

Corrections Amendment Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Corrections Amendment Bill and recommends by majority that it be passed. We recommend all amendments by majority.

About the bill as introduced

The Corrections Amendment Bill would amend the Corrections Act 2004. It aims to improve rehabilitation, reintegration, and safety outcomes for people in prisons. The bill also seeks to enable best-practice operations by ensuring that the Act responds to the complex and changing environment in which the Department of Corrections operates. The proposed changes include:

- explicitly empowering Corrections to monitor prisoner communications and information sources for intelligence purposes to improve prison and public safety
- amending the disciplinary process in prisons so it is timely and incentivises good behaviour
- strengthening the processes for authorising and using non-lethal weapons on prisoners
- supporting improved rehabilitation and reintegration outcomes for Māori who are under Corrections' management
- creating a regulation-making power to enable limited mixing of accused and convicted remand prisoners for non-offence-based programmes.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Amendment Paper No 17

On 4 March 2024, the Minister of Corrections wrote to us requesting that we consider Amendment Paper No 17. Remand convicted prisoners are prisoners who have been convicted of an offence and are in custody awaiting sentencing. Remand accused prisoners are prisoners who are awaiting trial or whose trial is in progress. Therefore, they have a right to be presumed innocent until proven guilty. The amendment paper would amend the bill by explicitly strengthening legislative provisions to enable Corrections to provide all remand convicted prisoners with access to rehabilitative programmes. It would also amend the bill to create stronger expectations that Corrections will provide non-offence-based programmes to all prisoners (including accused prisoners) and people being managed by Corrections in the community.

We do not propose any changes to the amendment paper (other than minor changes to the definitions of non-offence-based programme and rehabilitative programme). We recommend that it be incorporated into the bill.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor, technical, or consequential amendments.

Treaty of Waitangi provisions

As introduced, the bill contained the following Treaty of Waitangi provisions:

- Clause 6 would insert paragraphs (j), (k), and (l) into section 6(1) of the Act to incorporate new principles for the corrections system that are derived from the principles of Te Tiriti o Waitangi.
- Clause 7 would insert new section 6A to show how the legislation provides for the Crown's intention to give effect to the principles of the Treaty of Waitangi.
- Clause 8 would amend section 8 to require Corrections to develop, maintain, and implement a strategy that focuses on improving outcomes for Māori.
- Clause 17 would amend section 62 to enable the chief executive to authorise that a prisoner be temporarily released from custody or removed from prison to access cultural activities.
- Clause 18 would amend section 78 to provide prisoners access to mātauranga Māori, as far as is practicable.
- Clause 19 would amend section 80 to provide prisoners access to cultural activities, so far as is reasonable and practicable.

A majority of the members of the committee recommend removing the Treaty of Waitangi provisions in the bill. Accordingly, they recommend removing the provisions listed above, and the definition of “cultural activities” in clause 4.

Intelligence powers

Clause 33 would insert new subpart 4A of Part 2 (new sections 127A to 127T) into the Act. It would explicitly enable some prisoner communications and information sources to be monitored, collected, used, and disclosed for intelligence purposes. The bill specifies that an intelligence purpose means to identify risk and to deter and prevent harm, or to support the good order, safety, and security of prisons.

Definitions

The bill defines “prisoner call” as “any information transmitted by an audio link to which a prisoner is a party that is conducted while the prisoner is in prison”. We understand that video calls should be included in the communications that can be monitored, collected, used, or disclosed for an intelligence purpose. We recommend amending the definition of “prisoner call” to reflect this intent.

The bill refers to open source information relevant to a prisoner as an example of an information source. However, the bill contains no definition, making the term potentially very broad. For clarity, we recommend replacing the reference to “open source information” with “publicly available and legally accessible information relevant to a prisoner”.

Exemptions for communications and information sources with specified persons

Proposed new section 127E sets out the types of communications and information sources between a prisoner and specified persons that are exempt from being monitored, collected, used, or disclosed. They include a person from an official agency acting in an official capacity. We consider that advocates from the Nationwide Health and Disability Advocacy Service should also be exempt from this provision. We recommend amending the definition of “official agency” in clause 4 to include advocates acting within their statutory role under the Health and Disability Commissioner Act 1994.

Proposed section 127E(1)(a) would exempt communications or information sources related to legal affairs between a prisoner and their legal adviser or potential barrister or solicitor. We note that the definition of a legal adviser under section 3 of the Act also includes a member of the Armed Forces representing another member detained in a prison. This would apply to the Court Martial or other proceedings. We recommend amending section 127E(1)(a) for consistency with the definition of legal adviser in section 3 of the Act.

On 19 July 2023, the Regulations Review Committee of the 53rd Parliament wrote to the previous Justice Committee about the provisions in clause 33, new section 127E(1)(g) and (h). Those paragraphs would exempt communications between a prisoner and someone who was:

- in a class of persons whose communications with prisoners had been exempted by an Order in Council and was acting for a purpose specified in the order (section 127E(1)(g))
- a person (other than a prisoner) exempted under this section by the chief executive for a specified period (section 127E(1)(h)).

The Regulations Review Committee noted that the exemption-making power proposed in new section 127E(1)(g) does not contain any safeguards. It referred to the safeguards recommended by the Legislation Design and Advisory Committee when using regulations to grant exemptions. The safeguards include that the empowering Act should set out clear purposes for granting exemptions. The Regulations Review Committee recommended that we consider amending the bill to provide safeguards, including specifying criteria for granting exemptions and requiring reasons to be given. That committee also noted that the bill, as introduced, would not empower the chief executive to grant exemptions. It recommended that we consider amending the bill so that the power conferred on the chief executive was more clearly outlined. The power should also be amended to provide safeguards that align with those recommended for new section 127E(1)(g).

