

House of Representatives

# Supplementary Order Paper

Tuesday, 15 October 2019

## Corrections Amendment Bill

*Proposed amendments for the consideration of the Committee of the whole House*

**Key:**

- **this is inserted text**
- **~~this is deleted text~~**

**Note:** This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**



## Explanatory note

This Supplementary Order Paper amends the Corrections Amendment Bill by—

- amending the commencement clause (*see clause 2*):
- removing the new provisions to be inserted into the Corrections Act 2004 (the **principal Act**) relating to the use of Police jails (*see clauses 4(1), 7, 8, 15, and 28(1)*):
- removing 1 definition from and inserting 2 new definitions into section 3(1) of the principal Act (*see clause 4(3)* and *see also clause 25D*):
- amending *new section 19B* inserted into the principal Act by *clause 6* to enable a delegation of a health centre manager’s powers and functions to a registered health professional rather than only to a medical practitioner or nurse, and amending *new section 61G* inserted into the principal Act by *clause 14* to require a health centre manager to consult a registered health professional before giving advice in relation to a matter that is outside the manager’s scope of practice (*see also clause 34*):
- amending *clause 9(1)* to add an additional type of information to the list of information in section 42(1) of the principal Act to be provided to a prisoner on reception to a prison:
- inserting *new clause 9(2)*, which inserts *new section 42(3)* into the principal Act, to require a prison manager to provide all of the listed information to a prisoner on reception to a prison in a form and language (as far as practicable) that are accessible and appropriate to the prisoner:
- revising the new provisions relating to prisoners at risk of self-harm inserted into the principal Act by *clauses 14 and 25(1)* by requiring an at-risk management plan to specify the situations in which an at-risk prisoner must be strip searched:
- clarifying in *clause 16*, in *new section 77(6)(b)* of the principal Act, that any fee for an outgoing telephone call is set by the chief executive of the Department of Corrections (the **chief executive**):
- inserting *new clause 17(1)*, which inserts *new section 81A(5A)* into the principal Act, to require the chief executive to—
  - provide reasons for refusing or ending a child’s placement with their mother under section 81A; and
  - notify the prisoner in writing of the process for reconsideration of the chief executive’s decision:
- amending *clause 18* to insert *new section 81AB(6)* into the principal Act to require the chief executive to provide reasons for the outcome of a reconsideration and to notify the prisoner in writing of the outcome:
- clarifying in *clause 20*, in *new section 87(5)* of the principal Act, that a mechanical restraint may be used for more than 24 hours during a prisoner’s stay in

hospital if it is necessary to prevent the escape of the prisoner or to maintain public safety:

- inserting *new clauses 20A and 20B* to amend sections 91 and 92 of the principal Act so that they continue to apply for the purposes of the Public Safety (Public Protection Orders) Act 2014:
- amending *clause 21* so that it inserts *new sections 92A to 92D* into the principal Act:
- amending *new sections 92A and 92C* of the principal Act (inserted by *clause 21*) and section 96 of the principal Act (*see clause 23*) to—
  - clarify that a scanner search is also intended to detect items beneath or within clothing and possessions; and
  - provide the power to search a person’s possessions and require the person to remove clothing for the purposes of a scanner search:
- inserting *new clause 25(IAAA)*, which inserts *new section 98(6)(ba)* into the principal Act, so that an officer may conduct a strip search of a prisoner on their return to the prison after having been outside it in the control of an officer, a probation officer, or a staff member who is not an officer:
- inserting *new clause 25(LAAB)*, which repeals section 98(7)(b) of the principal Act, to remove the mandatory requirement that a prisoner be strip searched on return to the prison after having been outside the prison in the control of an officer, a probation officer, or a staff member who is not an officer:
- inserting *new clause 25A*, which inserts *new section 99(4A)* into the principal Act, to provide the power to refuse entry to a prison or to require a person to leave a prison if they refuse to remove outer clothing for the purposes of a scanner search or a rub-down search:
- inserting *new clause 25B*, which inserts *new section 104(g), (h), and (i)* into the principal Act, to expand the considerations that a staff member of the Department of Corrections must take into account, as far as practicable in the circumstances, when dealing with mail to or from a prisoner:
- inserting *new clause 25C*, which amends the provision under which a prison manager may withhold mail between a prisoner and another person (section 108 of the principal Act) by—
  - lowering the threshold to reasonable belief that the correspondence may directly or indirectly have one of the harmful effects specified in section 108(1)(d), rather than a reasonable belief that the correspondence is likely to have one of those harmful effects:
  - extending the current harmful effect of threatening or intimidating a person to apply to any person, and not just to the intended recipient of the mail sent by a prisoner:

