords to the person being searched the 35

greatest degree of dignity consistent with the purpose of the search.

Compare: 2004 No 50 s 97

**57D Taking and inspecting items appearing to be prohibited**

- (1) If, in the course of a search under **section 57 or 57A**, the residence manager suspects on reasonable grounds that an item is a prohibited item, the manager may take possession of the item, by force if necessary. 5
- (2) The manager may retain any item taken under **subsection (1)** for the purpose of inspecting the item. 10
- (3) If the residence manager is not satisfied that an item taken under **subsection (1)** is a prohibited item, or considers that the resident concerned is permitted to possess the item in terms of a permission given under rules made under **section 104**, the residence manager must return the item to the person entitled to it. 15
- (4) If the residence manager is satisfied that the item is a prohibited item (other than an item that the resident concerned is permitted to possess in terms of a permission given under rules made under **section 104**), the residence manager must deal with the item in accordance with **section 20A(3)**. 20

*Drug or alcohol tests*

**58 Resident may be required to submit to drug or alcohol test**

- (1) If the manager has reasonable grounds to believe that a resident has used ~~drugs (other than drugs prescribed for the resident under the Medicines Act 1981)~~ any substance that falls within any of **paragraphs (b) to (bb)** of the definition of prohibited item in **section 3**, or consumed alcohol without permission, the manager may require the resident to submit to a test for the purpose of detecting whether the resident has used ~~drugs~~ any of those substances or; consumed alcohol, or both. 25
- (2) The tests administered under **subsection (1)** must comply with any guidelines or instructions that are relevant to the administration of such tests. 30
- (3) The guidelines or instructions may specify the kinds of sample that a resident may be required to supply (including, without 35

limitation, a sample of saliva, hair, breath, or urine, or other bodily sample) and the circumstances and manner in which any sample is to be supplied.

- (4) However, in no case may a resident be required to supply a sample of his or her blood. 5

**59 Resident must be informed of results of test**

If, under **section 58**, a resident submits to a test, the manager must ensure that the resident is informed, promptly and in writing, of the result of the procedure.

Compare: 1954 No 51 s 36BC

10

**60 Restrictions on use of result of test**

- (1) Neither the fact that a resident has been required, under **section 58**, to submit to a drug or alcohol test nor any information obtained from that test is admissible as evidence against any resident or any other person in any proceedings other than any application under **section 15, 16, 72, 75, or 76**. 15

- (2) To avoid doubt, **subsection (1)** does not prevent any fact or information from being presented to, or considered by, the review panel.

*Seclusion*

20

**61 Seclusion**

- (1) For the purposes of this section, **seclusion**, in relation to a resident, means placing the resident without others in a room or other area that—

(a) provides a safe environment for the resident throughout the resident's stay in the room or area; but 25

(b) does not allow the resident to leave without help.

- (2) The manager may place a resident in seclusion if it is necessary to prevent the resident from doing 1 or more of the following:

(a) endangering the health or safety of the resident or of others: 30

(b) seriously compromising the care and well-being of other persons:

(c) significantly disrupting the orderly functioning of the residence. 35

- (3) The manager who places a resident in seclusion—
- (a) must ensure that the resident is not placed in seclusion for longer than is necessary to achieve the purpose of placing the resident in seclusion; and
  - (b) must comply with guidelines or instructions that are relevant to placing the resident in seclusion. 5
- (4) The following provisions must be followed when a resident is placed in seclusion:
- (a) in cases other than an emergency, seclusion must be authorised by the manager personally: 10
  - (b) in an emergency, a resident may be placed in seclusion, without the prior authority of the manager, by a person who, under a delegation given by the manager, has immediate responsibility for the resident, but that person must immediately bring the case to the attention of the manager: 15
  - (c) the duration and circumstances of each episode of seclusion must be recorded in a register kept in accordance with guidelines or instructions. 20
- Compare: 2003 No 116 s 60

### *Restraint*

#### **62 Restraint of residents**

- (1) A residence manager may restrain a resident if that is necessary to prevent the resident from doing 1 or more of the following: 25
- (a) endangering the health or safety of the resident or of others:
  - (b) seriously damaging property:
  - (c) seriously compromising the care and well-being of the resident or of other persons: 30
  - (d) escaping from lawful custody.
- (2) ~~A resident may not be restrained under **subsection (1)** by the application of a mechanical restraint if—~~
- (a) ~~1 or more authorised individuals can personally restrain the resident to achieve the purpose for which the resident is to be restrained; and~~ 35
  - (b) ~~it is reasonably practicable for those individuals to do so.~~



- (3) The following provisions must be followed when a resident is restrained:
- (a) a person exercising the power of restraint may not use a greater degree of force, and may not restrain the resident for longer, than is required to achieve the purpose for which the resident is restrained: 5
  - (b) no resident may be kept under mechanical restraint for more than 24 hours unless the restraint is approved in writing by a medical practitioner:
  - (c) a person exercising the power of restraint must comply with guidelines or instructions that are relevant to the restraint of the resident: 10
  - (d) in cases other than an emergency, the restraint of a resident must be authorised by the manager personally:
  - (e) in an emergency, a resident may be restrained, without the prior authority of the manager, by a person who, under a delegation given by the resident's manager, has immediate responsibility for the resident, but that person must immediately bring the case to the attention of the manager: 15 20
  - (f) the duration and circumstances of each episode of restraint must be recorded in a register kept in accordance with guidelines or instructions.

Compare: 2003 No 116 s 61

- 63 Escort of persons subject to detention orders** 25
- (1) A staff member of the residence, corrections officer, or Police employee who is directed by the chief executive or the residence manager to escort a person subject to an interim detention order or a public protection order to or from a place or to supervise that person while outside the residence or a prison has, in relation to that person, all the ~~functions and powers~~ powers and functions specified in **subsections (2) and (3)**. 30
  - (2) A person who may exercise any power under **subsection (1)** may use any force, and apply any mechanical restraint, that is reasonably necessary for that purpose. 35
  - (3) The functions and powers, in relation to the person described in **subsection (1)**, are—
    - (a) preventing that person's escape from lawful custody:

- (b) preventing, or detecting and reporting on, the commission or attempted commission by that person of unlawful acts:
- (c) ensuring good order and discipline on that person's part:
- (d) attending to that person's well-being: 5
- (e) attending to the security of any property of that person that is in that person's possession.