We agree with the committee's recommendations and propose several amendments to these provisions. We recommend deleting section 127E(1)(g) and (h) and inserting section 127EA. Our proposed amendments would:

- require the Order in Council to specify the purpose of exemptions for communications and information sources
- empower the chief executive to grant exemptions for communications and information sources between a prisoner and a named individual
- specify the matters that must be taken into account when exemptions are granted.

Monitoring, collecting, and using prisoner communications and information sources by an authorised intelligence person

The bill defines an "authorised intelligence person" as the chief executive and a person who is authorised by the chief executive under section 127F. Proposed new section 127H(1) would enable an authorised intelligence person to monitor, collect, and use prisoner communications and information sources. The actions would need to be reasonably necessary for an intelligence purpose. They would also need to be aimed at individuals who presented a serious risk of harm to the good order, safety, and security of prisons or to public safety. Under new section 127H(2), the authorised intelligence person could monitor, collect, and use the prisoner communication or information source if they did not reasonably believe that it was exempt. We consider that section 127H(2) does not interact as clearly as it could with proposed new section 127K (which relates to monitoring exempt prisoner communications and information sources). We therefore recommend replacing section 127H(2). Our proposed amendment would make clear the prisoner communications and information sources that section 127H(1) would not apply to.

Proposed new section 127I states that an authorised intelligence person may record any prisoner call, other than an exempt call, for a purpose including an intelligence purpose. As introduced, the bill provides that only an authorised intelligence person could record the calls. We understand that it is intended that only the monitoring of calls should be limited to an authorised intelligence person. We recommend amending section 127I to remove the requirement for an authorised intelligence person to record the call.

Monitoring of visits

Under proposed new section 127J, the chief executive could approve an authorised intelligence person to monitor visits between a prisoner and a visitor and to collect information from communications during the visits. The chief executive would need to reasonably believe, based on information previously collected, that the monitoring and collection was necessary for an intelligence purpose. It must also be likely that the information communicated in the visit could:

- threaten the security, good order, and discipline of the prison
- threaten the safety of any person
- promote or encourage the commission of an offence, involve an offence, or facilitate the commission or possible commission of an offence.

Some submitters opposed the monitoring of in-person visits, expressing concern that it could discourage contact with family and friends. We acknowledge these concerns. However, we understand that some prisoners use in-person visits as an opportunity to discuss activity that could affect the good order of the prison. This is because they know that visits cannot be monitored at present.

We consider that the power to monitor visits should be limited to recognise its potential to impinge on contact between prisoners and their families. We therefore recommend inserting clause 8A to amend section 10, to add the chief executive's power under section 127J(1) as one that cannot be delegated to a prison staff member.

Proposed new section 127J(4) would apply to visits between a prisoner and a person specified in section 127E(1) (Exemptions for communications and information sources with specified persons). It specifies that an authorised intelligence person may not monitor the visit or communications during the visit with a person whose communications are exempt or collect or use information from communications during the visit. We recommend replacing the words "may not" with "must not".

Disclosing prisoner communications and information sources to people other than eligible employees

Proposed new section 127N would enable the disclosure of prisoner communications and information sources to people other than eligible employees for certain purposes. New section 127N(6)(b) provides that an authorised intelligence person or an eligible employee could disclose prison communications and information sources if the disclosure was required by any legislation. We recommend amending this provision to make it clear that the legislation includes the Official Information Act 1982 and the

Privacy Act 2020. This provision was intended to include these pieces of legislation, but because each contains a non-derogation clause it is desirable to make it clear where they apply.

Warnings

Proposed new section 127P sets out the requirements for warning prisoners that their communications and information sources may be monitored, collected, used, and disclosed. Section 127P(4) provides that the chief executive would need to take all practicable steps to ensure that written notices were prominently placed in visiting areas. We think that this provision should be a requirement for the chief executive. Accordingly, we recommend amending section 127P(4) to remove the words “take all practicable steps”.

Under new section 127P(5), if the chief executive had authorised the monitoring and collection of information from prisoner visits, they would need to inform the prisoner and their visitor. We consider that a prisoner and their visitor should be told that their information may be used for an intelligence purpose. We recommend inserting this requirement as section 127P(5)(b).

Giving notice of an intention to produce evidence

Proposed new section 127S(1) specifies the requirements for using as evidence prisoner communications and information sources obtained under new subpart 4A of Part 2. This would apply to evidence received by any court against any person or in any proceedings against a prisoner for a disciplinary offence. The party intending to use the particulars as evidence would need to give the person reasonable notice of that intention. We were advised that this section is only intended to apply to prisoner disciplinary hearings. Therefore, we recommend deleting the reference to a court.

Matters to be included in annual report

Section 190(1) of the Act sets out the matters that must be included in the department’s annual report under section 43 of the Public Finance Act 1989. Section 190(1)(c) provides that the report must describe the processes and systems in place during the relevant year to supervise and control the monitoring of prisoner calls under the Act. Clause 44 of the bill would insert the use of intelligence powers in section 190(1)(c) as a matter to be included in the annual report.

For transparency and accountability, we consider that several other matters should also be included in the annual report. We recommend amending section 190 to require Corrections to report on the use of the new intelligence powers and data about the types of programmes for which remand accused and convicted prisoners were mixed.

Collection of biometric information

Section 41 of the Act allows for the collection of biometric and other information by an officer from a prisoner. The information can only be used to facilitate the management and security of the prison and to verify the identity of prisoners upon release to ensure public safety. Clause 9 would amend section 41 to specify that

information collected under that section could be monitored, used, or disclosed for an intelligence purpose under new subpart 4A of Part 2. We recommend amending this section to enable an authorised intelligence person to collect the information in the first place for an intelligence purpose.