- adding as a harmful effect the promotion or encouragement of hostility towards any group of persons on 1 or more grounds specified in section 21 of the Human Rights Act 1993:
- inserting *new clause 25E*, which amends section 118(1) of the principal Act, to remove the ability for an authorised person to disclose a prisoner call in accordance with the Privacy Act 1993:
- inserting *new clause 25F*, which amends section 120 of the principal Act, to enable an intelligence and security agency to retain recordings from prisoner calls for as long as required by the agency for the purpose of its functions:
- making minor and technical changes to improve drafting.

### Departmental disclosure statement

The Department of Corrections is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. It provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2019&no=392&>

### Regulatory impact assessment

The Department of Corrections produced regulatory impact assessments in July 2019 and on 23 August 2019 to help inform the new policy decisions taken by the Government relating to the contents of this SOP.

Copies of these regulatory impact assessments can be found at—

- [https://corrections.govt.nz/resources/policy\\_and\\_legislation/regulatory\\_impact\\_analysis\\_strengthening\\_powers\\_to\\_withhold\\_mail](https://corrections.govt.nz/resources/policy_and_legislation/regulatory_impact_analysis_strengthening_powers_to_withhold_mail)
- [https://corrections.govt.nz/resources/policy\\_and\\_legislation/regulatory\\_impact\\_analysis\\_corrections\\_amendment\\_bill\\_2018](https://corrections.govt.nz/resources/policy_and_legislation/regulatory_impact_analysis_corrections_amendment_bill_2018)
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

**The Honourable Kelvin Davis, in Committee, to propose the amendments shown in the following document.**



*Hon Kelvin Davis*

## **Corrections Amendment Bill**

Government Bill

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

#### 1 Title

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

#### 2 Commencement

- (1) ~~Sections 4(1), 7, 8, 15, and 28(1) come into force on the day after the date on which this Act receives the Royal assent.~~

- (2) ~~The rest of this Act comes~~ **Sections 4(2), 9, 10, 12, 13, 14, 25(1AAA) to (1), 31, 32, 33, 34, and 37** come into force on a date appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates.
- (3) Any provision specified in subsection (2) that has not earlier been brought into force ~~under subsection (2)~~ comes into force on the date that is 6 months after the date on which ~~it~~ this Act receives the Royal assent.
- (4) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

### 3 Principal Act

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

## Part 1 Amendments to principal Act

### 4 Section 3 amended (Interpretation)

- (1) ~~In section 3(1), definition of **corrections prison**, replace paragraph (b) with:~~
- (b) ~~does not include a Police jail (other than a Police jail or part of a Police jail that is declared to be part of a corrections prison under **section 32A**)~~
- (2) In section 3(1), definition of **drug**, after paragraph (b), insert:
- (c) a psychoactive substance within the meaning of section 9 of the Psychoactive Substances Act 2013
- (3) In section 3(1), insert in their appropriate alphabetical order:
- ~~**at-risk area** means a confined area of the prison that has been designated as an at-risk area under **section 61H**~~
- at-risk assessment** means, in relation to a prisoner, an assessment of the prisoner's risk of self-harm made under **section 49(2) or 61A**
- at-risk cell** means a cell that has been designated as an at-risk cell under **section 61H**
- at-risk management plan**, in relation to a prisoner, means the plan established for that prisoner under **section 61D**
- at-risk prisoner** means a prisoner who has received an at-risk assessment indicating that the prisoner is at risk of self-harm and the at-risk assessment has not been reversed or revoked
- Director-General of an intelligence and security agency** has the same meaning as in section 4 of the Intelligence and Security Act 2017
- imaging technology search** has the meaning given to that term in ~~section 92~~ **section 92B**

**intelligence and security agency** has the same meaning as in section 4 of the Intelligence and Security Act 2017

**rub-down search** has the meaning given to that term in section 89

**scanner search** has the meaning given to that term in ~~section 91~~ **section 92A**

**scope of practice** has the same meaning as in section 5(1) of the Health Practitioners Competence Assurance Act 2003

**self-care unit** means accommodation of a residential style

**shared cell** means a cell shared by a prisoner with 1 or more other prisoners

**strip search** has the meaning given to that term in section 90

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

After section 10(g), insert:

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

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

After section 19A, insert:

**19B Delegation of powers and functions of health centre managers**

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

**7 ~~New sections 32A and 32B inserted~~**

After section 32, insert:

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

- (1) ~~The Minister may, by notice in the *Gazette*, declare any land or building, or part of any land or building, that is a Police jail to be part of a particular established corrections prison.~~
- (2) ~~A declaration may be made only if—~~
  - (a) ~~the purpose of the declaration is to address an acute shortage of prison accommodation in the area; and~~
  - (b) ~~all other practicable steps have been taken to address the shortage.~~
- (3) ~~A declaration—~~
  - (a) ~~comes into effect on the date specified by the Minister in the declaration; and~~
  - (b) ~~continues in force until the date specified by the Minister in the declaration.~~
- (4) ~~Despite **subsection (3)(b)**,—~~
  - (a) ~~a declaration does not continue in force for more than 3 months unless the Minister, by notice in the *Gazette* before the expiry of the declaration, extends the period of the declaration; and~~
  - (b) ~~any extension does not continue in force for more than 3 months unless the Minister, by notice in the *Gazette* before the expiry of the extended period, further extends the period of the declaration.~~
- (5) ~~A declaration that has been extended may not continue in force for a continuous period of more than 12 months.~~
- (6) ~~An extension to a declaration may be made only if the requirements in **subsection (2)** for making a declaration continue to be met.~~

**32B Effect of declaration that Police jail or part of Police jail is part of corrections prison**

- (1) ~~The land or building covered by a declaration that is in force under **section 32A** is part of the established corrections prison specified in the declaration.~~
- (2) ~~Despite the land or building being part of a corrections prison,—~~
  - (a) ~~cells within Police jails that are declared to be part of corrections prisons may be exempted by regulations made under this Act from complying with regulations that require certain facilities, items, and features to be provided in respect of cells; and~~
  - (b) ~~any resource consent or designation under the Resource Management Act 1991 that applies to the land or building continues to apply; and~~
  - (c) ~~no person under 18 years of age may be detained in the land or building covered by the declaration.~~

**8 New section 34AA inserted (Detention of prisoners in Police jails declared to be part of corrections prisons)**

After section 34, insert:

**34AA Detention of prisoners in Police jails declared to be part of corrections prisons**

The maximum period of detention for a prisoner in Police jails that are declared to be part of corrections prisons (~~see section 32A~~) is a period of detention not exceeding—

- (a) 7 consecutive days; and
- (b) 21 days over a 12-month period.

**9 Section 42 amended (Certain information to be given to recently received prisoners)**

(1) Replace section 42(1) with:

(1) The manager of a prison must ensure that, on the reception of a prisoner, or reasonably promptly after the prisoner is received, the prisoner is given, in writing, relevant and sufficient information about—

- (a) the operation of the prison; and
- (b) the rules of the prison made under section 33; and
- (c) the rules about authorised property made under section 45A; and
- (d) the entitlements of prisoners; and
- (e) offences against discipline under sections 128 to 131; and
- (f) the complaints system operating at the prison.

(2) After section 42(2), insert:

(3) The manager of a prison must, as far as is practicable, also provide the information and advice in a form and language that are accessible and appropriate to the prisoner.

**10 Section 49 amended (Prisoners must be assessed on reception and have needs addressed)**

In section 49, insert as subsection (2):

(2) The assessment under **subsection (1)(a)** must include an at-risk assessment to determine whether the prisoner is at risk of self-harm.

**11 Section 51 amended (Management plans)**

After section 51(3), insert:

(3A) A plan may comprise more than 1 document, and those documents may be kept in different physical or electronic locations.

**12 Section 57 replaced (Segregation)**

Replace section 57 with:

**57 Denial or restriction of prisoner’s opportunity to associate with other prisoners**

The opportunity of a prisoner to associate with other prisoners must not be denied or restricted, except in accordance with this Act.

**13 Section 60 amended (Segregation for purpose of medical oversight)**

- (1) In section 60(1)(a), after “health”, insert “, except against the risk of self-harm”.
- (2) In section 60(1)(b), delete “(including, without limitation, the risk of self-harm)”.
- (3) Replace section 60(5) and (6) with:
- (5) While a direction under this section is in force, the health centre manager must, unless he or she is satisfied that it is not necessary in the circumstances, ensure that a registered health professional visits the prisoner concerned at least once a day.