### *Emergencies*

- 64 In emergency, manager of prison may assist manager of residence—Responses to security emergencies** 10
- (1) If there is ~~an~~ a security emergency in a residence, the manager of the prison in which the residence is physically located may, on request by the residence manager, direct 1 or more corrections officers to assist in restoring order at the residence.
  - (2) A corrections officer who is directed under **subsection (1)** 15 may—
    - (a) apply any physical force that is reasonably necessary to prevent residents from—
      - (i) harming, or continuing to harm, themselves or others; or 20
      - (ii) damaging, or continuing to damage, property; and
    - (b) detain and take to a prison any resident who appears to pose such an unacceptably high risk to the resident or to others, or to both, that the resident cannot be safely 25 managed in the residence.
  - (3) An officer who uses physical force for any of the purposes referred to in **subsection (2)** may not use any more physical force than is reasonably necessary in the circumstances.
  - (4) A resident who is taken to a prison under **subsection (2)(b)** 30 may be detained in the prison, but if the resident's detention exceeds a period of 24 hours, the chief executive must, within the next working day after the day on which that period of 24 hours expires, apply to the court, in respect of the resident, for a prison detention order and an ~~interim detention~~ order under 35 **subsection (4A)**.

- (4A) If it appears to the court on the papers that the application for a prison detention order against the resident is properly made, the court may make an order (an **interim prison detention order**) ordering that, while that application is pending, the resident continue to be detained in the prison. 5
- (4B) **Section 73** applies to a person who is taken to a prison under **subsection (2)(b)** or who is subject to an interim prison detention order as if the person were subject to a prison detention order.
- (4C) The interim prison detention order ceases to have effect when the application for the prison detention order is finally determined or is discontinued. 10
- (5) If the court declines to grant an application an interim prison detention order under **subsection (4)**, the resident must be immediately returned to a residence. 15
- (6) In this section, **security emergency** means a state of affairs, brought about by the conduct of 1 or more persons in a residence, that leads the residence manager reasonably to believe that persons or property in the residence cannot be protected from harm or damage without assistance. 20

Compare: 2004 No 50 s 83(2)

**64A Assumption of control by manager of prison during civil defence emergency**

- (1) If a civil defence emergency affects the area in which a prison and a residence are physically located, the manager of the prison may, by written notice to the manager of the residence, assume control over the residence and the residents in the residence. 25
- (2) Despite **subsection (1)**, a notice under that subsection may be given orally if the manager of the prison considers that the notice is required as a matter of urgency and, in that case, the manager of the prison must provide the manager of the residence with a written record of the notice as soon as practicable. 30
- (3) As soon as a notice is given under **subsection (1)**, the manager of the residence must exercise or perform his or her powers, duties, and functions under this Act subject to the direction of the manager of the prison. 35

- (4) A notice under **subsection (1)** ceases to have effect as soon as the manager of the prison informs the manager of the residence in writing that the notice is no longer required.
- (5) In this section, **civil defence emergency** means a situation that— 5
- (a) is the result of any happening, whether natural or otherwise, including, without limitation, any explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, technological failure, infestation, plague, epidemic, failure of or disruption to an emergency service or a lifeline utility, or actual or imminent attack or warlike act; and 10
- (b) causes or may cause loss of life or injury or illness or distress or in any way endangers the safety of persons or property. 15

**64B Relocation of residents to prison where residence becomes uninhabitable**

- (1) Where, for any reason, a residence is destroyed or becomes uninhabitable, the manager of the prison in which the residence is physically located may, on request by the residence manager, direct 1 or more corrections officers to detain and take the residents to the prison or, if that prison has also been destroyed or has become uninhabitable, to another prison. 20
- (2) Where 1 or more residents are taken to a prison under **subsection (1)**, the residents may be detained in the prison, but if the residents' detention exceeds a period of 72 hours, the chief executive must, within the next working day after the day on which that period of 72 hours expires, apply to the court under **section 64C** for a transitional detention warrant authorising the continued detention of those residents. 25 30
- (3) Nothing in this section limits **section 64A**.
- (4) **Section 73** applies to a person who is taken to a prison under **subsection (1)**.

**64C Transitional detention warrants**

- (1) The chief executive may make 1 or more applications to the court for a transitional detention warrant in respect of 1, some, or all of the residents who have been taken to a prison under **section 64B**. 5
- (2) An application for a transitional detention warrant must set out the following particulars:
- (a) the names of the residents in respect of whom the application is made and details of the orders that have been made under this Act against each resident; 10
  - (b) the circumstances that led to the residents being taken to a prison under **section 64B**;
  - (c) why it is currently impossible, or impracticable, or undesirable to transfer the residents to another residence.
- (3) The court may issue a transitional detention warrant in respect of 1 or more residents if satisfied that— 15
- (a) the residence in which the residents previously resided has been destroyed or has become uninhabitable; and
  - (b) it is currently impossible, or impracticable, or undesirable to transfer the residents to another residence. 20
- (4) A transitional detention warrant expires on the close of the 90th day after the date on which it is issued, but the chief executive may apply for a further transitional detention warrant in respect of 1 or more residents who are subject to such a warrant. 25
- (5) **Section 73** applies to a person to whom a transitional detention warrant applies.

Subpart 5—Inspections and complaints into  
alleged breaches of rights

- 65 Visits by inspectors** 30
- (1) An inspector must visit each residence for which he or she is responsible at regular intervals in each year.
- (2) Each residence must be visited, under **subsection (1)**, at least twice a year or on a greater number of occasions that the chief executive directs. 35
- (3) An inspector may, without previous notice, visit a residence as often as the inspector thinks fit.

- (4) An inspector may visit a residence at any time and for any length of time that the inspector thinks fit.

Compare: 1992 No 46 s 96

## **66 Inspectors' access to persons and documents**

- (1) An inspector who visits a residence for the purposes of this Act must be given access to every part of the residence and to every person in it, whether or not that person is a resident under this Act. 5

- (2) The manager must present to the inspector ~~the following documents:—~~ 10

(a) every record relating to a resident, including the resident's court order and management plan; ~~and~~

(b) every communication or ~~article item~~ withheld by the manager under **section 41 or 43A(4)**.

