

Corrections Amendment Bill (No 2)

Government Bill

Explanatory note

General policy statement

This Bill makes a number of amendments to the Corrections Act 2004 (the **Act**) that are intended to improve the operations of the corrections system. The Act is relatively new and is generally working well. However, some amendments are needed to address issues that have arisen during the time since its passage. The proposed changes add to the existing framework and help give better effect to existing provisions. There have been 2 particular drivers for the changes included in the Bill—technological advances in forms of electronic communication since the passage of the Act, and the need to incrementally improve the control of contraband in prisons.

The main components of the Bill are—

- improvements to the control of contraband in prisons through additional search, detection, and offence provisions:
- a consistent approach to the monitoring of prisoners' telephone calls and mail:
- a limitation on the Crown's liability in an emergency situation (caused by an epidemic, civil defence emergency, or specific prison situation):
- information sharing about highest-risk offenders:
- new offence provisions relating to unauthorised communications with prisoners:
- the use of firearms for animal and pest control in prison grounds:
- provision for communion wine to be consumed in prisons:
- authority for the Department of Corrections (the **Department**) and its agents to electronically detect, monitor, disable,

disrupt, and interfere with wireless transmissions within prison boundaries in order to prevent or stop unauthorised electronic communications, and the delivery, possession, or use of unauthorised electronic communication devices.

Contraband and drug use

Contraband is a major concern in the prison system, with items such as drugs, alcohol, money, offensive weapons, and mobile telephones having the capacity to produce serious problems for prison management. Such items can present a direct threat to staff and prisoners, lead to stand-over tactics and assaults, and allow prisoners to subvert prison controls and organise further criminal activities outside the prison. A failure to control their entry and use in prisons also has a serious negative effect on perceptions, especially by staff and prisoners but also by the public, of the Department's capacity to manage and control prisons.

In recent years a number of factors have impacted on the control of contraband in prisons, including the growth in the prison population and consequent increase in inexperienced staff members, gang involvement in prisons, drug and alcohol use and dependency, and the changing nature of contraband, with both drugs and electronic devices becoming smaller and easier to conceal.

A range of legislative and operational measures are already in place to reduce both the demand for contraband and its supply, and to improve the effectiveness of drug and alcohol testing. Operational steps that are currently being taken or planned for include—

- a strengthened response to gang-management issues in prisons:
- expanded drug detection dog teams in prisons:
- additional drug treatment units:
- best practice telephone-monitoring systems:
- cellphone detectors:
- implementation of a regional crime prevention information staffing model and a crime prevention database and network.

The extent of the amount of contraband being detected in prison indicates that, on their own, operational measures go only so far towards managing the problem and that some legislative enhancements are also needed.

The Bill—

- enhances existing search powers in relation to the strip searching of prisoners, and the searching of staff lockers and other parts of a prison set aside for the exclusive use of a person other than a prisoner:
- provides for retesting if a sample provided by a prisoner during drug and alcohol testing is dilute, tainted, or otherwise contaminated:
- provides for strip searching in those circumstances when a prisoner is to be retested, and before and after Parole Board hearings:
- strengthens the provisions around tampering with a sample or possessing items that could be used to tamper with a sample:
- introduces new provisions relating to unauthorised electronic communication devices.

Prisoner mail

It is clear that letters containing threats, plans for further offending, and other prohibited communications are leaving prisons. Current legislation does not permit prison staff to screen prisoners' mail without a reasonable-grounds test being met, and in most cases there are, on the face of it, no reasonable grounds to suspect that a particular letter may need to be withheld. The Act is inconsistent in its treatment of prisoners' mail and telephone calls. All telephone calls may be screened and unlawful communications may be recorded and passed to the police or other enforcement agencies. In the absence of tighter controls, prisoners' mail is likely to be seen as a relatively risk-free way to communicate prohibited messages once cellphones are clamped down on.

The Bill provides that all prisoner mail, other than mail that is currently exempt, can be read, but only for the purpose of determining whether mail should be withheld under section 108(1) (for example, on the grounds that it endangers the safety or welfare of any person).

Emergency management

At present the Crown and departmental agents and contractors may be liable for any breach of the Act or its regulations that is reasonably necessary or unavoidable during an epidemic, civil defence, or prison-specific emergency. In addition, it is unclear whether successful actions could be taken against the Crown for the continued detention of a prisoner past his or her release date while a prison is

covered by a quarantine order issued under the Health Act 1956 during an epidemic emergency situation. There is no certainty that the provisions of the Health Act 1956 will override other legislation or that the common law doctrine of necessity will protect the Department from damages claims for actions taken in good faith in an emergency situation, both in respect of prisoners and others who happen to be in a prison when an emergency is declared.

Providing protection from liability during an emergency would provide some certainty and clarity around the steps that may be taken to manage prisons in the event of any emergency situation.

Information sharing

The Act provides for the release to the police of certain information on highest-risk offenders to assist in monitoring their compliance with release conditions. There are 3 problems with these provisions. First, the set of information may not allow the police on all occasions to adequately identify a particular prisoner so that the prisoner can be monitored. Second, the purpose for releasing the information, and the restriction of that information release only to the police, does not allow for consideration of the prisoner's reintegration into the community. Third, the disclosure of information is limited to the police and it may be useful on occasion to also involve social agencies so that a full range of reintegration issues can be addressed.

The Bill allows information to be disclosed that is sufficient to allow a co-ordinated response by the Department, the police, and where appropriate, relevant social agencies. This is so that the best arrangements for the placement of a prisoner into the community can be made, taking into account the interests of the prisoner and community safety.

Unauthorised communications with prisoners

Sections 141 and 143 of the Act include offence provisions in relation to unauthorised communications with prisoners. These provisions do not prohibit unauthorised communications with a prisoner that may prejudice the well-being of a victim of a crime committed by that prisoner. This could result, for example, from the publication of details of the crime.

The Bill provides for prejudice to the well-being of the victim as an additional ground for the offence of unauthorised communications with prisoners.

Firearms for animal and pest control

The Act provides that nothing in the Act authorises an officer or a staff member to carry, possess, or use any firearm. There are, however, circumstances on prison farms and nurseries when it is desirable for staff members to be able to use firearms in the course of their duties—for example, putting down badly injured or ill animals, or for pest control of rabbits and hares. It is costly and impractical for the Department to alternatively make use of veterinarians for putting down severely injured animals.

The Bill provides for an amendment to allow the chief executive to empower staff members with a firearms licence to possess, carry, and use firearms, but only for the purposes of humanely killing animals, pest control, and for specified prison industry purposes, such as pet food production. Appropriate safeguards are provided for the use and storage of these firearms to ensure that they do not become available to prisoners.

Exemptions for communion wine

It is not lawful under the Act and the Corrections Regulations 2005 (the **regulations**) for a prison chaplain or priest to bring wine into a prison for the purpose of celebrating Mass or Holy Communion. It is also an offence against discipline for a prisoner to consume communion wine (or any alcohol) without the authority of a medical officer.