Clause 33, new section 127A, would define “prisoner communications and information sources”. It includes information held by the department about a prisoner and lists biometric information collected under section 41 as an example. To make it clearer that all information collected under section 41 should be covered, we recommend removing the reference to “biometric information”.

Prisoners at risk of self-harm or segregated for medical oversight

Clause 14 would insert new section 61CA to enable a prison manager to restrict or deny an at-risk prisoner’s opportunity to associate with other prisoners to provide consistency with other segregation powers. The prison manager would first need to confirm the prisoner’s at-risk assessment. The prison’s health centre manager would need to recommend that such a direction was desirable to address the prisoner’s risk of self-harm.

Section 60(5) of the Act relates to segregation for the purpose of medical oversight. It requires a health centre manager to ensure that a registered health professional visits the prisoner daily, unless they are satisfied that it is unnecessary in the circumstances. For consistency across the segregation categories, we recommend amending the bill to extend this requirement to new section 61CA.

We note that the Act does not explicitly require staff to regularly consider whether there should be a review of any decision to segregate a prisoner for medical oversight. We recommend inserting this requirement as clause 12A, which amends section 60. Under our proposed amendment, the consideration of the need to review segregation status could be completed when staff conducted the existing daily check. We also recommend inserting a similar requirement into new section 61CA in relation to at-risk prisoners whose opportunity to associate with others has been restricted or denied.

Use of non-lethal weapons

Clause 21 would amend section 85, which relates to the use of non-lethal weapons. In 2020, in recognition that all weapons can have fatal consequences, the United Nations released guidance recommending the use of the term “less-lethal”. We therefore recommend amending the bill to replace all references to “non-lethal weapons” with “less-lethal weapons”.

Proposed new section 85(1A) sets out when an officer could use a non-lethal weapon to deal with a prisoner who was passively resisting a lawful order. The new provision defines what it means for an officer to have reasonable grounds under section 83 for believing that the use of force is necessary in that limited circumstance. The officer would need to reasonably believe there was an imminent threat of injury or harm to the prisoner or another person. For clarity, we recommend simplifying the provision

by removing the definition but retaining the same test of what the officer would need to reasonably believe before using non-lethal weapons in cases of passive resistance.

Withholding mail

The Act defines “mail” and “correspondence” as two separate terms. “Mail” is defined as “any letter, package, parcel, or postcard sent or delivered to or by a prisoner”. “Correspondence” refers to a handwritten, typed, or printed message that is mail or is contained in any mail. It includes a handwritten, typed, or printed manuscript contained in any email but does not include an electronic message or a fax.

Section 108 of the Act allows a prison manager to withhold mail between a prisoner and another person in certain circumstances. Clause 31 would amend section 108(1)(d) to apply to both mail and correspondence.

Section 110B of the Act requires prisoners to be informed in writing that their correspondence may be opened and read. We recommend inserting clause 31B to also require a prisoner to be warned that their mail may be opened and read.

We also propose several other amendments for consistency between “mail” and “correspondence”. We recommend inserting clause 31A, amending section 110A, and clause 31C, amending section 110C to this effect.

Disciplinary hearings

The Act contains a process for hearing adjudicators and Visiting Justices to hold disciplinary hearings to determine whether prisoners have committed offences against discipline in prisons. They can also impose penalties. Clause 35 would amend section 133, which relates to the powers of hearing adjudicators in relation to offences against discipline. Proposed new section 133(4A) would enable the adjudicator to suspend the imposition of any penalties if the offence was proven. In this situation, the adjudicator would also need to require the prisoner to appear for a disciplinary hearing if they committed a subsequent offence against discipline within a 3-month period.

Section 136 of the Act provides a right to appeal to a Visiting Justice if a prisoner is dissatisfied with any decision of a hearing adjudicator. Clause 38 would amend section 136 to account for the order that could be made under proposed new section 133(4A). New section 136(4)(b)(i) provides that the Visiting Justice could confirm an order suspending the penalty imposed by the adjudicator. We understand that this order is intended to suspend the imposition of the penalty rather than allow the penalty to be imposed and then suspended. We therefore recommend amending this section to refer to an order imposed under section 133(4A).

We consider that the bill should be clearer about the options available to hearing adjudicators or Visiting Justices who are considering subsequent offending by prisoners. We therefore recommend inserting section 133(4B) in clause 35 and section 137(4B) in clause 39. Under our proposed amendments, a prisoner who had already benefitted

from having the imposition of a penalty suspended for a first offence could not have the imposition of a penalty suspended for a subsequent offence.

Clause 36 would insert new section 133A to enable a hearing adjudicator to proceed with a hearing without the prisoner present. Clause 40 would insert as new section 138A similar provisions for a Visiting Justice. The adjudicator or Visiting Justice would need to be satisfied that the prisoner had refused to attend the hearing or had been required to leave the hearing due to their disruptive behaviour. Proposed new sections 138A(3) and 138A(4) provide that a prisoner could request a rehearing if a hearing before a Visiting Justice proceeded without them and the offence was proved.

We considered the implications of not including these rehearing provisions. This could enable Visiting Justices to make more timely decisions and hold prisoners to account. It would also be more consistent with the other disciplinary processes in the Act involving a Justice, none of which have rights of appeal or to a rehearing.

We were particularly interested in whether a prisoner should be able to seek a rehearing if the Visiting Justice was hearing the matter in the first instance, rather than on an appeal. However, we were advised that prisoners might be able to exploit the process by refusing to attend hearings, which was the original problem that the bill sought to address.