Compare: 1992 No 46 s 97

15

## **67 Complaints about breaches of rights**

- (1) Anyone may complain to an inspector about the breach of a resident's rights.

- (2) The manager or staff member of a residence who receives a complaint about a breach of the resident's rights must refer the complaint to an inspector. 20

## **68 Investigation by inspectors**

- (1) An inspector may, on his or her own initiative or on receipt of a complaint, commence an investigation into an alleged breach of this Act or of regulations made under this Act or of any guidelines or instructions. 25

- (2) As soon as is reasonable in the circumstances after an inspector ~~An inspector who~~ receives an oral or written complaint made by or on behalf of a resident, the inspector must investigate the complaint unless satisfied that the complaint is frivolous or vexatious or is not made in good faith. 30

- (3) If, after investigating the complaint, the inspector is satisfied that the complaint has substance, the inspector must, as soon as is reasonable in the circumstances,—

- (a) conduct an inquiry under **section 70** into the complaint; or
- (b) report the matter, together with any recommendations, to the manager.
- (4) The inspector must send a copy of any report prepared under **subsection (3)(b)** to the chief executive. 5  
Compare: 2003 No 116 s 98
- 69 Resident to be informed of outcome of investigation**
- (1) On receiving a report on an investigation under **section 67(3)(b), 68(3)(b)**, the manager must report in writing the outcome of the investigation to— 10
- (a) the resident whose rights were in issue in the investigation; and
- (b) any person who complained on behalf of the resident.
- (2) If the resident is not satisfied with the outcome of the complaint, he or she may request the chief executive to examine the complaint, and the chief executive must consider if further investigation is warranted. 15  
Compare: 1992 No 46 s 75
- 70 Inquiries by inspector** 20
- (1) Any inspector may inquire into an alleged breach of this Act or of regulations made under this Act or of any guidelines or instructions.
- (2) The chief executive may direct an inspector to conduct an inquiry under **subsection (1)**, and that inspector must comply with that direction as soon as is reasonable in the circumstances. 25
- (3) For the purpose of conducting an inquiry under this Act, an inspector has the same powers and authority to summon witnesses and receive evidence as are conferred on ~~commissions of an inquiry by the Commissions of Inquiry Act 1908; Inquiries Act 2013~~, and the provisions of that Act, except ~~sections 11 and 12~~ section 28 (which relates to costs), apply accordingly. 30
- (4) As soon as practicable after concluding an inquiry under this section, the inspector must send a full report of the inquiry to— 35

- (a) the manager and to the chief executive; and
- (b) if applicable, the resident whose rights were in issue in the investigation; and
- (c) if applicable, any person who complained on behalf of the resident.

5

Compare: 1992 No 46 s 95

**71 Duty of manager to correct deficiencies**

On receiving a report under **section 68(3)(b) or 70(4)(a)**, the manager must take all steps reasonably necessary to correct every deficiency identified in the report.

10

Compare: 2003 No 116 s 100

## Subpart 6—Prison detention orders

**72 Order for detention in prison**

- (1) The court may, on the application of the chief executive, order that a person subject to a public protection order be detained in a prison instead of a residence. 15
- (2) The court may make an order under **subsection (1)** only if satisfied that—
  - (a) the person would, if detained or further detained in a residence, pose such an unacceptably high risk to himself or herself or to others, or to both, that the person cannot be safely managed in the residence; and 20
  - (b) all less restrictive options for controlling the behaviour of the person have been considered and any appropriate options have been tried. 25
- (3) The court may make an order under **subsection (1)** against a person immediately after making a public protection order against that person.
- (4) A prison detention order ceases to have effect if the person against whom it is made ceases to be subject to a public protection order. 30

**73 Rights and obligations of person subject to prison detention order**

A person who is subject to a prison detention order, during the currency of that order,—

35



- (a) must be treated in the same way as a prisoner who is committed to prison solely because he or she is awaiting trial; and
- (b) has the rights and obligations of such a prisoner; and
- (c) has all the rights conferred on residents by this Act, 5 to the extent that those rights are compatible with the provisions of the Corrections Act 2004 that apply to prisoners described in **paragraph (a)**.

*Review by review panel*

- 74 Review of prison detention orders by review panel** 10
- (1) During the currency of a prison detention order, the review panel must review the continuing justification of the order—
    - (a) within 1 month after the order is made; and
    - (b) then—
      - (i) within every succeeding 6 months after the most recent previous review of the order by the review panel; but
      - (ii) if an application (other than an application for leave) under **section 75** or **76** is pending before the court, within 6 months after the date on which the application is determined or withdrawn. 15
  - (2) ~~Despite **subsection (1)(b)**, the review panel is not to conduct a review of a prison detention order at any time while an application (other than an application for leave) under **section 75** or **76** in respect of that order is pending before the court and; if that order continues in effect after the application to the court is determined or withdrawn, the review panel must conduct the next review 6 months after the date of that determination or withdrawal.~~ 25
  - (3) If the review panel considers that the person subject to the prison detention order is no longer eligible to have an order under **section 72** imposed on him or her, the review panel may direct the chief executive to apply to the court for a review of the order under **section 75**. 30

*Review by court***75 Application by chief executive for review of prison detention order**

- (1) During the currency of a prison detention order, the chief executive must apply to the court for a review of the continuing justification of the order— 5
- (a) within 1 year after the order is made; and
  - (b) then, after the first or any subsequent review, at intervals not exceeding 1 year after each previous review; and
  - (c) whenever the review panel directs the chief executive to apply. 10
- (2) For the purpose of calculating any period specified in **subsection (1)**, if the court grants leave for an application under **section 76**, the period is suspended until the application is determined or withdrawn. 15

**76 Application for cancellation by person subject to prison detention order**

A person who is subject to a prison detention order may, with the leave of the court, apply to the court for the cancellation of the order. 20

**77 Court must be provided with relevant reports on person subject to prison detention order**

On an application under **section 75 or 76**, the court must be provided with all reports provided to the review panel and may call for any further or supplementary reports by any person, including the chief executive, the manager of the prison in which the person subject to the prison detention order is detained, and any health assessor. 25