The Bill allows wine to be provided by prison chaplains and ministers of religion at church services attended by prisoners. This is consistent with freedom of religion and other rights of minorities affirmed under the New Zealand Bill of Rights Act 1990.

Forfeiture of items

The Act establishes a process whereby items connected to an offence can be seized. If items are seized from a person who is not a prisoner and the person is convicted of the offence, the Act also states that the item is forfeit to the Crown unless a Court orders otherwise. There is no equivalent forfeiture provision for items related to an offence against discipline committed by a prisoner. Additionally, there is nothing expressly authorising the Department to use or otherwise dispose of items that are forfeit.

The Bill would allow the forfeiture of items that have been seized in relation to offences and disciplinary offences (with appropriate protections), and empower the Department to use and dispose of forfeited items.

Cellphone jamming

The illicit use of cellphones in prisons has become increasingly difficult to manage through traditional search and seizure techniques. Within prison walls, cellphones have been used by prisoners to organise further criminal offending, to threaten and harass witnesses and others, and to arrange escapes.

Entry solutions, such as scanner devices at the entrance to a prison, do not completely prevent illicit cellphone activity. Disabling and interference (jamming) solutions appear to be the most effective method for dealing with the problem because they can completely eliminate cellphone coverage within prison boundaries.

The Department, Telecom, and Vodafone have been working together to arrive at solutions for monitoring and preventing cellphone use in prisons through electronic means.

Three solutions have been selected for implementation—a hard-wired detection solution, a disabling solution, and an interference solution. The suitability of a solution to a particular prison site will be fully assessed in the next stages of the project.

The Bill would provide an explicit authority for the Department to intercept, monitor, detect, disable, disrupt, and interfere with radio-based telecommunications within a prison in order to stop or prevent transmissions from cellphones (and other electronic communication devices), but only where this does not prevent the legitimate use of cellphones outside prison boundaries. The proposed amendment would state that no solution may be implemented that would result in harmful interference (as defined by the Radiocommunications Act 1989) outside prison boundaries. This means that members of the public would be able to use their cellphones outside prison boundaries.

Amendments are also proposed to authorise any incidental monitoring and to enable the Department to take the appropriate action if, for example, a prisoner was overheard making plans, by way of a cellphone, to commit a crime.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for the Bill (once enacted) to come into force on a date appointed by the Governor-General by Order in Council. One or more Orders in Council may be made bringing different provisions into force on different dates.

Clause 3 states that this Act amends the Corrections Act 2004.

Part 1 Amendments to Corrections Act 2004

Clause 4(1) amends section 3(1) to insert a definition of electronic communication device. That definition extends to include any part of an electronic communication device, and any device that facilitates the functioning of an electronic communication device (for example, a cellphone recharger). *New section 141A*, as inserted by *clause 23*, will make it an imprisonable offence for a prisoner to knowingly, and without authority, use or possess an electronic communication device. *Paragraph (d)* of the definition of electronic communication device is, therefore, significant because it ensures that telephone facilities that prisoners can lawfully use are not caught by that definition.

Clause 4(2) amends paragraph (a)(v) of the definition of officer. The current provision specifies that an employee of the Department is an officer if the chief executive designates that person to carry out the powers and functions of an officer in respect of 2 or more prisons. The amendment replaces the reference to 2 or more prisons with a reference to 1 or more prisons.

Clause 4(3) omits references to independent contractor from the definition of staff member of a prison or staff member.

Clause 4(4) and (5) include in the definition of unauthorised item—

- an electronic communication device; and
- any thing or substance that could be used to tamper with samples provided by prisoners for drug or alcohol testing.

Clause 5 updates section 23(3) to include references to enforcement powers under sections 56 to 58 of the Misuse of Drugs Amendment Act 2005, and sections 200B, 200F, and 200G of the Summary Proceedings Act 1957. Section 23(3) lists statutory provisions that do not apply to a member of the armed forces, or an officer who is

not also a member of the police, when acting in the capacity of an officer under the principal Act.

Clause 6 amends section 79 to ensure that section 129(a) (which forbids the consumption of alcohol by prisoners other than on medical grounds) does not operate to prohibit the consumption of wine by a prisoner partaking in Holy Communion.

Clause 7 amends section 86, which currently prohibits the possession and use of firearms by officers and staff members. The amendment permits the use of firearms by officers or staff members authorised by the chief executive for the purposes of any prison industry, humane killing of animals, and pest control. Firearms, however, must not be used in the presence of prisoners, must not be stored in a prison, and may only be used by those officers or staff members who hold the appropriate licence.

Clause 8 amends the definition of strip search in section 90 to allow a person conducting the search to require the person being searched to lift or raise any part of his or her body (for example, rolls of fat, genitalia, or breasts).

Clause 9 makes the following changes to section 98 (which relates to the search of prisoners and cells):

- a prisoner may be strip searched immediately after (as well as before) a hearing or examination before a Visiting Justice or a hearing adjudicator, or an appeal before a Visiting Justice (*Clause 9(1)*);
- a prisoner may also be strip searched—
 - before or after a hearing before the New Zealand Parole Board (*Clause 9(2)*); and
 - immediately before he or she submits to further drug or alcohol testing under *new section 124(2)(d)* (where the manager has reasonable grounds to believe that the prisoner's previous sample was dilute, tainted, or contaminated) (*Clause 9(3)*).

Clause 10 relates to section 100(1), which currently authorises an officer who has reasonable grounds to suspect that there is an unauthorised item in any place in a prison set aside for the exclusive use of a person other than a prisoner (for example, a staff member's locker). Section 100(1) is repealed and replaced by a new section that no longer requires that an officer have reasonable grounds to suspect that there is an unauthorised item in that place.

Clause 11 inserts *new section 103A*, which provides a definition of authorised officer. An authorised officer is a prison manager or officer authorised by the manager to open and read mail under sections 104 to 110A.

Clauses 12 and 13 make consequential amendments to sections 104 and 106(2) to reflect the new definition of authorised officer.

Clause 14 repeals and replaces section 107(1). *New section 107(1)* permits an authorised officer to read correspondence between a prisoner and another person for the purpose of ascertaining whether it may be withheld under section 108(1). Currently, section 107(1) authorises only the prison manager to read prisoner correspondence and only in specified circumstances. *New section 107(1)* continues to be subject to the protections under the Act relating to mail between the prisoner and legal advisers, official agencies, and members of Parliament.

Clause 15 amends section 108(1) by adding new grounds for withholding prisoner correspondence, namely, if the manager believes on reasonable grounds that the correspondence is likely to—

- prejudice the maintenance of the law; or
- breach an order of any court or constitute contempt of court.

Clauses 16 and 17 make consequential amendments to sections 109 and 110.

Clause 18 inserts *new sections 110A to 110C*.

New section 110A restricts an authorised officer from disclosing information obtained from prisoner correspondence unless—

- the disclosure is made to another authorised officer for the purpose of making a decision under section 108(1) or (2), or paragraph (c) of *new section 110A*; or
- the officer believes on reasonable grounds that the disclosure—
 - is necessary to avoid prejudice to the maintenance of the law by a public sector agency;
 - is necessary for the conduct of proceedings before a tribunal or a court;
 - is necessary to prevent or lessen a serious and imminent threat to public health or safety or to the life or health of any person;
 - is authorised by the Privacy Commissioner under section 54(1) of the Privacy Act 1993; or
- the disclosure is required by law.