**14 New sections 61A to 61H and cross-heading inserted**

After section 61, insert:

*Prisoners at risk of self-harm*

**61A Ongoing assessment for risk of self-harm**

A prisoner who has been assessed, in accordance with **section 49(2)**, as not at risk of self-harm or whose at-risk assessment has been revoked must be re-assessed if there are material changes in the prisoner’s circumstances that are relevant to the risk of self-harm.

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

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

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

**61C Confirmation of at-risk prisoner assessment**

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

**61D At-risk management plan established**

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

**61E Content of at-risk management plan**

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

**61F Revocation of confirmed at-risk assessment**

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

**61G Health centre manager must consult ~~medical practitioner~~ registered health professional if advice outside scope of practice**

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

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

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

**15 Section 69 amended (Minimum entitlements)**

After section 69(3), insert:

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

**16 Section 77 amended (Outgoing telephone calls)**

Replace section 77(6) with:

- (6) Every prisoner who makes an outgoing telephone call may be required to—
  - (a) meet the cost of the call; or
  - (b) pay a fee set by the chief executive.



- (7) Despite **subsection (6)**, a prisoner is not required to meet the cost of an outgoing telephone call or to pay a fee if this Act, or any regulations made under this Act, provides otherwise.

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

- (1) After section 81A(5), insert:

(5A) If the chief executive refuses approval for a child's placement under subsection (1), or ends a placement under subsection (5), the chief executive must—

- (a) provide reasons for the decision; and
- (b) notify the prisoner in writing of the decision and the process for reconsideration of the decision.

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

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

After section 81A, insert:

**81AB Reconsideration of decision relating to child's placement**

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

**19 New sections 82A and 82B inserted**

After section 82, insert:

**82A Types of permitted accommodation**

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

**82B No legitimate expectation as to conditions, etc**

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

**20 Section 87 amended (Restraint of prisoners)**

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

**20A Section 91 amended (Definition of scanner search)**

- (1) In the heading to section 91, after “search”, insert “for purposes of Public Safety (Public Protection Orders) Act 2014”.
- (2) In section 91, replace “this Act” with “the Public Safety (Public Protection Orders) Act 2014”.

**20B Section 92 amended (Definition of x-ray search)**

- (1) In the heading to section 92, after “search”, insert “for purposes of Public Safety (Public Protection Orders) Act 2014”.
- (2) In section 92(1), replace “this Act” with “the Public Safety (Public Protection Orders) Act 2014”.
- (3) In section 92(2), after “x-ray search”, insert “under that Act”.

**21 Sections 91 and 92 replaced—New sections 92A to 92D inserted**

~~Replace sections 91 and 92 with:~~ After section 92, insert:

**~~91-92A~~ Definition—Meaning of scanner search for purposes of this Act**

- (1) For the purposes of this Act, **scanner search** means a search of a person and the person’s clothing or possessions using an electronic device (whether or not the device uses imaging technology) designed to identify the presence of unauthorised items that are concealed ~~beneath clothing or internally.~~
  - (a) in a person’s body:
  - (b) beneath or within clothing or possessions.
- (2) For the purpose of facilitating a scanner search under this Act, the person conducting the search may require the person being searched to—
  - (a) remove any item of outer clothing (including, without limitation, any jacket, jumper, or sweatshirt) that needs to be removed in order to carry out the search, except where the person being searched has no other clothing, or only underclothing, under that outer clothing:
  - (b) remove any head covering, gloves, footwear (including socks or stockings), belts, jewellery, or other accessories:
  - (c) comply with any other procedure that needs to be undertaken to carry out the search.

**~~92-92B~~ Definition—Meaning of imaging technology search**

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

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

**~~92A-92C~~ Particular matters relating to imaging technology searches**

- (1) ~~For the purpose of facilitating an imaging technology search, the person conducting the search may require the person being searched to—~~
  - (a) ~~remove any item of outer clothing that needs to be removed in order to carry out the search, except where the person being searched has no other clothing, or only underclothing, under that outer clothing:~~

- (b) ~~comply with any other procedure that needs to be undertaken to carry out the search.~~
- (2) An image produced as a result of an imaging technology search must,—
- (a) so far as practicable, avoid showing a clear image of the body beneath clothing; and
- (b) obscure the genitals or make them not easily distinguishable if they are included in the image.
- (3) An image produced as a result of an imaging technology search must be retained only as long as is necessary to determine the presence of an unauthorised item.
- (4) Despite anything to the contrary in another enactment, a person who conducts an imaging technology search must not, without reasonable excuse, photograph or copy the image or provide the image to another person.
- (5) ~~In this section, **outer clothing** includes, without limitation, any jacket, jumper, or sweatshirt.~~

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

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

**21A Section 93 amended (Restrictions on internal examinations)**

In section 93, replace “92” with “92B”.