**78 Cancellation of prison detention order**

The court may, on an application under **section 75 or 76**, cancel a prison detention order if satisfied that the person subject to the prison detention order is no longer eligible to have an order under **section 72** imposed on him or her. 30

**79 Consequence of cancellation of prison detention order**

Where, as a result of the cancellation under **section 78**, a person ceases to be subject to a prison detention order but continues to be subject to a public protection order, the person must be transferred from prison to a residence and then has the status, rights, and obligations of a resident under this Act. 5

## Subpart 7—Protective supervision

**80 Replacement of public protection order with protective supervision order**

~~(1) If, following a review under **section 17**, the court is satisfied that there is no longer a very high risk of imminent serious sexual or violent offending by the person who is subject to the public protection order, the court must—~~ 10

~~(a) cancel the public protection order; and~~

~~(b) impose a protective supervision order on the person.~~ 15

(1) Where, in the course of a proceeding under **section 15 or 16**, the court makes a finding under **section 17(2B)** in respect of a person subject to a public protection order, the court must—

(a) cancel the public protection order; and

(b) impose a protective supervision order on the person. 20

(1A) Before the court makes the orders under **subsection (1)**, the court must give each party an opportunity to make submissions on the requirements that should be included in the protective supervision order under **section 81**.

(1B) As soon as practicable after a protective supervision order is imposed on a person, the person must be released from detention in the residence or the prison, as the case may be. 25

(2) If the court imposes a protective supervision order on a person, the chief executive must notify every victim of the person of that order. 30

**81 Requirements may be included in protective supervision order**

The court may include in any protective supervision order under **section 80** any requirements that the court considers necessary to— 35

- (a) reduce the risk of reoffending by the person under protective supervision; or
- (b) facilitate or promote the rehabilitation and reintegration into the community of the person under protective supervision; or
- (c) provide for the reasonable concerns of victims (within the general sense of that term and not merely as defined in **section 3**) of the person under protective supervision. 5
- 82 Notification of requirements** 10
- Notice of any requirements imposed by the court on a person under a protective supervision order must be provided, in writing, to the following:
- (a) the person under protective supervision:
- (b) the chief executive: 15
- (c) the Police.
- Compare: 2002 No 10 s 107K(8)
- 83 Court may vary requirements of protective supervision order**
- (1) The chief executive or the person subject to a protective supervision order may apply to the court at any time for a variation or the discharge of a requirement of a protective supervision order. 20
- (2) On a review under **section 86** or on an application under **subsection (1)**, the court may vary or discharge any requirement forming part of the order. 25
- 84 Review panel may modify requirements to render them less restrictive**
- The review panel may, on an application by the chief executive or the person subject to a protective supervision order, modify a requirement of a protective supervision order, but only if the review panel is satisfied that the modification will render the requirement less restrictive. 30

**85 Notification of changes**

If the requirements of a protective supervision order are varied or discharged, the chief executive must give notice of the variation or discharge to—

- (a) the person subject to the protective supervision order: 5
- (b) the probation officer involved:
- (c) the Police.

Compare: 2002 No 10 s 107O(1)

**86 Application by chief executive for review of protective supervision order**

10

- (1) The chief executive must apply to the court for a review of a protective supervision order—

- (a) within 5 years after the order is made; and
- (b) then, within 5 years after the first review; and
- (c) then, at intervals of not more than 10 years. 15

- (2) The chief executive may apply at any time for a review of the protective supervision order.

- (3) As soon as practicable after an application is made under this section, the chief executive must advise every victim of the person subject to the public protection order that the application has been made. 20

**87 Application for review by person subject to protective supervision order**

- (1) A person who is subject to a protective supervision order may, with the leave of the court, apply to the court for a review of the order. 25

- (2) As soon as practicable after an application is made under this section, the chief executive must advise every victim of the person subject to the protective supervision order that the application has been made. 30

**88 Review of protective supervision order**

- (1) On a review of a protective supervision order, the court must be provided by the chief executive with current reports on the person subject to the order.

- (2) On a review, the court must consider the continuing appropriateness of the requirements included in the protective supervision order and, where the court has jurisdiction under **section 89**, whether the order should be cancelled.

**89 Cancellation of protective supervision order** 5

- (1) On a review or on an application made for the purpose by the chief executive or the person who is subject to a protective supervision order, the court may cancel the order if, during a period of 5 years in which the person has been subject to the order, the person has neither— 10
- (a) committed any serious sexual or violent offences; nor
  - (b) breached any requirements included in the order.
- (2) If a protective supervision order is cancelled, the chief executive must give notice of the cancellation to— 15
- (a) the person under protective supervision;
  - (b) the probation officer involved;
  - (c) the Police;
  - (d) every victim of the person formerly subject to protective supervision; but the chief executive may withhold notice of a particular matter if disclosure of the matter would unduly interfere with the privacy of any other person (other than the person formerly subject to protective supervision). 20

**90 Offence to breach protective supervision order**

A person who is subject to a protective supervision order and who breaches, without reasonable excuse, any requirements included in that order is liable on conviction to imprisonment for a term not exceeding 2 years. 25

**Part 2**  
**Procedural, administrative, and**  
**miscellaneous matters**

Subpart 1—Procedural matters

*Procedure governing applications to court* 5

**90A Applications to be made by originating application**

The following applications must be made by originating application:

- (a) an application for a public protection order or a prison detention order: 10
- (b) an application for a review of a public protection order, a prison detention order, or a protective supervision order:
- (c) an application under **section 83**:
- (d) an application under **section 89**. 15

**91 Service of applications**

- (1) When the chief executive makes an application to the court under this Act, the person to whom the application relates must be served personally with—
  - (a) a copy of the application; and 20
  - (b) copies of any affidavits accompanying the application; and
  - (c) a copy of any health assessor’s report to be provided to the court; and
  - (d) a notice setting out the respondent’s rights and the procedures relating to the application. 25
- (2) The service must comply with the High Court Rules governing personal service.

**92 Respondent who fails to appear may be brought to court**

- (1) If a respondent who has been duly summoned to attend a hearing fails to appear at the hearing, the Judge may issue a warrant for the respondent to be detained and brought before the court. 30
- (2) The warrant must be directed to every constable.
- (3) The warrant may be executed by any constable.