On balance, we recommend amending the bill to remove the ability for a prisoner to request a rehearing before a Visiting Justice when a hearing had proceeded in their absence. We recommend deleting proposed section 138A(3) and (4) accordingly. To mitigate the effects on natural justice, we propose several amendments. We recommend inserting sections 133A(1A) and 138A(1A). These would require Corrections staff to provide evidence to the hearing adjudicator or Visiting Justice, respectively, that the prisoner had been given an opportunity to attend the hearing and had refused.

We also recommend amending the Corrections Regulations 2005 by amending clause 57 to insert clause 31A in Schedule 7. This would require a not-guilty plea to be entered on behalf of the prisoner.

We would like self-represented prisoners to be as informed and engaged as possible about their rights in the disciplinary process. We also note that many prisoners may have learning disabilities. We therefore encourage Corrections to take these types of needs into account when giving information and advice about the process.

Searches of prisons and cells

Imaging technology

Clause 28 would replace section 98, which relates to the search of prisoners and cells. New section 98B would allow an officer to conduct a rub-down search of any prisoner, at any time, for the purpose of detecting any unauthorised item. Section 98B(2) would provide that an officer may conduct an imaging search of any prisoner as an alternative to a rub-down search if:

- the prisoner is returning to prison (section 98B(2)(a))

- the prisoner does not express a preference for a rub-down search (section 98B(2)(b))
- the chief executive has approved the device used in the imaging technology search as suitable for the purpose of replacing a rub-down search (section 98B(2)(c)).

We understand that, at present, scanners are only used in the areas where prisoners enter prison. However, we received advice that scanners may be used in other areas of prisons in the future. To enable their use, we recommend deleting the requirement in section 98B(2)(a) for a prisoner to be returning to prison.

We also recommend deleting section 98B(2)(b), which would allow prisoners to express a preference for a rub-down search instead of a scanner search. We consider that this section could increase the number of strip searches of prisoners, which would have human rights implications due to their invasiveness. If a prisoner refused to go through a scanner as an alternative to a rub-down search, a Corrections officer could assume that the prisoner was concealing an unauthorised item. Under new section 98D, an officer could conduct a strip search if they reasonably believed the prisoner possessed an unauthorised item.

Strip searches of at-risk prisoners

Clause 28, new section 98C, would require prisoners to be strip-searched when they first entered prison. It would also require at-risk prisoners to be strip-searched each time they entered an at-risk cell until a management plan was established for them. In practice, this could result in prisoners who were received into prisons and immediately assessed as at-risk being needlessly strip-searched twice in quick succession. We recommend amending section 98C so that a prisoner at risk of self-harm would not need to be strip-searched if they already had been immediately before entering an at-risk cell as is currently permitted.

New Zealand Labour Party differing view

Labour members are strongly opposed to the removal of provisions relating to Te Tiriti o Waitangi. We observe that Māori are overrepresented in the Corrections systems and are of the view that it is the role of Parliament to direct Corrections to improve outcomes for Māori.

We appreciate that Corrections is already working toward the goals of the bill's Treaty provisions but believe this should be underpinned by a legislative foundation.

We consider the removal of these provisions amounts to another breach by the Crown of its Treaty obligations and we consider it will be harmful to the wider community, impede effective rehabilitation, and create a less effective Corrections system.

Green Party of Aotearoa New Zealand differing view

The Greens completely oppose the removal of Te Tiriti o Waitangi Provisions from the Corrections Amendment Bill and subsequently the entire Department of Correc-

tions impacting prisons, those on remand and home detention, probation, and those going through the justice system.

It is hard to comprehend how Corrections could feel confident that they are on their way to honouring Te Tiriti o Waitangi and its obligations to the point where they feel they can do away with Treaty provisions. In reality, Corrections are not even capable of meeting people's basic human rights, let alone further commitments under Te Tiriti. This departmental failure has been well documented by the Ombudsman in his unannounced prison visits and in the Kia Whaitake report. These reports detail prisoners not receiving any human contact and not being able to be visited by their family and community—both fundamental tenets in the rehabilitation of offending.

Eliminating these provisions will detrimentally impact Māori within the justice system, as Corrections will lack clear legislative guidance on supporting the rehabilitation and reintegration of Māori offenders in alignment with Te Tiriti o Waitangi. Consequently, Māori are less likely to receive appropriate rehabilitation and reintegration support, leading to broader implications for re-offending rates and prison populations where Māori are over-represented.

Including Te Tiriti o Waitangi clauses ensures that individuals and agencies operating under the legislation can fulfil pre-existing obligations under Te Tiriti with clarity. It means that there is an obligation on Corrections to provide culturally appropriate rehabilitation and reintegration services. If we accept that the impacts of colonisation have been a driver of crime committed by Māori, then the solutions to healing that harm must also lie within Te Ao Māori and kaupapa Māori responses. Dr Moana Jackson wrote extensively about these causes and consequences on the justice system.

Regardless of the Government's stance on Treaty clauses in legislation, obligations under Te Tiriti persist, binding the Crown to uphold them. Upholding treaty principles is a collective responsibility, and meaningful change within the justice system for Māori necessitates holding the system accountable for its consistent failures. Including the principles in legislation helps us to hold the system to account.

Appendix

Committee process

The Corrections Amendment Bill was referred to the Justice Committee of the 53rd Parliament on 27 June 2023. The committee called for submissions on the bill with a closing date of 10 August 2023. It received and considered 44 submissions from interested groups and individuals.

The bill was reinstated with this committee in the 54th Parliament on 6 December 2023. We also considered Amendment Paper 17, which was released on 4 March 2024. We called for submissions on the amendment paper with a closing date of 19 March 2024. We received and considered 23 submissions on the amendment paper and 7 submissions on the bill. We heard oral evidence from 19 submitters at hearings by videoconference and in Wellington.