**22 Section 94 amended (Restrictions on searches)**

- (1) Replace section 94(1) with:
- (1) The following searches may be carried out only by a person of the same sex as the person to be searched:
- (a) a rub-down search;
- (b) a strip search;
- (c) an imaging technology search that is used as an alternative to a strip search under **section 98(9)**.
- (1A) A strip search must not be carried out in view of any person who is not of the same sex as the person to be searched.
- (2) In section 94(2), replace “strip search, or x-ray search”, with “or strip search”.

**23 Section 96 amended (Authority to search property)**

(1) Replace section 96(1) with:

(1) Authority conferred by this Act to conduct a scanner 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 for the purposes of the search;
- (c) any head covering, gloves, footwear (including socks or stockings), belts, jewellery, or other accessories removed for the purposes of the search.

(2) In section 96(3), delete “or x-ray search”.

(3) In section 96(7), delete “or x-ray”.

**24 Section 97 amended (Use of dogs for searching)**

Replace section 97(3) with:

(3) While any officer is using a dog for the purposes of searching any person, the officer who has control of the dog must take reasonable steps to prevent the dog from coming into physical contact with the person being searched.

**25 Section 98 amended (Search of prisoners and cells)**

(1AAA) After section 98(6)(b), insert:

(ba) on the return of the prisoner to the prison after the prisoner has been outside the prison in the control of an officer, a probation officer, or a staff member who is not an officer:

(1AAAB) Repeal section 98(7)(b).

(1) Replace section 98(7A) and (7B) with:

(7A) ~~Every at-risk prisoner must be required to undergo a strip search conducted by an officer on each of the following occasions:—~~

- ~~(a) when the prisoner is first placed in an at-risk cell;~~
- ~~(b) on each occasion when the prisoner is returned to the at-risk cell, unless—~~
  - ~~(i) the prisoner had not left the at-risk area; or~~
  - ~~(ii) the prisoner had undergone a strip search on returning to the at-risk area before being returned to the at-risk cell;~~
- ~~(c) on each occasion when the prisoner is returned to the at-risk area from another area.~~
- (a) each time the prisoner enters an at-risk cell, until an at-risk management plan is established for the prisoner;
- (b) in the situations set out in the at-risk management plan for the prisoner.

(2) Replace section 98(9) with:

- (9) If a prisoner is required to undergo a strip search under this section, a scanner search may be undertaken as an alternative if the chief executive has approved the device as suitable for the purpose of replacing a strip search.

**25A Section 99 amended (Search of persons other than prisoners)**

After section 99(4), insert:

- (4A) Any person may be refused admission to a prison or part of the prison, refused access to a prisoner, or required to leave the prison or place where the prisoner is (as the case may be) if the person refuses to remove an item of outer clothing (on the grounds that the person has no other clothing, or only underclothing, under that outer clothing) for the purpose of a scanner search or a rub-down search.

**25B Section 104 amended (General considerations relating to mail)**

After section 104(f), insert:

- (g) the interests of victims;  
(h) the potential impacts of the written material on persons beyond the intended recipient, including the potential for the sharing and publication of the material;  
(i) the potential for messages to be disseminated through coded references.

**25C Section 108 amended (Withholding mail)**

- (1) In section 108(1)(d), replace “it is correspondence that the manager believes on reasonable grounds is likely to—” with “the manager believes on reasonable grounds that the correspondence may, directly or indirectly,—”.  
(2) In section 108(1)(d)(i), replace “a person to whom it is being sent by the prisoner” with “any person”.  
(3) After section 108(1)(d)(vi), insert:  
(vii) promote or encourage hostility towards any group of persons on 1 or more of the grounds specified in section 21 of the Human Rights Act 1993.

**25D Section 117 amended (Authorised disclosure of information)**

Repeal section 117(7).

**25E Section 118 amended (Restrictions on disclosure of information)**

In section 118(1), delete “or in accordance with the Privacy Act 1993”.