- (4) For the purposes of executing the warrant, the constable executing it may at any time enter any premises, by force if necessary, if he or she has reasonable grounds to believe that the respondent is on those premises.

**93 Court may order interim detention of, or interim imposition of conditions on, respondent** 5

- (1) This section applies when, before an application for a public protection order is finally determined, 1 or more of the following events occur:
- (a) a respondent is released from detention: 10
  - (b) a respondent who is subject to an extended supervision order ceases to be subject to conditions of the kind referred to in **section 7(1)(b) or (c)**:
  - (c) the respondent is brought before the court under **section 92**: 15
  - (d) the court ~~orders further assessment reports on the respondent~~ gives a direction under **section 12(2)**:
  - (e) a respondent to whom **section 7(1)(d)** applies arrives in New Zealand.
- (2) The court may, on an application by the chief executive, order that, until the application for a public protection order is finally determined, the respondent is to be detained by a person, and in a place, specified in the order. 20
- (3) When the court makes an order under **subsection (2)** (an **interim detention order**), the court may suspend that order subject to any conditions that the court thinks fit. 25
- (4) An order under this section ceases to have effect when the application for a public protection order is finally determined or discontinued.

**94 Evidence in proceedings under this Act** 30

- (1) In a proceeding under this Act, a court may receive as evidence any statement, document, information, or matter that it considers relevant, whether or not it would be otherwise admissible in a court of law.
- (2) This section is subject to— 35
- (a) subpart 8 of Part 2 of the Evidence Act 2006; and



(b) any rule of law governing legal professional privilege.

**95 Court may determine whether hearings are held in open or closed court**

The court may determine whether to hold any hearing related to a public protection order, prison detention order, or protective supervision order in closed or open court. 5

**96 Court may suppress evidence and submissions**

(1) The court may make an order forbidding publication of any report or account of the whole or any part of the evidence given or the submissions made in any proceeding under this Act. 10

(2) The court may make an order under **subsection (1)** only if the court is satisfied that publication would be likely to—

(a) cause undue hardship to any victim (within the general sense of that term and not merely as defined in **section 3**) of a person subject to an order under this Act or against whom such an order is sought; or 15

(b) endanger the safety of any person; or

(c) lead to the identification of a person whose name is suppressed by order or by law; or

(d) prejudice the maintenance of the law, including the prevention, investigation, and detection of offences; or 20

(e) prejudice the security or defence of New Zealand.

**96A Suspension of proceedings in certain cases**

(1) This subsection applies if, while an application for a public protection order is pending, the respondent is detained— 25

(a) in a hospital under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or

(b) in a facility under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or

(c) in a prison otherwise than under this Act. 30

(2) If **subsection (1)** applies, the proceeding on the application for the public protection order is suspended until the respondent is no longer detained in the hospital, facility, or prison.

*Matters governing reviews by review panel***97 Reports to be provided to review panel**

- (1) For the purposes of any review under **section 14 or 74**, the chief executive must provide the review panel with—
- (a) a copy of the public protection order made against the person and, where applicable, of the prison detention order and of all reports about the person that were before the court when either order was made; and 5
  - (b) a copy of the report on the most recent assessment of the person by a health assessor; and 10
  - (c) in the case of a resident, the resident's management plan and a report by the manager of that residence; and
  - (d) in the case of a person subject to a prison detention order, a report by the manager of the prison; and
  - (e) in the case of a person currently detained in, or on leave from, a hospital under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or a facility under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, a report from the responsible clinician (or the most suitable other health professional to provide such a report) concerning the person and any care programmes that the hospital has put, or intends to put, in place for the person; and 15 20
  - (f) any further or supplementary reports requested by the review panel, to be provided by any person, including the chief executive, the manager of the prison or the residence in which the person is detained, and any health assessor. 25
- (2) The responsible clinician (or other health professional) referred to in **subsection (1)(e)** must, on request by the chief executive, supply a report on the person to the chief executive. 30

**98 Interview of person**

For the purposes of any review under **section 14 or 74**, the review panel must interview the person who is subject to a public protection order or prison detention order, unless the person indicates to the review panel that he or she does not wish to be interviewed. 35

## Subpart 2—Matters relating to management or administration

### 99 Establishment of residences

- (1) The Minister may, by notice in the *Gazette*, declare any building located in prison precincts or any part of that building and any land adjacent to that building to be a residence. 5
- (2) Before making a declaration under **subsection (1)**, the Minister must be satisfied that the proposed residence will be separate and secure.
- (3) When the notice takes effect, the building or the part of the building and any adjacent land are excluded from the prison and cease to be subject to the Corrections Act 2004. 10
- (4) Despite **subsection (2) (3)**, for the purposes of the Resource Management Act 1991, the land specified in the notice continues to be part of the prison in which it is located and the use of the land as a residence is deemed to be an authorised use under any existing designation or provisions of any plan that applies to the prison under that Act. 15
- (5) Every notice under this section takes effect from the date specified in the notice. 20
- (6) The building or the part of the building and any adjacent land declared to be a residence may be described in the notice in any way that is sufficient to identify it.

### 100 Appointment of residence manager

- (1) For every residence that is not subject to a residence management contract, the chief executive must appoint under the State Sector Act 1988— 25
  - (a) a suitable person as the residence manager; and
  - (b) a suitable person as the deputy residence manager; and
  - (c) as many other suitable persons as are required as employees for the purposes of the residence. 30
- (2) For every residence that is subject to a residence management contract, the contractor must appoint— 35
  - (a) a suitable person as the residence manager; and
  - (b) a suitable person as the deputy residence manager; and
  - (c) as many other suitable persons as are required as employees for the purposes of the residence.

- (3) A person must not perform any functions under the Corrections Act 2004 while that person is a residence manager or an employee for the purposes of the residence.

**101 Powers and functions of residence managers**

- (1) The residence manager has, in relation to the residence for which the manager is appointed as manager, the following powers and functions: 5
- (a) ensuring that the residence operates in accordance with the objective set out in **section 4** and the principles set out in **section 5**: 10
  - (b) ensuring the welfare of residents, staff, and visitors:
  - (c) ensuring the safe custody of residents:
  - (d) making rules for the residence under **section 104**:
  - (e) protecting the rights of residents and ensuring that any limitation of those rights is lawful: 15
  - (f) any other powers and functions conferred under this Act or regulations made under this Act or any other enactment.
- (2) On the occurrence from any cause of a vacancy in the office of the residence manager, and in the case of the absence from duty of the person appointed as residence manager (from whatever cause arising), and for so long as any such vacancy or absence continues, the deputy residence manager has and may exercise and perform all of the powers, duties, and functions of the residence manager. 20 25
- (3) A person must not perform any functions under the Corrections Act 2004 while that person is a residence manager or an employee for the purposes of the residence.