New section 110B requires the chief executive to ensure that prisoners are warned that their correspondence may be opened, read, and withheld.

New section 110C states that the Privacy Act 1993 applies to provisions in the Act relating to prisoner correspondence.

Clause 19 amends section 124(2), which describes the situations in which a prisoner may be required to submit to a drug or alcohol test. The amendment provides that a prisoner may also be required to submit to a test if the manager has reasonable grounds to believe that a sample given by that prisoner in a previous test is dilute, tainted, or contaminated.

Clause 20 consequentially amends section 128(1)(d) by changing a reference to electronic device to electronic communication device.

Clause 21 amends section 129(a), which makes it a disciplinary offence for a prisoner to use any drug or consume alcohol except as authorised by a medical officer. The amendment excepts the consumption of wine by prisoners when partaking in Holy Communion.

Clause 22 makes a number of substantive amendments to section 141.

Section 141(1) states the offences and penalties in respect of unauthorised deliveries, communications, and recordings.

It is currently an offence under section 141(1)(e) for any person to hold any unauthorised communication with a prisoner if that communication may prejudice—

- the maintenance of the law; or
- the safe custody of the prisoner; or
- the safety of any other person; or
- the security of any prison.

Section 141(1)(e) is extended so that it is also an offence for a person to hold any unauthorised communication with a prisoner if that communication may prejudice the well-being of any victim of an offence committed by that prisoner.

Section 141(1)(f), which relates to unauthorised visual and sound recordings, is amended in a similar manner to section 141(1)(e).

New section 141(1)(g) makes it an offence for any person to knowingly have in his or her possession any unauthorised item in prison unless possession of that item is authorised under the Act or regulations or by the prison manager or chief executive.

Currently, a person who commits an offence against section 141(1) is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding \$2,000, or to both.

The penalties for offences against provisions of section 141(1) are increased in respect of the commission or attempted commission of an offence against—

- section 141(1)(a) (bringing any thing into prison that is intended for the possession of a prisoner); or
- *new section 141(1)(g)* (possessing unauthorised item in prison).

A person who commits an offence against those provisions is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine of up to \$5000, or to both.

Clause 23 inserts a *new section 141A*, which prohibits the unauthorised use or possession by a prisoner of any electronic communication device. A prisoner who commits an offence against *new section 141A* is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine of up to \$5000, or to both.

Clause 24 amends section 143, which prohibits unauthorised communications or deliveries from any person to a prisoner outside a prison.

The amendment increases the penalty for making unauthorised deliveries to a prisoner if the person making the delivery is an officer, staff member, or probation officer. The maximum term of imprisonment is increased from 3 months to 12 months, and the maximum fine is increased from \$2,000 to \$5,000.

The definition of restricted communication in section 143(3)(a) is consequentially amended as a result of the changes to section 141.

Clause 25 amends section 146, which provides that a person who contravenes section 118 is liable on summary conviction to a fine not exceeding \$2,000. Section 146 is amended to apply also to any person who contravenes *new section 110A* (restricting disclosure of prisoner mail).

Clause 26 amends section 150 (relating to power of seizure) to enable any thing that is forfeited to the Crown under section 150(2), 133, or 137 to be used or otherwise disposed of in any manner that the chief executive directs.

Clause 27 inserts a *new heading* and *new sections 179A to 179E*, which are mainly about limiting Crown liability in the following situations:

- an epidemic in respect of which the provisions of the Act or the regulations are modified by Order in Council under the Epidemic Preparedness Act 2006;
- a prison emergency;
- an epidemic emergency affecting a prison or prisoners;
- a state of emergency affecting a prison or prisoners.

New section 179A states that a prisoner who is eligible for release may be detained in the prison beyond his or her release date if the detention is pursuant to any order or requirement under section 70 or 79 of the Health Act 1956.

New section 179B is for the avoidance of doubt. The Crown is not liable to pay or compensate any person because of any detention in a prison pursuant to any order or requirement under the Health Act 1956.

New section 179C defines terms used in *new sections 179D and 179E*.

New section 179D requires the chief executive to notify the Minister of the existence of a prison emergency, or an epidemic emergency or state of emergency affecting a prison or prisoners.

New section 179E provides that there is no cause of action against the Crown or Crown servants for any harm or loss arising from—

- any act or omission by any person in the exercise of his or her functions, duties, or powers under a provision of the Act or the regulations that is modified by Order in Council under the Epidemic Preparedness Act 2006; or
- any failure by any person to comply with any provision of the Act or the regulations during a prison emergency, or an epidemic emergency or state of emergency affecting a prison or prisoners, if it is impossible or unreasonable to comply with the Act or regulations in those circumstances.

A person, however, may be granted leave to bring proceedings against the Crown if the High Court is satisfied that the person against whom proceedings are sought acted in bad faith or gross negligence.

Clause 28 inserts a *new heading* and *new section 181A*, which authorises the sharing of personal information about highest-risk offenders between specified agencies.

New section 181A largely replicates the information-sharing provisions in section 182A (relating to child sex offenders). *New section 181A(6)* allows information disclosed under that section to be disclosed before the offender's release from prison.

Clause 29 makes consequential amendments to section 182 as a result of *new section 181A*.

Clause 30 amends section 182A (information sharing about child sex offenders) to allow information disclosed under that section to be disclosed before the offender's release from prison.

Clause 31 inserts a *new heading* and *new sections 189A to 189C*. The purpose of these provisions is to stop or prevent—

- unauthorised electronic communications to or from a prisoner within prison boundaries; and
- the delivery, possession, or use of electronic communication devices by any person in contravention of section 141.

New section 189A defines terms used in *new sections 189B and 189C*.

New section 189B provides that a person authorised by the chief executive may, for the purpose of that section, use any equipment or device to detect, intercept, monitor, disable, disrupt, or interfere with radiocommunications within prison boundaries, as long as it does not cause harmful interference (within the meaning of section 2(1) of the Radiocommunications Act 1989) outside prison boundaries.

New section 189C allows a manager who reasonably believes that an unauthorised electronic communication relates to the commission or attempted commission of an offence to record that communication and give it to an enforcement officer, the chief executive, or any other employee of the Department.

Part 2

Amendments to other enactments

Clause 32 amends section 216B(4) of the Crimes Act 1961 to ensure that the prohibitions against the use of interception devices under that section do not apply to interceptions authorised under *new section 189B* of the Corrections Act 2004.

Clauses 33 and 34 amend sections 17 and 18 of the Parole Act 2002 as a result of *new section 179A*.