**25F Section 120 amended (Destruction of recordings)**

- (1) In section 120(3), after “State Sector Act 1988”, insert “(except an intelligence and security agency)”.  
(2) After section 120(3), insert:

(3A) The Director-General of an intelligence and security agency must ensure that every recording of a prisoner call held by the agency that was obtained by the monitoring of the call under this Act is destroyed, or completely erased, as soon as practicable if the recording is not required, or is no longer required, by the agency for the purpose of its functions.

(3) In section 120(4), replace “(1) and (3)” with “(1), (3), and **(3A)**”.

**26 Section 128 amended (Offences by prisoner)**

After section 128(1)(n), insert:

- (o) tattoos another prisoner:
- (p) receives a tattoo with his or her consent:
- (q) tattoos himself or herself:
- (r) contacts a person in breach of a court order or direction of any court.

**27 Section 146 replaced (Contravention of section 110A or 118)**

Replace section 146 with:

**146 Offences in relation to mail, information, and images**

Every person who contravenes section **92C(4)**, 110A, or 118 commits an offence and is liable on conviction to a fine not exceeding \$2,000.

**28 Section 202 amended (Regulations relating to safe custody of prisoners)**

(1) ~~After section 202(e), insert:~~

~~(ea) prescribing facilities, items, and features that are not required to be provided in respect of cells in a Police jail that is declared to be part of an established corrections prison:~~

(2) In section 202(g), delete “under section 58 or section 59 or section 60”.

(3) In section 202(k), replace “x-ray”; with “imaging technology”.

**29 Section 203 amended (Regulations relating to treatment of prisoners)**

After section 203(b), insert:

(ba) prescribing matters that must be included in rehabilitative programmes, and different matters may be prescribed for different rehabilitative programmes and different classes of prisoners:

**Part 2**

**Consequential amendments to Corrections Regulations 2005**

**30 Amendments to Corrections Regulations 2005**

This Part consequentially amends the Corrections Regulations 2005.

**31 Regulations 57 and 58 and cross-headings replaced**

Replace regulations 57 and 58 and the cross-heading above each regulation with:

*Prescribed segregation and at-risk facilities*

**57 Mandatory items, features, and standards for segregation accommodation and at-risk cells**

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

*Additional segregation and at-risk facilities*

**58 Additional segregation and at-risk facilities**

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

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

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

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



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

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

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

Replace regulation 63 with:

**63 Prisoners at risk of self-harm**

- (1) A suitable registered health professional must keep written notes of each visit to an at-risk prisoner and the notes must be entered on the prisoner's health record.
- (2) Within 24 hours of a prisoner's assessment as an at-risk prisoner, the health centre manager must visit the prisoner and prepare a report on the prisoner, but this does not apply if the health centre manager has visited the prisoner and written a report when providing advice to the prison manager under **section 61C** of the Act.
- (3) The health centre manager must—
  - (a) record any advice given under **section 61C** of the Act in relation to an at-risk prisoner in the health record of the prisoner concerned; and
  - (b) arrange for a copy of any report prepared to be put in the health record of the prisoner.
- (4) After visiting a prisoner under **subclause (2)**, the health centre manager must recommend to the prison manager—
  - (a) whether or not the prisoner should be denied access, under section 69(2)(c) of the Act, to all or any of the minimum entitlements referred to in section 69, or, if the prisoner has already been denied access to all or any of those entitlements under section 69(2)(c), whether the prisoner should continue to be denied access to those entitlements;
  - (b) whether or not the prisoner should be denied access to any other item (such as clothing).
- (5) The health centre manager must record a recommendation under **subclause (4)** on the prisoner's prison record.
- (6) Before the health centre manager makes a recommendation under **subclause (4)** that relates to a matter outside his or her scope of practice, he or she must consult a ~~medical practitioner~~ registered health professional whose scope of practice includes that matter.
- (7) As far as is practicable in the circumstances and consistent with maintaining the prisoner's safety, an at-risk prisoner must be detained under the same conditions as if he or she were not at risk of self-harm, including access to activ-

ities in accordance with his or her management plan and access to authorised property.

**35 Regulation 66 replaced (Individual cells)**

Replace regulation 66 with:

**66 Individual cells and shared cells**

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

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

Revoke regulation 196.

**37 Schedule 2 amended**

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

**38 Schedule 3 amended**

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

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- (6) In Schedule 3, Part B, after the item relating to automatic fire detector, insert:
- Intercom, alarm, or call button (in the case of a shared cell)
  - Privacy screening consistent with safe custodial management (including, in the case of a shared cell, privacy screening of the toilet and shower from view by other cell occupants)