Advice on the bill was provided by the Department of Corrections. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported on the powers contained in clause 33.

Committee membership

James Meager (Chairperson)

Hon Ginny Andersen

Jamie Arbuckle

Cameron Brewer

Tākuta Ferris

Paulo Garcia

Dr Tracey McLellan

Rima Nakhle

Tamatha Paul

Todd Stephenson

Hon Dr Duncan Webb

Related resources

The documents received as advice and evidence are available on the Parliament website.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Mark Mitchell

Corrections Amendment Bill

Government Bill

Contents

		Page
1	Title	5
2	Commencement	6
3	Principal Act	6
Part 1		
Amendments to principal Act		
4	Section 3 amended (Interpretation)	6
5	New section 3A inserted (Transitional, savings, and related provisions)	7
	3A Transitional, savings, and related provisions	7
<u>5A</u>	<u>Section 5 amended (Purpose of corrections system)</u>	<u>7</u>
6	Section 6 amended (Principles guiding corrections system)	7
7	New section 6A inserted (Tiriti o Waitangi/Treaty of Waitangi)	8
	6A Tiriti o Waitangi/Treaty of Waitangi	8
8	Section 8 amended (Powers and functions of chief executive)	8
<u>8A</u>	<u>Section 10 amended (Delegation of powers and functions of chief executive)</u>	<u>8</u>
9	Section 41 amended (Collection of biometric information, etc, from prisoner)	9
10	Section 43 amended (Authorised property)	9
11	Section 51 amended (Management plans)	9
<u>11A</u>	<u>Section 52 amended (Rehabilitative programmes)</u>	<u>10</u>
12	Section 54 amended (Reasons for transfer)	10
<u>12A</u>	<u>Section 60 amended (Segregation for purpose of medical oversight)</u>	<u>10</u>
13	Section 61A replaced (Ongoing assessment for risk of self-harm)	10
	61A Ongoing assessment for risk of self-harm	10

Corrections Amendment Bill

14	New section 61CA inserted (Prison manager may direct that at-risk prisoner's association with other prisoners be restricted or denied)	10
	61CA Prison manager may direct that at-risk prisoner's association with other prisoners be restricted or denied	10
15	Section 61E amended (Content of at-risk management plan)	11
16	Section 61G amended (Health centre manager must consult registered health professional if advice outside scope of practice)	12
17	Section 62 amended (Temporary release from custody or temporary removal from prison)	12
18	Section 78 amended (Information and education needs of prisoners)	12
19	Section 80 amended (Needs relating to particular cultures)	12
20	Section 81B amended (Parenting agreements)	12
21	Section 85 amended (Use of non-lethal weapons)	12
<u>21A</u>	<u>Section 88 amended (Reporting on use of force, weapons, and mechanical restraints)</u>	<u>13</u>
22	Section 92A amended (Meaning of scanner search for purposes of this Act)	13
23	Section 92C amended (Particular matters relating to imaging technology searches)	13
24	Section 92D amended (Particular restrictions when imaging technology search used as alternative to strip search)	14
25	Section 94 amended (Restrictions on searches)	14
26	New section 94A inserted (Prisoner's preference in relation to searches)	14
	94A Prisoner's preference in relation to searches	14
27	Section 96 amended (Authority to search property)	15
28	Section 98 replaced (Search of prisoners and cells)	15
	98 Search of cells	15
	98A Scanner search of prisoners	15
	98B Rub-down search of prisoners	16
	98C Strip search of prisoner required in specified circumstances	16
	98D Strip search of prisoner for purpose of detecting unauthorised item	16
	98E Strip search of prisoner for purpose of detecting use of drugs or alcohol	17
	98F Scanner <u>Imaging technology</u> search may be alternative to strip search	17
29	Section 99 amended (Search of persons other than prisoners)	17
30	New section 103AAA inserted (Scanner search authorised to ascertain risk of communicable disease)	18
	103AAA Scanner search authorised to ascertain risk of communicable disease	18

Corrections Amendment Bill

31	Section 108 amended (Withholding mail)	18
<u>31A</u>	<u>Section 110A amended (Restrictions on disclosure of mail)</u>	<u>18</u>
<u>31B</u>	<u>Section 110B amended (Warnings in relation to mail)</u>	<u>18</u>
<u>31C</u>	<u>Section 110C amended (Application of Privacy Act 2020)</u>	<u>19</u>
32	Sections 111 to 122 and cross-heading repealed	19
33	New subpart 4A of Part 2 inserted	19

	Subpart 4A—Monitoring, collecting, using, and disclosing prisoner communications and information sources for intelligence purpose	
127A	Interpretation	19
127B	Meaning of intelligence purpose	21
127C	Relationship of this subpart to monitoring, collecting, using, or disclosing information by other means	22
	<i>Exemptions</i>	
127D	Exemptions for specified prisoner communications and information sources	22
127E	Exemptions for <u>prisoner</u> communications and information sources with specified persons	23
<u>127EA</u>	<u>Powers of Governor-General and chief executive to exempt prisoner communications and information sources</u>	<u>23</u>
	<i>Authorised intelligence persons</i>	
127F	Authorised intelligence persons	24
	<i>General considerations</i>	
127G	General considerations	24
	<i>Monitoring, collecting, and using information under this subpart</i>	
127H	Authorised intelligence person may monitor, collect, and use prisoner communications and information sources	25
127I	Recording of prisoner calls	25
127J	Monitoring of visits <u>and use of information collected</u>	25
127K	Monitoring of exempt prisoner communications and information sources	26
127L	Monitoring that is incidental to other work	26
	<i>Disclosure</i>	
127M	Disclosure of prisoner communications and information sources to eligible employees	27
127N	Disclosure of prisoner communications and information sources to persons other than eligible employees	27
127O	Employee must not knowingly disclose prisoner communications and information sources	28