Regulatory impact statement

Executive summary

The amendments proposed in this paper are intended to—

- work alongside a variety of operational initiatives to improve the control of contraband in prisons through additional search, detection, and offence provisions:
- provide for a consistent approach to the monitoring of prisoners' telephone calls and mail:
- limit the Crown's liability in relation to prisoners, and persons in prisons, in an emergency situation (caused by an epidemic, civil defence emergency, or specific prison situation):
- amend provisions relating to information sharing about high-risk offenders:
- provide for new offence provisions relating to unauthorised communications with prisoners:
- clarify the use of firearms for the humane destruction of animals and for pest control in prison grounds:
- allow for the consumption of communion wine in prisons
- permit the Department and its agents to electronically detect, monitor, disable, disrupt, and interfere with wireless transmissions within prison boundaries in order to stop or prevent unauthorised electronic communications and offences relating to the delivery, possession, or use of electronic communication devices.

Adequacy statement

The Department confirms that the principles of the Code of Good Regulatory Practice and the regulatory impact analysis requirements have been complied with. Consultation has occurred with relevant departments and Crown entities and the 2 main telecommunications providers, but not with staff unions and other outside organisations.

The Department considers that the level of analysis is adequate given the likely impacts of the proposals.

Status quo and problem

The Act is relatively new and is generally working well. However, some amendments are needed to address issues that have arisen during the time since its passage. The major issues that the Bill addresses are as follows:

- contraband is a major concern in the prison system, with items such as drugs and alcohol, money, offensive weapons, and mobile telephones having the capacity to produce serious problems for prison management. They can present a direct threat to staff and prisoners, lead to stand-over tactics and assaults, and allow prisoners to subvert prison controls and organise illicit activities outside the prison:
- it is clear that letters dealing with further criminal offending, threats to individuals concerning their welfare and safety, and other harmful or unlawful matters are leaving prisons. Current legislation may not allow the opportunity for prison staff to screen these letters as mail may not be read without a reasonable grounds test being met. This is inconsistent with the treatment under the Act of prisoner phone calls, which may be monitored unless they privileged in some way (for example, they are calls to lawyers or official agencies):
- existing legislation does not provide adequate authority for the Department to detain prisoners who are eligible for release but are required to remain in a prison that is under an isolation or quarantine order during an epidemic situation:
- the Act provides no exclusion from liability for the Crown, its agents, or contractors, for acts taken in good faith in an epidemic situation, a civil defence emergency, or a prison-specific emergency:
- while the Act provides for the Department to provide information to the police in relation to highest-risk offenders, this information is not sufficient to allow the police on all occasions to adequately identify a particular prisoner so that the prisoner can be monitored, or allow for the prisoner's reintegration into the community to be considered:
- sections 141 and 143 of the Act, which set out the offence provisions in relation to unauthorised communications with prisoners, do not include prejudice to the well-being of a victim of a crime committed by a prisoner:
- there are circumstances on prison farms, and in prison nurseries and prison industries, when it is desirable for staff members to be able to use firearms in the course of their duties—for example, putting down badly injured or ill animals, or for pest control of rabbits, hares, and possums:
- it is an offence against discipline for a prisoner to consume communion wine (or any alcohol) without the authority of a medical officer:

- there are no forfeiture provisions in the Act for items related to an offence against discipline committed by a prisoner, or ability for the department to use or otherwise dispose of items that are forfeit:
- the illicit use of cellphones in prisons (to organise further criminal offending, arrange for escapes and to threaten and harass witnesses) has become increasingly difficult to manage through traditional search and seizure techniques.

Objectives

The objectives of the proposed amendments to the Act are to—

- work in tandem with operational improvements to reduce the problems caused in prisons by the use of drugs, alcohol, cellphones, and other contraband by increasing the effectiveness of the drug and alcohol testing procedure, making it more difficult to introduce contraband into prisons, and detecting and blocking cellphone use:
- enhance provisions permitting prison staff to screen prisoners' mail to prevent unlawful or harmful communications leaving prisons:
- provide that prisons under an isolation or quarantine order during an epidemic situation may detain any prisoner who is due for release:
- provide an exclusion from liability for actions taken in good faith during epidemic situations, and civil defence and prison specific emergencies:
- put in place an information sharing regime that would allow the disclosure of information about highest-risk offenders to the police and other relevant agencies, with a view to addressing the rehabilitation needs of the prisoner and the safety of the community:
- amend the Act to include prejudice to the well-being of the victim as an additional ground for an offence of unauthorised communications with a prisoner:
- allow Department of Corrections staff members to use firearms (in controlled circumstances) for the purposes of specified prison industries, humane killing of animals, and pest control:
- allow prisoners to consume communion wine during the celebration of the Eucharist:

- allow items related to an offence against discipline to be seized from prisoners, and to be forfeited to the Crown:
- amend the Act to make it clear that forfeited items may be disposed of by the Department:
- amend the Act to provide the Department and its agents with explicit authority to detect, monitor, disable, disrupt, and interfere with cellphone and other illicit radio-wave transmissions within prison boundaries.

Alternative and preferred options

The preferred options set out in this paper have been selected because—

- they target the problems that have been defined:
- new costs in some areas (for example, drug retesting) are not significant:
- there are legislative precedents that provide ways for dealing with issues that have been raised:
- they are effective in dealing with the problem identified.

One additional cost that might arise from the proposals is that the greater penalties and new offence relating to contraband (in particular, electronic communication devices) might lead to longer sentences and an increased number of prisoners. This is expected to be marginal as only 1 successful case is required for the new penalties to have an impact.

Drugs and contraband

The extent of contraband being detected in prison indicates that operational measures are not likely to be entirely successful and that some legislative refinements are needed.

Possible alternatives focussed on the prevention of contraband getting into prison might include—

- restricting visitor numbers:
- restricting contact visits:
- increasing to a greater degree the frequency and intrusiveness of prisoner and visitor searches:
- increasing the thoroughness and frequency of cell searches and searches of other parts of the prison.

These alternatives involve an increase in resources or further restrictions on the rights of prisoners and visitors. They are broad-brush in approach, involving both those that are perceived as a risk and those

that are not. An across the board limitation on the frequency of visitors is likely to be seen as an unnecessary restriction on the rights of prisoners and their families.

The preferred options are to—

- enhance existing search powers in relation to strip searching and staff lockers and other parts of a prison set aside for the exclusive use of a person other than a prisoner:
- provide for retesting if a sample provided by a prisoner during drug and alcohol testing is diluted, tainted, spoiled or not a true sample:
- provide for strip searching in those circumstances when a prisoner is to be retested or has attended a Parole Board hearing:
- strengthen the provisions around tampering with a sample or possessing items that could be used to tamper with a sample:
- introduce new provisions relating to unauthorised electronic communication devices (primarily cellphones).

Prisoners' mail

Continuation of the status quo means that there would be restrictions on the ability of prison staff to screen prisoners' mail. Unlawful and harmful letters would continue to leave prisons.

The preferred option is to permit authorised prison staff to screen mail for the purpose of detecting letters that need to be withheld or passed to the police. Privileged communications to lawyers, members of Parliament, and official agencies would not be read.

Emergency management

Under the status quo there is no certainty that the common law doctrine of necessity will protect the Department from claims for damages relating to actions taken in good faith in an emergency situation.