Compare: 2004 No 50 s 12

**102 Manager of residence may delegate powers and functions** 30

- (1) The residence manager may delegate any of his or her powers or functions, except this power of delegation and the power to make rules under **section 104**, to a person who is suitably qualified to exercise them.
- (2) The manager must make the delegation in writing and sign it. 35

- (3) The delegation may be subject to any conditions or limits, or both.
- (4) The manager is not prevented from exercising, or affected in his or her exercise of, any of the delegated powers or functions.
- (5) The delegate may exercise the powers or functions in the same manner and with the same effect as if they had been conferred on the delegate directly by this Act. 5
- (6) Every person purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation. 10

### 103 Status of delegations

- (1) A delegation made under **section 102** continues in force according to its tenor until it is revoked.
- (2) If the maker of the delegation ceases to hold office, the delegation continues to have effect as if made by the successor of the office holder. 15
- (3) The maker of the delegation, or successor, may revoke the delegation at any time by written notice to the delegate.

### 104 Manager may make rules for residence

- (1) The chief executive may authorise the residence manager to make rules that the manager considers appropriate for the management of the residence and for the conduct and safe custody of the residents. 20
- (2) An authorisation given by the chief executive under **subsection (1)** may be subject to any conditions or any limitations placed on the scope or subject matter of the rules. 25
- (3) Rules made under **subsection (1)**, may, without limitation, authorise the manager to permit residents to possess prohibited items, subject to limits specified in the rules and subject to the manager being satisfied of certain matters specified in the rules concerning the protection of the order of the residence and the health and safety of any person. 30
- (4) Any rules made under **subsection (1)** may be revoked at any time by the residence manager or the chief executive.
- (5) Any rules made under **subsection (1)** must not be inconsistent with this Act or any regulations made under this Act. 35

- (6) Rules made under **subsection (1)** are not disallowable instruments for the purposes of the Legislation Act 2012 and do not have to be presented to the House of Representatives under section 41 of that Act.
- (7) Rules made under **subsection (1)** may regulate the exercise of coercive powers conferred by this Act, but may not confer any additional coercive powers. 5  
Compare: 2004 No 50 s 33
- 105 Chief executive may provide guidelines or instructions**
- (1) The chief executive may provide to residence managers and to persons exercising powers under **section 63(1)**— 10
- (a) guidelines on the exercise of powers under this Act or any regulations made under this Act:
- (b) instructions or guidelines relating to procedures to be followed or standards to be met— 15
- (i) in the management of residences:
- (ia) in providing for the safe custody of residents:
- (ii) in escorting persons pursuant to directions under **section 63.**
- (2) The chief executive must ensure that guidelines are provided, under **subsection (1)**, relating to the exercise of coercive powers. 20
- ~~(3) All instructions issued under **subsection (1)** are regulations for the purposes of the Regulations (Disallowance) Act 1989, but are not regulations for the purposes of the Acts and Regulations Publication Act 1989.~~ 25
- (3) All guidelines and instructions provided under **subsection (1)** are disallowable instruments for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 30
- (4) The chief executive must—
- (a) publish all instructions provided under **subsection (1)** on the Internet site maintained by the department; and
- (b) make sufficient copies of any instructions provided under **subsection (1)** available for public inspection, free of charge, at the head office of the department during normal office hours; and 35

- (c) make sufficient copies of those instructions available either for distribution free of charge or for purchase at a reasonable price during normal office hours at the head office of the department.

Compare: 2003 No 116 s 148

5

**106 Matters to be included in annual report of department**

- (1) The department's annual report under section 43 of the Public Finance Act 1989 must state in respect of the year to which the report relates—

- (a) the number of persons who, at the end of that year, are detained, under this Act, in residences and state, for each person so detained, the number of months for which the person has been detained in a residence: 10
- (b) the number of persons who, at the end of that year, are detained, under this Act, in prisons and state, for each person so detained, the number of months for which the person has been detained in prison, and the reasons for that detention: 15
- (c) the number of persons who have been released on protective supervision: 20
- (d) the number of persons who were on protective supervision and who have again been detained under this Act:
- (e) the number of times that the chief executive applied to the court, ahead of time and pursuant to a direction of the review panel, for a review of a public protection order: 25
- (f) the number of appeals against orders made under this Act, and the outcome of each appeal:
- (g) the number and nature of any serious incidents involving residents or staff members of residences, or both: 30
- (h) the number and nature of any incidents involving the use of significant force or restraints on residents:
- (i) the number of times seclusion was imposed on residents, and the duration of, and reasons for, each episode of seclusion: 35
- (j) the number of times that residents were hospitalised:
- (k) the number of residents who died:

- (l) the number of emergencies in residences that required assistance from correction officers:
  - (m) any other matter that the chief executive considers should be included in the annual report.
- (2) The annual report referred to in **subsection (1)** must also include a report on the activities undertaken by inspectors during the year to which the annual report relates. 5

*Review panel*

**107 Establishment and constitution of review panel**

- (1) A review panel is established. 10
- (2) The review panel consists of 6 members appointed by the Minister of Justice by written notice.
- (3) The Minister of Justice must nominate 1 member of the review panel as its chairperson and another member of the review panel as its deputy chairperson, and a member so nominated must hold, or have held, office as a High Court Judge or as a District Court Judge. 15
- (4) Before the Minister of Justice appoints a person as a member, the Minister of Justice must be satisfied that the person has experience and expertise in assessing the potential for individuals to pose a high risk to public safety. 20
- (5) The review panel must include—
  - (a) at least 2 members who are health assessors; and
  - (b) at least 4 members who have experience in the operation of the New Zealand Parole Board. 25