Corrections Amendment Bill

	<i>Warnings</i>	
127P	Warnings	29
	<i>Disposal of records collected under this subpart</i>	
127Q	Disposal of record held by department delayed pending resolution of complaint	30
127R	Disposal of records held by Police and other agencies	30
	<i>Evidence and privilege</i>	
127S	Notice to be given of intention to produce evidence <u>in disciplinary proceeding</u>	31
127T	Privileged evidence <u>not to be given in court unless waiver of privilege obtained</u>	31
34	Section 131 amended (Attempting or aiding commission of offence against discipline)	32
35	Section 133 amended (Powers of hearing adjudicator in relation to offences against discipline)	32
36	New section 133A inserted (Hearing adjudicator may proceed with hearing without prisoner present)	32
	133A Hearing adjudicator may proceed with hearing without prisoner present	32
37	New section 135A inserted (Imposition of penalties on prisoner who is called to appear before <u>hearing</u> adjudicator)	33
	135A Imposition of penalties on prisoner who is called to appear before <u>hearing</u> adjudicator	33
38	Section 136 amended (Right to appeal to Visiting Justice against decision of hearing adjudicator)	34
39	Section 137 amended (Powers of Visiting Justice in relation to offences by prisoners)	35
40	New sections 138A and 138B inserted	36
	138A Visiting Justice may proceed with hearing without prisoner present	36
	138B Imposition of penalties on prisoner who is called to appear before Visiting Justice	36
41	Section 139 replaced (Mode of hearing or reaching decisions)	37
	139 Use of remote access facilities	37
42	Section 146 amended (Offences in relation to mail, information, and images)	37
43	New sections 180E and 180F and cross-heading inserted	37
	<i>Disclosure of prisoner information for taxation purposes</i>	
	180E Information may be disclosed for taxation purposes	38
	180F Agreement for disclosing prisoner information for taxation purposes	38
44	Section 190 amended (Matters to be included in annual report)	39

<u>44A</u>	<u>Section 190A amended (Minister may approve subsidies for voluntary groups)</u>	<u>39</u>
45	Section 202 amended (Regulations relating to safe custody of prisoners)	39
46	Section 203 amended (Regulations relating to treatment of prisoners)	40
47	New Schedule 1AA inserted	40
	<u>Consequential amendments</u>	
<u>47A</u>	<u>Consequential amendments</u>	<u>40</u>
	Part 2	
	Amendments to Corrections Regulations 2005	
48	Principal regulations	40
<u>48A</u>	<u>Regulation 3 amended (Interpretation)</u>	<u>41</u>
49	Regulation 48 amended (Assessment of risk when security classification reviewed)	41
50	Regulation 52J amended (Criteria for review)	41
51	Regulation 62 amended (Treatment of segregated prisoners)	41
52	Regulation 63 amended (Prisoners at risk of self-harm)	41
53	Regulation 84 amended (Copying of correspondence)	41
54	Regulation 113 amended (Visits not to be recorded without necessary approvals)	41
<u>54A</u>	<u>Part 9 heading amended</u>	<u>41</u>
<u>54B</u>	<u>Cross-heading above regulation 119A amended</u>	<u>41</u>
55	Regulation 119A amended (When non-lethal weapons may be used)	42
<u>55A</u>	<u>Regulation 119B amended (Warning before use of non-lethal weapon)</u>	<u>42</u>
<u>55B</u>	<u>Cross-heading above regulation 127 amended</u>	<u>42</u>
<u>55C</u>	<u>Regulation 128 amended (Reporting use of force or non-lethal weapon)</u>	<u>42</u>
<u>55D</u>	<u>Regulation 129 amended (Minimum requirements)</u>	<u>42</u>
56	Regulation 158 amended (Privileges)	42
57	Schedule 7 amended	42
	Schedule 1	44
	New Schedule 1AA inserted	
	Schedule 2	<u>46</u>
	<u>Consequential amendments</u>	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Corrections Amendment Act **2023**.

2 Commencement

- (1) This Act, except **sections 11, 12, 20, 49 to 52, and 56**, comes into force on the day after Royal assent.
- (2) **Sections 11, 12, 20, 49 to 52, and 56** come into force on a single date set by Order in Council. 5
- (3) If **sections 11, 12, 20, 49 to 52, and 56** have not come into force by the first anniversary of Royal assent, they come into force then.
- (4) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

3 Principal Act 10

This Act amends the Corrections Act 2004.

Part 1 Amendments to principal Act

4 Section 3 amended (Interpretation)

- (1) In section 3(1), definition of **offender**, replace paragraph (c)(i) with: 15
 - (i) an accused prisoner; or
- (2) In section 3(1), definition of **official agency**, after paragraph (g), insert:
 - (ga) an advocate within the meaning of section 2(1) of the Health and Disability Commissioner Act 1994; or
- (3) In section 3(1), replace the definition of **rehabilitative programme** with: 20

rehabilitative programme means a programme designed for offenders to reduce reoffending by facilitating their rehabilitation and reintegration into the community, for example, a medical, social, therapeutic, psychological, te ao Māori, cultural, educational, employment-related, religion-based, reintegrative, or rehabilitative programme