Providing protection from liability during an emergency would provide some certainty and clarity around the steps that may be taken to manage prisons in the event of any emergency situation.

The preferred option is to provide exemption from liability for the Crown for actions taken in good faith during an emergency situation (due to an epidemic, civil defence, or prison specific situation). This is considered necessary in the unique prison environment to allow

staff to manage in difficult circumstances and to avoid large numbers of costly civil actions for damages against the Department.

In addition, without a legislative amendment, there will be a conflict between the provisions of the Parole Act 2002 and the Health Act 1956 (which provides for the detention of persons subject to a quarantine or isolation order during an epidemic emergency). The preferred option is to avoid additional actions for damages by making it clear that ex-prisoners will be required to remain in a prison in these circumstances.

Information sharing

The status quo would mean that highest-risk offenders would continue to be released from prison without the benefit of steps being able to be put in place that increase the likelihood of successful reintegration and policing efforts to support a safer community.

The preferred option is to amend the Act to allow sufficient information to be shared in advance of the prisoner's release with the police and relevant social agencies for the purposes of monitoring compliance with the conditions of their release or home detention, and assisting with the rehabilitation and reintegration of highest-risk prisoners into the community. This would be done by way of information sharing provisions modelled on sections 182A to 182D of the Act, which deals with information sharing in respect of child sex offenders.

Unauthorised communications with prisoners

The status quo provides no specific protections for victims, while the proposed amendment would include prejudice to the well-being of the victim as an additional ground for an offence.

The preferred option is to add prejudice to the well-being of victims as an additional ground for the offence of unauthorised communications with prisoners.

Use of firearms

The status quo means that the Department would need to make alternative, off-site arrangements for the destruction of animals for prison industry (pet food) purposes, and call veterinarians in from some distance to put down severely injured animals. This would be costly, but also might be impractical. For example, it may not always be possible for a vet to travel from Taupo to Tongariiro/Rangipo in a

timely way, bearing in mind the operational requirements of the prison and the welfare of the animal.

The preferred option is to amend the Act to allow the chief executive of the Department to authorise staff members to possess, carry, and use firearms but only for the purposes of specified prison industries, the humane killing of animals, and pest control.

Exemptions for communion wine

The current situation is problematic because of the prohibitions on the consumption of alcohol in prisons set out in the Act.

The preferred option is to provide an exception for wine that is brought in and consumed in prisons during the celebration of the Eucharist. This is consistent with the freedom of religion and other rights of minorities affirmed under the New Zealand Bill of Rights Act 1990.

Forfeiture of items

The current position means that items that are seized and forfeited cannot be disposed of by the Department, and that items related to offences against discipline by prisoners cannot be seized.

The preferred option is to allow the forfeiture of items that have been seized (with appropriate protections), and empower the Department to use and dispose of forfeited items.

Cellphone jamming

The Act provides no explicit authority for the Department or its agents to detect, monitor, disable, disrupt, and interfere with wireless communications (typically cellphone calls) within prisons.

The preferred option is to amend the Act to allow the Department to jam cellphone communications within a prison. Legislative protections for the public would be included and provide that no cellphone jamming solution may be put in place that resulted in harmful interference (as defined in section 3 of the Radiocommunications Act 1989) outside prison boundaries.

No legislative amendments to the Radiocommunications Act 1989 to provide for departmental access to spectrum are proposed at this time. The necessary arrangements with spectrum right holders will be made according to the licensing arrangements of that Act.

Implementation and review

The Department is putting in place a formalised data collection and management system that will provide better quality and timely information to allow the success of these legislative and related operational issues to be monitored.

In relation to cellphone jamming, subject to funding, the joint project between the Department, Telecom, and Vodafone will move to the next phase and roll out the 3 preferred solutions to suitable prison sites. The project team will review the effectiveness of each solution and report on any matters associated with implementation.

Consultation

Relevant consultation has been carried out with the Treasury, the Ministry of Justice, the New Zealand Police, the Ministry of Social Development, Housing New Zealand Corporation, the Department of Internal Affairs, the Ministry of Health, the Privacy Commissioner, the Department of the Prime Minister and Cabinet, and the Ministry of Economic Development. Consultation has been carried out with Telecom and Vodafone over the cellphone jamming proposal.

There has been no consultation with unions representing prison staff or with other organisations interested in prisons.

Hon Phil Goff

Corrections Amendment Bill (No 2)

Government Bill

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Corrections Amendment (No 2)

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Corrections Amendment Act (No 2) **2007**.
- 2 Commencement**
This Act comes into force on a date to be appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates. 5
- 3 Principal Act amended**
This Act amends the Corrections Act 2004. 10

**Part 1
Amendments to Corrections Act 2004**

- 4 Interpretation**
- (1) Section 3(1) is amended by inserting the following definition in its appropriate alphabetical order: 15
 - “**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: 20
 - “(i) transmitting sound: 20
 - “(ii) computing information:
 - “(iii) functioning as a telephone:
 - “(iv) communicating in any other way using any technology (including telecommunication, radiocommunication, Internet, and broadcasting technology): 25
 - “(b) includes any part of an electronic communication device (for example, a SIM card) regardless of whether the part—
 - “(i) is capable of any of the actions specified in **paragraph (a)**; and 30
 - “(ii) is detachable and may be used in other electronic communication devices:
 - “(c) includes any device that enables or facilitates the functioning of an electronic communication device (for example, a recharger or charging device): 35

- “(d) does not include—
- “(i) any telephone facility provided for the use of prisoners under section 77; and
 - “(ii) any telephone facility or telephone system authorised by the chief executive or a prison manager to be used in a prison, or by the Commissioner of Police to be used in a police jail”.
- (2) Paragraph (a)(v) of the definition of **officer** in section 3(1) is amended by omitting “of 2” and substituting “of 1”.
- (3) The definition of **staff member of a prison** or **staff member** in section 3(1) is amended by omitting “or independent contractor” in each place where it appears.
- (4) The definition of **unauthorised item** in section 3(1) is amended by repealing paragraph (c) and substituting the following paragraph:
- “(c) any electronic communication device:”.
- (5) The definition of **unauthorised item** in section 3(1) is amended by inserting the following paragraph after paragraph (f):
- “(fa) any thing or substance that could be used to tamper with any sample that a prisoner is required to supply in accordance with a prescribed procedure under section 124:”.
- 5 Restrictions on exercise of certain powers**
- Section 23 is amended by repealing subsection (3) and substituting the following subsection:
- “(3) Despite sections 21 and 22, the following provisions do not apply to a member of the armed forces, or an officer who is not also a member of the police:
- “(a) sections 18 and 18A of the Misuse of Drugs Act 1975 (which confer powers of search and seizure):
 - “(b) section 13A of the Misuse of Drugs Amendment Act 1978 (which confers powers in relation to internal concealment):
 - “(c) sections 56 to 58 of the Misuse of Drugs Amendment Act 2005 (which confer enforcement powers in relation to restricted substances):

“(d) sections 200B, 200F, and 200G of the Summary Proceedings Act 1957 (which confer powers in relation to tracking devices).”