**108 Meetings of review panel**

- (1) The quorum necessary for any meeting of the review panel is 3 members, who must include—
  - (a) the chairperson or deputy chairperson; and
  - (b) 1 health assessor; and 30
  - (c) 1 member who has experience in the operation of the New Zealand Parole Board and who is not a health assessor.
- (2) The decision of the majority of members in attendance at a meeting is the decision of the review panel. 35



- (3) At any meeting of the review panel, the review panel may receive and take into consideration whatever information it thinks fit, whether or not the information would be admissible as evidence in a court of law.
- (4) The review panel may regulate its own procedure. 5

### **109 Term of appointment, and reappointment**

- (1) Every member of the review panel, including the chairperson, must be appointed for a term of 3 years or less.
- (2) A member continues in office despite the expiry of his or her term of office until— 10
- (a) the member is reappointed; or
- (b) the member's successor is appointed.
- (3) A member who participates in a review that is not complete on the date that he or she ceases to be in office may complete his or her participation in the review after that date and is, for that purpose, deemed to be in office until the review is complete. 15
- (4) Any member may be reappointed any number of times.
- (5) A member may at any time resign from office by written notice to the Minister of Justice.
- (6) The Minister of Justice may at any time remove a member from office for just cause, and the member is not entitled to compensation for removal. 20

Compare: 2002 No 10 ss 120, 121(†)

### **110 Remuneration and expenses of members**

- (1) The remuneration of any member of the review panel who is a District Court Judge or a Judge of the High Court must, so far as it relates to the Judge's membership of the review panel, be determined by the Remuneration Authority. 25
- (2) Every other member of the review panel must be paid fees and expenses in accordance with the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies. 30
- (3) A person is not employed in the service of the Crown, for the purposes of the State Sector Act 1988 or the Government

Superannuation Fund Act 1956, merely as a result of being a member of the review panel.

Compare: 2002 No 10 s 122

### 111 Immunity of members

No member of the review panel is personally liable for any act or omission done in pursuance, or intended pursuance, of the panel's functions, unless the act or omission was done in bad faith.

Compare: 2002 No 10 s 123

### *Appointment of inspectors*

### 112 Inspectors

(1) For the purposes of this Act, the chief executive may, by written notice, designate, on any terms and conditions specified in the notice, appoint 1 or more lawyers to be independent inspectors.

(2) The chief executive must ensure that the number of inspectors appointed under **subsection (1)** is at all times sufficient for the operation of this Act.

(3) No lawyer appointed under this section may be otherwise employed or engaged by the department.

(4) The Minister may from time to time, with the concurrence of the Minister of Finance, fix the remuneration of inspectors, either generally or in any particular case, and may, with that concurrence, vary the amount or nature of that remuneration.

Compare: 1992 No 46 s 94

### *Visits by specified office holders*

### 113 Right of specified office holders to visit residences

(1) A specified office holder may, whenever the office holder considers it appropriate, enter a residence and examine it and the condition of the residents, and may inform the residence manager of his or her observations.

(2) The prison residence manager must ensure that any observations of a specified office holder are recorded and that a permanent record of those observations is kept at the residence.

- (3) A specified office holder is not entitled, under **subsection (1)**, to communicate with any resident except in relation to—
- (a) his or her treatment in the residence; or
  - (b) a complaint that the resident makes about that treatment.
- (4) For the purposes of this section, each of the following is a **specified office holder**:
- (a) a member of Parliament;
  - (b) a Judge or an officer of the High Court or another court;
  - (c) an Ombudsman;
  - (d) the Privacy Commissioner: 10
  - (e) the Health and Disability Commissioner:
  - (f) a Human Rights Commissioner.
- Compare: 2004 No 50 s 161

#### **114 Crimes of Torture Act 1989 not limited**

Nothing in this Act limits the operation of Part 2 of the Crimes of Torture Act 1989. 15

Compare: 2004 No 50 s 162A

#### *Residence management contracts*

#### **115 Management of residences 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 residence. 20
- (2) No residence may be managed by a person other than the Crown except under a residence management contract.
- (3) For the purposes of the Ombudsmen Act 1975 and the Official Information Act 1982, every contract residence is to be treated as part of the department. 25

Compare: 2004 No 50 s 198

#### **116 Requirements of residence management contracts**

- (1) Every residence management contract must provide for— 30
  - (a) objectives and performance standards for the contractor in relation to the management of the residence that are no lower than the standards applicable to residences managed by the department; and

- (b) objectives and performance standards for the contractor in relation to the management and care of residents in the residence that are no lower than the standards applicable to residents in residences managed by the department; and 5
- (c) the appointment or engagement by the contractor of—
- (i) a suitable person as manager of the residence, 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 residence. 10
- (2) Every residence management contract must impose on the contractor, in relation to the management of the residence, a duty to comply with— 15
- (a) the requirements of this Act, of any regulations made under this Act, and of any instructions or guidelines, in so far as those requirements are applicable to the contract residence; and 20
- (b) the requirements of the New Zealand Bill of Rights Act 1990, as if the residence were a residence managed by the department; and
- (c) the requirements of the Public Records Act 2005, as if records relating to the residence and to residents in the residence were records created or received by the department; and 25
- (d) all relevant international obligations and standards; and
- (e) 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 residence. 30 35

Compare: 2004 No 50 s 199

**117 Delegation of powers and functions of contractor**

Without limiting sections 41 and 42 of the State Sector Act 1988, those sections of that Act apply in relation to a contract residence as if—

- (a) the contractor were the chief executive of the department; and 5
- (b) each staff member of the residence were an employee of the department.

Compare: 2004 No 50 s 199A

**118 Liability of contractor**

10

- (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 15

- (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. 20

- (3) This section does not limit any other right to indemnification that may be provided in a residence management contract. 25

Compare: 2004 No 50 s 199B

**119 Control of contract residence in emergency**

- (1) This section applies if the chief executive believes, on reasonable grounds,—

- (a) that either— 30

- (i) there exists in respect of any contract residence an emergency affecting the safety or health of the residents or any class or group of residents, or the security of the residence; or

- (ii) there is an imminent threat of such an emergency; and 35

- (b) that the contractor responsible for the management of that residence 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 residence 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 residence, all of 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 residence 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 residence 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 residence 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 residence management contract or otherwise; or
- (b) any liability of the contractor under the residence 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: 2004 No 50 s 199H

5

**120 Residence management contracts to be presented to House of Representatives**

(1) Within 12 sitting days after a residence management contract is entered into, the Minister must present a copy of that contract to the House of Representatives.