 25
- (4) In section 3(1), insert in their appropriate alphabetical order:

accused prisoner—

 - (a) means a prisoner detained only by reason of the fact that the prisoner is awaiting trial or is on remand in custody during the trial:
 - (b) does not include a prisoner who is on remand awaiting sentence 30

audio link means a facility (for example, a telephone) that enables audio communication between people in different places

audiovisual link means a facility that enables audio and visual communication between people in different places

~~**cultural activities** means activities that are integral to establishing and main-~~ 35
~~taining a person's connection with their culture~~

intelligence purpose has the meaning given in **section 127B**

non-offence-based programme means a programme designed for persons under control or supervision to assist them to reintegrate into the community, for example, a medical, social, therapeutic, psychological, te ao Māori, cultural, educational, employment-related, religion-based, or reintegrative programme

5

remote access facility means any of the following:

- (a) audio link:
- (b) audiovisual link:
- (ba) visual link:
- (c) any other facility that enables communication between people in different places

10

visual link means a facility that enables visual communication between people in different places.

5 New section 3A inserted (Transitional, savings, and related provisions) 15

After section 3, insert:

3A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

5A Section 5 amended (Purpose of corrections system) 20

In section 5(1)(c), replace “their reintegration” with “the reintegration of persons under control or supervision”.

6 Section 6 amended (Principles guiding corrections system)

After section 6(1)(h), insert:

(ha) accused prisoners may, so far as is reasonable and practicable in the circumstances within the resources available, be given access to activities including non-offence-based programmes to assist with their successful reintegration into the community:

25

After section 6(1)(i), insert:

~~(j) equitable rehabilitation and reintegration outcomes for Māori offenders must be provided for so far as is reasonable and practicable:~~

30

~~(k) Māori must, so far as is reasonable and practicable, be engaged with on matters relating to rehabilitation and reintegration outcomes for Māori offenders, including engagement on a national, regional, and site level on the design, delivery, and monitoring of programmes and services:~~

35

~~(l) the views of an offender’s family and of the hapū and iwi of a Māori offender may, where appropriate and so far as is reasonable and pra-~~

~~tieable, be taken into account in the decision about which prison the offender is detained in:~~

- ~~(m) the well being of Māori persons, and all other persons, under control and supervision in the corrections system must be promoted, including by providing access to mātauranga Māori:~~
- ~~(n) approaches to health care for prisoners in a prison must be guided by the health sector principles set out in section 7 of the Pae Ora (Healthy Futures) Act 2022 as far as is reasonable and practicable.~~

5

7 ~~New section 6A inserted (Tiriti o Waitangi/Treaty of Waitangi)~~

~~After section 6, insert:~~

10

6A ~~Tiriti o Waitangi/Treaty of Waitangi~~

~~In order to provide for the Crown's intention to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi,—~~

- ~~(a) **section 6(1)(j) to (n)** provides principles that guide the operation of the corrections system and support rehabilitation and reintegration of Māori offenders:~~
- ~~(b) **section 8(1)(ka)** provides for the chief executive's function of ensuring the development, maintenance, and implementation of a strategy that is focused on improving outcomes for Māori in the corrections system:~~
- ~~(e) **section 62(2)(a)(ia)** provides for access, by prisoners who may be temporarily released from custody or temporarily removed from prison, to cultural activities:~~
- ~~(d) **section 78(1)(d)** provides for access by prisoners to mātauranga Māori:~~
- ~~(e) **section 80(2)** provides for access by Māori prisoners and other prisoners to cultural activities.~~

15

20

25

8 ~~Section 8 amended (Powers and functions of chief executive)~~

~~After section 8(1)(k), insert:~~

- ~~(ka) ensuring that a strategy is developed, maintained, and implemented that—~~
 - ~~(i) focuses on improving outcomes for Māori in the corrections system; and~~
 - ~~(ii) provides requirements for monitoring the outcomes:~~

30

8A Section 10 amended (Delegation of powers and functions of chief executive)

35

After section 10(ga), insert:

(gb) the power under **section 127J(1)** to approve the monitoring of visits and the collection of information from communications during the visits; or

9 Section 41 amended (Collection of biometric information, etc, from prisoner) 5

~~After section 41(3), insert:~~

~~(3A) Despite subsection (3), information that is collected under this section may be monitored, used, or disclosed for an intelligence purpose under **subpart 4A** of this Part.~~

(1) After section 41(1), insert: 10

(1A) An authorised intelligence person (as defined in **section 127A**) may, for an intelligence purpose,—

- (a) take photographs of a prisoner:
- (b) collect biometric information from a prisoner:
- (c) take measurements from a prisoner: 15
- (d) collect information by carrying out a prescribed procedure designed to create a record to enable the subsequent identification of a prisoner.

(2) In section 41(2), after “(1)(d)”, insert “or **(1A)(d)**”.

(3) In section 41(4), after “officer”, insert “under subsection (1)”.

(4) After section 41(4), insert: 20

(4A) Information that is collected or taken from a prisoner under subsection (1) or **(1A)** may be monitored, collected, used, or disclosed under **subpart 4A** of this Part.

10 Section 43 amended (Authorised property) 25

After section 43(3)(a)(iii), ~~insert~~ insert:

- (iv) an at-risk prisoner; or

11 Section 51 amended (Management plans)

(1) Replace the heading to section 51 with “**Case management plans**”.

(2) Replace section 51(1) with:

(1) This section applies to 1 or more classes of prisoners prescribed by regulations made under this Act. 30

(3) In section 51(2), replace “management plan” with “case management plan”.

(4) In section 51(3), replace “any prescribed requirements” with “any requirements prescribed by regulations made under this Act”.

(5) Replace section 51(4) with: 35

- (4) Each case management plan must be consistent with the resources available to the chief executive to manage the prisoner.