6 Religious and spiritual needs

Section 79 is amended by adding the following subsection: 5

“(3) Section 129(a) does not apply to a prisoner who during a religious service (whether inside or outside a prison) consumes wine provided at the service by a prison chaplain or minister of religion for the purposes of the Eucharist, Holy Communion, Mass, or Communion.” 10

7 Possession, carriage, and use of firearms prohibited

(1) The heading to section 86 is amended by omitting “**prohibited**” and substituting “**restricted**”.

(2) Section 86 is amended by repealing subsection (1) and substituting the following subsection: 15

“(1) No officer or staff member may possess, carry, or use any firearm within a prison except as provided under **subsection (3)**.”

(3) Section 86 is amended by adding the following subsections:

“(3) The chief executive may, in writing, authorise an officer or staff member to possess, carry, or use a firearm within a prison, but only in a specified area of the prison for 1 or more of the following purposes: 20

“(a) for the purpose of any specified prison industry;

“(b) for the purpose of humanely killing animals: 25

“(c) for the purpose of pest control.

“(4) If **subsection (3)** applies, a firearm—

“(a) may only be used by an officer or staff member who holds a current firearms licence under section 24 of the Arms Act 1983 and in accordance with that Act; and 30

“(b) must not be used while prisoners are present; and

“(c) must not be stored in a prison.”

8 Definition of strip search

(1) Section 90(2) is amended by adding the following paragraph:

“(g) lift or raise any part of his or her body (including, for example, rolls of fat, genitalia, and breasts).” 35

- (2) Section 90(3) is amended by inserting “and to conduct a visual examination of the anal and genital areas (without the use of any instrument or device designed to illuminate or magnify),” after “and ears,”.
- 9 Search of prisoners and cells** 5
- (1) Section 98(6)(g) is amended by inserting “or after” after “immediately before”.
- (2) Section 98(6)(g) is amended by adding the following subparagraph:
- “(iv) any hearing before the New Zealand Parole Board:”.
- (3) Section 98(6) is amended by adding the following paragraph:
- “(j) if the prisoner is required under section 124 to submit to a prescribed procedure in the situation referred to in **section 124(2)(d)**, immediately before the prisoner submits to that procedure.” 15
- (4) Section 98(8) is amended by inserting “(other than in the situation referred to in **section 124(2)(d)**)” after “section 124”.
- 10 Search of staff lockers and other places**
- Section 100 is amended by repealing subsection (1) and substituting the following subsection: 20
- “(1) For the purpose of detecting an unauthorised item, an officer may, with the prior approval of the prison manager, and in the presence of another officer, search any place set aside in a prison for the exclusive use of any person other than a prisoner (for example, a staff member’s locker).” 25
- 11 New section 103A inserted**
- The following section is inserted above section 104:
- “103A Interpretation**
- In this section and in sections 104 to **110A**, unless the context otherwise requires,— 30
- “**authorised officer** means a prison manager or an officer authorised by the manager to open and read mail for the purposes of sections 104 to **110A**.”

- 12 General considerations relating to mail**
 Section 104 is amended by omitting “staff members” and substituting “authorised officers”.
- 13 Opening of mail**
 Section 106(2) is amended by— 5
 (a) omitting “a staff member” and substituting “an authorised officer”; and
 (b) omitting “staff member” and substituting “authorised officer”.
- 14 Reading of correspondence** 10
 (1) Section 107(1) is repealed and the following subsection substituted:
 “(1) An authorised officer may read correspondence between a prisoner and another person for the purpose of ascertaining whether it may be withheld under section 108(1).” 15
 (2) Section 107(2) is amended by omitting “manager” and substituting “authorised officer”.
- 15 Withholding mail**
 (1) Section 108(1)(d) is amended by omitting “has read under section 107(1) and the manager believes on reasonable grounds that it” and substituting “believes on reasonable grounds”. 20
 (2) Section 108(1)(d) is amended by adding the following subparagraphs:
 “(v) prejudice the maintenance of the law (including the prevention, detection, investigation, prosecution, and punishment of offences, and the right to a fair trial); or 25
 “(vi) breach an order or direction of any court or constitute contempt of court.” 30
- 16 Mail between prisoners, official agencies, and members of Parliament**
 Section 109 is amended by omitting “A staff member” and substituting “An authorised officer”.

- 17 Mail between prisoners and legal advisers**
 Section 110(1) and (2) are amended by omitting “A staff member” and substituting in each case “An authorised officer”.
- 18 New sections 110A to 110C inserted** 5
 The following sections are inserted after section 110:
- “110A Restrictions on disclosure of mail**
 An authorised officer must not disclose any information obtained from correspondence contained in any mail between a prisoner and another person unless— 10
- “(a) the disclosure is made to another authorised officer for the purpose of determining whether—
- “(i) mail may be withheld under section 108(1); or
- “(ii) mail that is withheld under section 108(1) should be forwarded to an enforcement officer under section 108(2); or 15
- “(iii) **paragraph (c)** applies; or
- “(b) the officer believes on reasonable grounds that the disclosure—
- “(i) 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 20
- “(ii) is necessary for the conduct of proceedings (already commenced or reasonably in contemplation) before a court or tribunal; or 25
- “(iii) 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 30
- “(iv) has been authorised by the Privacy Commissioner under section 54(1) of the Privacy Act 1993; or
- “(c) the disclosure is required by any enactment or rule of law. 35
- “110B Warnings in relation to mail**
 The chief executive must take all practicable steps to ensure that when, or reasonably promptly after, prisoners are received at a prison they are informed in writing—

- “(a) that their correspondence—
 - “(i) may be opened and read; and
 - “(ii) may be withheld and the grounds on which it may be withheld; and
- “(b) about the types of correspondence that are exempted from being opened, read, and withheld, and the extent to which the exemptions apply. 5

“110C Application of Privacy Act 1993

The Privacy Act 1993 applies to any activity authorised under any of sections 104 to **110B** relating to correspondence to or from a prisoner.” 10

19 Prisoner may be required to submit to drug or alcohol test

Section 124(2) is amended by adding the following paragraph: 15

- “(d) if the prisoner has submitted to a prescribed procedure under this section by supplying a sample and the prison manager believes, on reasonable grounds, that the sample supplied is dilute, tainted, or otherwise contaminated.” 20

20 Offences by prisoner

Section 128(1)(d) is amended by inserting “communication” after “electronic”.

21 Offences by prisoners relating to drugs and alcohol

Section 129(a) is amended by inserting “or unless **section 79(3)** applies” after “medical officer”. 25

22 Unauthorised deliveries, communications, and recordings

- (1) The heading to section 141 is amended by omitting “**and recordings**” and substituting “**recordings, and possession of unauthorised items**”. 30

- (2) Section 141(1) is amended by omitting “and is liable on summary conviction to imprisonment for a term not exceeding 3 months, to a fine not exceeding \$2,000, or to both”.