10

(2) Within 12 sitting days after a residence 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: 2004 No 50 s 199I

15

**121 Release of resident information to and by contract residences**

(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 residence and that relates to that contract residence or to any resident.

20

(2) For the purposes of enabling any staff member of a contract residence to exercise or perform any of his or her powers, duties, or functions, any staff member of a contract residence 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 resident.

25

30

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

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

35

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

Compare: 2004 No 50 s 199J

### Subpart 3—Miscellaneous matters

- 122 Regulations** 5
- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- (a) ensuring the good management of residences:
- (b) ensuring the safe custody of residents:
- (c) providing for the management, care, treatment, well-being, and rehabilitation of residents or persons subject to prison detention orders, and for their reintegration into the community: 10
- (d) providing for any other matters contemplated by ~~the~~ this Act, necessary for its administration, or necessary for giving it full effect. 15
- (2) Regulations under **subsection (1)** may regulate the exercise of coercive powers conferred by this Act, but may not confer any additional coercive powers.
- 123 Sentence of preventive detention not affected by this Act** 20
- This Act does not affect the imposition of any sentence of preventive detention under the Sentencing Act 2002, and, in considering whether to impose such a sentence, the court must not take into account the jurisdiction conferred by this Act to impose orders on offenders who have served determinate sentences. 25
- 123A Suspension of orders in certain cases**
- (1) This subsection applies if, while a person is subject to a public protection order, a prison detention order, or a protective supervision order, the person is detained— 30
- (a) in a hospital under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
- (b) in a facility under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or
- (c) in a prison otherwise than under this Act. 35



- (2) If **subsection (1)** applies, the relevant order or orders specified in that subsection are suspended until the person is no longer detained in the hospital, facility, or prison.

**124 Claims by persons subject to orders under this Act not affected by Prisoners' and Victims' Claims Act 2005** 5

A person is not a person under control or supervision within the meaning of section 4 of the Prisoners' and Victims' Claims Act 2005 merely because the person is, or has at any time been, a resident, a person subject to a prison detention order, or a person under protective supervision. 10

*Escaping from residence*

**124A Amendment to Crimes Act 1961**

- (1) This section amends the Crimes Act 1961.

- (2) After section 120(1)(ba), insert:

“(bb) being subject to a public protection order made under the Public Safety (Public Protection Orders) Act **2014**, escapes from the residence in which he or she is required to stay under that Act; or”. 15

*Legal aid*

**124B Amendment to Legal Services Act 2011** 20

- (1) This section amends the Legal Services Act 2011.

- (2) In section 4(1), definition of **specified application**, after paragraph (c), insert:

“(ca) by a person who is a respondent to an application under the Public Safety (Public Protection Orders) Act **2014**, or who is subject to an order under that Act, in respect of an application under that Act; or”. 25

*Access to protection orders and restraining orders*

**124C Amendments to Privacy Act 1993** 30

- (1) This section amends the Privacy Act 1993.

- (2) In Schedule 5, under the heading “Police records”, items relating to protection orders and restraining orders, paragraph (d), after “conditions”, insert “; or”.
- (3) In Schedule 5, under the heading “Police records”, items relating to protection orders and restraining orders, after paragraph (d), insert: 5  
“(e) a public protection order, a prison detention order, or a protective supervision order under the Public Safety (Public Protection Orders) Act 2014”.
- (4) In Schedule 5, under the heading “Police records”, items relating to protection orders and restraining orders, replace “offender’s sentence and any post-sentence conditions” with “offender’s sentence, any post-sentence conditions, or any order under the Public Safety (Public Protection Orders) Act 2014”. 10  
15

**125 Consequential amendments**

The Acts specified in the **Schedule** are amended in the manner indicated in that schedule.

---

## Schedule

s 125

### Consequential amendments

#### Corrections Act 2004 (2004 No 50)

After section 25(1)(ad), insert:

- “(ae) to supervise persons released subject to a protective supervision order under the Public Safety (Public Protection Orders) Act **2012** and to ensure that the requirements included in the order are complied with:” 5

After section 65(2)(ab), insert:

- “(ac) a prisoner is the subject of an application for a public protection order under the Public Safety (Public Protection Orders) Act **2012**; or” 10

#### Crimes of Torture Act 1989 (1989 No 106)

In section 16, definition of **place of detention**, after paragraph (f), insert:

- “(fa) a residence established under **section 99** of the Public Safety (Public Protection Orders) Act **2012**.” 15

#### Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46)

In section 45(1), definition of **institution**, paragraph (b), after “1966”, insert “; and” 20

In section 45(1), definition of **institution**, after paragraph (b), insert:

- “(c) a residence established under **section 99** of the Public Safety (Public Protection Orders) Act **2012**.”

In section 45(1), definition of **superintendent**, paragraph (b), after “that institution”, insert “; and” 25

In section 45(1), definition of **superintendent**, after paragraph (b), insert:

- “(c) in relation to a residence established under **section 99** of the Public Safety (Public Protection Orders) Act **2012**, means the residence manager within the meaning of that Act.” 30

In section 46, after “detained in a prison”, insert: “or in a residence established under **section 99** of the Public Safety (Public Protection Orders) Act **2012**”.

**Mental Health (Compulsory Assessment and Treatment) Act  
1992 (1992 No 46)—*continued***

In section 47(1), replace “penal institution” with “prison or, as the case requires, a residence established under **section 99** of the Public Safety (Public Protection Orders) Act **2012**”.

In section 47(2) and (4), after “prison”, insert “or, as the case requires, a residence established under **section 99** of the Public Safety (Public Protection Orders) Act **2012**”.

In section 47(3), after “prison”, insert “or, as the case requires, the residence established under **section 99** of the Public Safety (Public Protection Orders) Act **2012**”.

After section 48(1)(d)(iii), insert: 10

“(iv) in the case of a person subject to a public protection order under the Public Safety (Public Protection Orders) Act **2012**, the date on which that order is cancelled.”

---

**Legislative history**

18 September 2012	Introduction (Bill 68–1)
18 September 2013	First reading and referral to Justice and Electoral Committee

---