- (3) Section 141(1)(e) is amended by omitting “the safety of any other person,” and substituting “the well-being of any victim of an offence committed by that prisoner, the safety of any person,”.
- (4) Section 141(1)(f) is amended by omitting “the safety of any other person,” and substituting “the well-being of any victim of an offence committed by that prisoner, the safety of any person,”. 5
- (5) Section 141(1) is amended by repealing paragraph (g) and substituting the following paragraphs: 10
- “(g) knowingly has in his or her possession any unauthorised item while in prison:
- “(h) attempts to do any of the things described in **paragraphs (a) to (g).**”
- (6) Section 141 is amended by inserting the following subsections after subsection (1): 15
- “(1A) A person is liable on summary conviction to imprisonment for a term not exceeding 3 months, to a fine not exceeding \$5,000, or to both who—
- “(a) commits an offence against **subsection (1)(a) or (g);** or 20
- “(b) commits an offence against **subsection (1)(h)** by attempting to do any thing described in **subsection (1)(a) or (g).**”
- “(1B) A person is liable on summary conviction to imprisonment for a term not exceeding 3 months, to a fine not exceeding \$2,000, or to both who— 25
- “(a) commits an offence against any of **subsection (1)(b) to (f);** or
- “(b) commits an offence against **subsection (1)(h)** by attempting to do any thing described in any of **subsection (1)(b) to (f).**” 30
- (7) Section 141(3) is amended by omitting “subsection (1)” and substituting “**subsection (1A) or (1B)**”.

23 New section 141A inserted

The following section is inserted after section 141:

- “**141A Unauthorised use or possession of electronic communication device by prisoner** 35
- “(1) Every prisoner (whether inside or outside a prison) commits an offence who, except with the express authority of the prison manager or the chief executive,—

- “(a) uses an electronic communication device knowing that he or she is not authorised to use it; or
“(b) knowingly has an electronic communication device in his or her possession.
- “(2) A prisoner who commits an offence against **subsection (1)** is liable on summary conviction to imprisonment for a term not exceeding 3 months, to a fine not exceeding \$5,000, or to both.” 5
- 24 Restricted communications with, or deliveries to, prisoner outside prison** 10
- (1) Section 143(1) is amended by omitting “and is liable on summary conviction to imprisonment for a term not exceeding 3 months, to a fine not exceeding \$2,000, or to both”.
- (2) Section 143 is amended by inserting the following subsections after subsection (2): 15
- “(2A) A person who commits an offence against subsection (1)(a) or (b) is liable on summary conviction to imprisonment for a term not exceeding 3 months, to a fine not exceeding \$2,000, or to both.
- “(2B) Despite **subsection (2A)**, an officer, staff member, or probation officer who commits an offence against subsection (1)(b) is liable to imprisonment for a term not exceeding 12 months, to a fine not exceeding \$5,000, or to both.” 20
- (3) Section 143(3)(a) is amended by omitting “the safety of any other person,” and substituting “the well-being of any victim of an offence committed by that prisoner, the safety of any person,”. 25
- 25 Contravention of section 118**
- (1) The heading to section 146 is amended by inserting “**110A or**” after “**section**”. 30
- (2) Section 146 is amended by inserting “**110A or**” after “**section**”.

26 Power of seizure

Section 150 is amended by adding the following subsection:

“(3) Anything that is forfeited to the Crown—

“(a) under subsection (2) may, subject to any order of a court, be sold, used, destroyed, or disposed of in any manner that the chief executive directs: 5

“(b) under any provision of section 133 or 137 may be sold, used, destroyed, or disposed of in any manner that the chief executive directs.”

27 New heading and sections 179A to 179E inserted

10

The following heading and sections are inserted after section 179:

“Emergency management

“179A Detention of prisoners eligible for release during outbreak or spread of infectious disease

15

“(1) A prisoner who is eligible for release under the Parole Act 2002 may be detained beyond his or her statutory release date in any part of the prison if that detention is pursuant to any order or requirement under section 70 or 79 of the Health Act 1956. 20

“(2) In this section, **statutory release date** has the meaning given to it in section 4(1) of the Parole Act 2002.

“179B No compensation for detention in prison under Health Act 1956

“(1) To avoid doubt, the Crown is not liable to make a payment to or otherwise compensate any person in respect of any detention in a prison if that detention is pursuant to any order or requirement under the Health Act 1956. 25

“(2) This section does not—

“(a) limit **section 179E** or 195 or any other enactment dealing with liability or the payment of compensation; or 30

“(b) affect any cause of action relating to unlawful arrest or detention.

“179C Interpretation

In this section and **sections 179D and 179E**, unless the context otherwise requires,— 35

- “**act or omission** means any act or omission described in **section 179E(1)(a)**
- “**epidemic emergency affecting a prison or prisoners** means an epidemic—
- “(a) that occurs while an epidemic notice is in force; and 5
 - “(b) in respect of which the chief executive reasonably believes that the corrections system is no longer able to fulfill its purpose in section 5(1)(a) in relation to the prison or prisoners affected
- “**epidemic notice** means a notice under section 5 of the Epidemic Preparedness Act 2006 10
- “**failure** means any failure described in **section 179E(1)(b)**
- “**prison emergency** means an emergency—
- “(a) affecting the safety or health of the prisoners or any class or group of prisoners, or the security of the prison; and 15
 - “(b) in respect of which the chief executive reasonably believes that the corrections system is no longer able to fulfill its purpose in section 5(1)(a) in relation to the prison or prisoners affected 20
- “**regulations** means regulations made under section 200
- “**state of emergency affecting a prison or prisoners** means a state of emergency—
- “(a) within the meaning of section 4 of the Civil Defence Emergency Management Act 2002; and 25
 - “(b) in respect of which the chief executive reasonably believes that the corrections system is no longer able to fulfill its purpose in section 5(1)(a) in relation to the prison or prisoners affected.
- “**179D Notification of emergency** 30
- “(1) The chief executive must notify the Minister within 7 days of determining the existence of—
 - “(a) an epidemic emergency affecting a prison or prisoners; or
 - “(b) a prison emergency; or 35
 - “(c) a state of emergency affecting a prison or prisoners. - “(2) A notice under **subsection (1)** must—
 - “(a) be in writing and signed by the chief executive; and
 - “(b) state the date on which it is signed; and

- “(c) state the nature of the emergency that exists; and
“(d) specify the actions taken to date in respect of the emergency; and
“(e) specify any action proposed to be taken to enable the corrections system to fulfill its purpose in section 5(1)(a). 5
- “(3) The chief executive must notify the Minister within 7 days of determining that the emergency no longer exists.
- “(4) A notice under **subsection (3)** must— 10
“(a) be in writing and signed by the chief executive; and
“(b) state the date on which it is signed; and
“(c) specify the actions taken in respect of the emergency.
- “179E Exclusion of liability while epidemic notice in force or during emergency**
- “(1) There is no cause of action against the Crown, a Minister of the Crown, an officer or employee of a Minister of the Crown, the chief executive, an employee of the department, a contractor, or an independent contractor, to recover damages for any harm or loss that is due directly or indirectly to— 15
“(a) any act or omission by any person that occurs while carrying out his or her functions, duties, or powers under a provision of this Act or the regulations that has been modified by Order in Council under the Epidemic Preparedness Act 2006 while an epidemic notice is in force; or 20
“(b) any failure by any person to comply (or comply fully) with any provision of this Act or the regulations if— 25
“(i) the failure occurs during an epidemic emergency affecting a prison or prisoners, a prison emergency, or a state of emergency affecting a prison or prisoners; and 30
“(ii) it is impossible or unreasonable in the circumstances to comply (or comply fully) with this Act or the regulations.
- “(2) A person is not exempt from liability under **subsection (1)** if the act or omission, or failure, constitutes bad faith or gross negligence on the part of that person. 35
- “(3) A person may apply to the High Court for leave to bring proceedings against any person referred to in **subsection (1)** on

the ground that the act or omission, or failure, constitutes bad faith or gross negligence on the part of that person.

- “(4) The Court must not grant leave unless it is satisfied that there are grounds for the contention that the act or omission, or failure, constitutes bad faith or gross negligence on the part of the person against whom proceedings are sought to be brought. 5
- “(5) An application for leave under **subsection (3)** must be made—
 - “(a) within 2 years after the act or omission, or failure, to which the application relates; or 10
 - “(b) in the case of a continuance of injury or damage, within 2 years after the ceasing of the injury or damage.
- “(6) Nothing in this section—
 - “(a) prevents the Crown from making any ex gratia payment it considers justifiable on the basis of hardship or fairness: 15
 - “(b) limits the operation of section 86 of the State Sector Act 1988:
 - “(c) affects any cause of action relating to unlawful arrest or detention.” 20

28 New heading and section 181A inserted

The following heading and section are inserted after section 181:

“Information sharing about highest-risk offenders

- “181A Disclosure of information relating to highest-risk offenders 25**
- “(1) A specified agency that enters into an information sharing agreement under section 182D (as modified by **subsection (5)**) with another specified agency is authorised to disclose to that agency any personal information about a highest-risk offender, but only if the disclosure is for, or relates to, a purpose listed in **subsection (3)**. 30
- “(2) Nothing in **subsection (1)** limits the operation of the Privacy Act 1993 or section 182 of this Act.
- “(3) The purposes for which personal information about highest-risk offenders may be disclosed under an information sharing agreement between specified agencies are— 35
 - “(a) to assist the monitoring of compliance of highest-risk offenders with their conditions of release:

- “(b) to assist in facilitating the rehabilitation of highest-risk offenders:
- “(c) to facilitate the reintegration of highest-risk offenders into the community:
- “(d) to manage the risk that the offender may commit further offences: 5
- “(e) to identify any increased risk that the offender may breach his or her conditions or will commit further offences.
- “(4) For the purposes of this section,— 10
- “**highest-risk offender** means any offender whom the chief executive considers, having regard, amongst other matters, to the nature and seriousness of his or her offending, to be included in the class of offenders who pose the highest risk to public safety 15
- “**specified agency** means—
- “(a) the Department of Corrections:
- “(b) the New Zealand Police:
- “(c) any public sector agency (as that term is defined in section 2 of the Privacy Act 1993) that the Minister of Justice, after consultation with the Privacy Commissioner, identifies as a specified agency for the purposes of this section by notice in the *Gazette*. 20
- “(5) Sections 182D and 182E apply to information sharing agreements about highest-risk offenders as if every reference in those sections to a child sex offender were a reference to a highest-risk offender. 25
- “(6) Information disclosed for the purposes of this section may be disclosed prior to the offender’s release from prison.
- “(7) This section does not limit or affect any information sharing agreement under section 182D in relation to a child sex offender who is also a highest-risk offender.” 30
- 29 Offender information may be disclosed to facilitate monitoring of certain offenders**
- (1) The heading to section 182 is amended by omitting “**certain offenders**” and substituting “**persons on temporary release**”. 35
- (2) Section 182(1) is amended by repealing paragraph (b).
- (3) Section 182(3) is amended by repealing paragraph (b).

(4) Section 182(4) is repealed.

(5) Section 182(5) is amended by omitting “or subsection (4)”.

(6) Section 182(6) is repealed.

30 Information sharing about child sex offenders

Section 182A is amended by adding the following subsection: 5

“(4) Information disclosed for the purposes of this section may be disclosed prior to the offender’s release from prison.”

31 New heading and sections 189A to 189C inserted

The following heading and sections are inserted after section 189: 10

“Detection, interception, etc, of radiocommunications within prison boundaries

“189A Interpretation

In this section and **sections 189B and 189C**, unless the context otherwise requires,— 15

“**harmful interference** has the meaning given to it in section 2(1) of the Radiocommunications Act 1989

“**interference** has the meaning given to it in section 2(1) of the Radiocommunications Act 1989

“**radiocommunications** has the meaning given to it in section 2(1) of the Radiocommunications Act 1989 20

“**unauthorised electronic communication**—

“(a) means any electronic communication made in contravention of **section 141A(1)(a)**; and 25

“(b) includes any electronic communication received on an electronic communication device that the prisoner uses or possesses in contravention of that section.

“189B Detection, interception, etc, of radiocommunications within prison boundaries

For the purpose of stopping or preventing unauthorised electronic communications to or from prisoners within prison boundaries, and the delivery, possession, or use of electronic communication devices by any person in contravention of section 141,— 30

“(a) any person authorised by the chief executive for the purpose of this section may use any equipment or 35

- device to detect, intercept, monitor, disable, disrupt, or interfere with radiocommunications within prison boundaries; but
- “(b) no interference may be made under this section that would result in harmful interference outside prison boundaries. 5

“189C Recordings of unauthorised communications

- If a prison manager believes on reasonable grounds that an unauthorised electronic communication contains information relating to the commission or attempted commission of an offence, a record of that communication may be made and given— 10
- “(a) to an enforcement officer;
- “(b) to the chief executive or any other employee of the department.” 15

Part 2

Amendments to other enactments

Crimes Act 1961

- 32 Amendment to Crimes Act 1961**
- (1) This section amends the Crimes Act 1961. 20
- (2) Section 216B(4) is amended by—
- (a) omitting “monitoring” and substituting “any monitoring of a”; and
- (b) adding “or any interception of a private communication if the interception is authorised under **section 189B** of that Act” after “Corrections Act 2004”. 25

Parole Act 2002

- 33 Amendments to Parole Act 2002**
- (1) This section and **section 34** amend the Parole Act 2002.
- (2) Section 17 is amended by adding the following subsection: 30
- “(3) Subsection (2) is subject to **section 179A** of the Corrections Act 2004.”

34 Conditions applying to release at statutory release date

Section 18 is amended by adding the following subsection:

“(3) A prisoner to whom **section 179A** of the Corrections Act 2004 applies—

“(a) is not, during the period between the statutory release date and the date of actual release, subject to any release conditions that will apply on or after his or her statutory release date; but

“(b) from the statutory release date the time begins to run on the prisoner’s release conditions.”