11A Section 52 amended (Rehabilitative programmes)

In section 52, insert as subsections (2) and (3):

- (2) The chief executive may, to the extent consistent with the resources available and any prescribed requirements or instructions issued under section 196, enable the provision of rehabilitative programmes to prisoners on remand awaiting sentence who, in the opinion of the chief executive, will benefit from those programmes. 5
- (3) In deciding whether to enable the provision of programmes under **subsection (2)**, the chief executive must consider the resources available to carry out the chief executive’s obligation under **subsection (1)**. 10

12 Section 54 amended (Reasons for transfer)

In section 54(1)(d), replace “management plan” with “case management plan”.

12A Section 60 amended (Segregation for purpose of medical oversight) 15

After section 60(5), insert:

- (6) As part of the visit referred to in subsection (5), the registered health professional must consider and advise the health centre manager of any matters relevant to a review of the continuing justification for a direction under this section.

13 Section 61A replaced (Ongoing assessment for risk of self-harm) 20

Replace section 61A with:

61A Ongoing assessment for risk of self-harm

A prisoner who has been assessed as not at risk of self-harm or whose at-risk assessment has been revoked must be reassessed if there are material changes in the prisoner’s circumstances that are relevant to the risk of self-harm. 25

14 New section 61CA inserted (Prison manager may direct that at-risk prisoner’s association with other prisoners be restricted or denied)

After section 61C, insert:

61CA Prison manager may direct that at-risk prisoner’s association with other prisoners be restricted or denied 30

- (1) A prison manager may direct that the opportunity of an at-risk prisoner to associate with other prisoners be restricted or denied if—

- (a) the health centre manager of the prison recommends that a direction of that kind is desirable to address the prisoner’s risk of self-harm; and
- (b) the prison manager has confirmed the prisoner’s at-risk assessment. 35

- (2) The direction may restrict or deny the at-risk prisoner’s opportunity to associate with other prisoners only to the extent that the restrictions or denial of opportunity are necessary for the safety of the at-risk prisoner.
- (3) If the prison manager gives a direction under this section, the prison manager must ensure that— 5
 - (a) the at-risk prisoner is promptly informed in writing of the reasons for the direction, and any modification of the direction; and
 - (b) the chief executive is promptly informed in writing of the direction, and any modification of the direction, and the reasons for it.
- (4) The prison manager or chief executive may, at any time, revoke or modify a direction under this section. 10
- (5) However, the prison manager may not—
 - (a) revoke a restriction on, or the denial of, the opportunity of the at-risk prisoner to associate with other prisoners under this section unless the health centre manager advises that there has ceased to be any justification, under **subsection (1) and (2)**, for the restriction or denial of opportunity; or 15
 - (b) modify a restriction unless the prison manager has taken into account the advice of the health centre manager.
- (6) More than 1 direction may be given under this section while an at-risk management plan is in effect for the prisoner. 20
- (7) If the direction is not earlier revoked under **subsection (4)**, a prison manager must revoke a direction under this section when an at-risk management plan for the prisoner ends under section 61F(2).
- (8) While a direction under this section is in force, the health centre manager must, unless the health centre manager 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. 25
- (9) As part of the visit referred to in **subsection (8)**, the registered health professional must consider and advise the health centre manager— 30
 - (a) of any matters relevant to the continuing justification for a direction under this section; and
 - (b) whether the prisoner’s at-risk assessment should be reviewed.

15 Section 61E amended (Content of at-risk management plan)

- (1) Replace section 61E(1)(a) with: 35
 - (a) whether any direction is in effect under **section 61CA** to restrict or deny the opportunity of the prisoner to associate with other prisoners; and
- (2) Repeal section 61E(2), (3), and (4).

- 16 Section 61G amended (Health centre manager must consult registered health professional if advice outside scope of practice)**
In section 61G, replace “section 61C or 61F” with “section 61C, **61CA**, or 61F”.
- 17 ~~Section 62 amended (Temporary release from custody or temporary removal from prison)~~** 5
After section 62(2)(a)(i), insert:
(ia) the prisoner’s access to cultural activities:
- 18 ~~Section 78 amended (Information and education needs of prisoners)~~**
(1) After section 78(1)(e), insert: 10
(d) so far as is practicable, to access to mātauranga Māori.
(2) In section 78(2), replace “subsection (1)(e)” with “**subsection (1)(c) or (d)**”.
- 19 ~~Section 80 amended (Needs relating to particular cultures)~~**
In section 80, insert as subsection (2):
(2) ~~Māori prisoners and other prisoners detained in a corrections prison must have access to cultural activities, so far as is reasonable and practicable, regardless of the corrections prison in which they are detained.~~ 15
- 20 Section 81B amended (Parenting agreements)**
In section 81B(d)(iv), replace “management plan” with “case management plan”. 20
- 21 Section 85 amended (Use of non-lethal weapons)**
(1AAA) In the heading to section 85, replace “non-lethal” with “less-lethal”.
(1AAB) In section 85(1), (2), and (3), replace “non-lethal” with “less-lethal”.
(1) After section 85(1), insert:
(1A) ~~An officer may only use a non-lethal weapon prescribed for use in dealing with a prisoner who is passively resisting a lawful order in the situation described in section 83(1)(c)(ii) if —~~ 25
(a) ~~the officer has reasonable grounds for believing that the use of physical force is reasonably necessary; and~~
(b) ~~in that context, having reasonable grounds for believing that the use of physical force is reasonably necessary means having reasonable grounds for believing there is an imminent threat of injury or harm to the prisoner or any other person.~~ 30
(1A) An officer may only use a less-lethal weapon prescribed for use in dealing with a prisoner who is passively resisting a lawful order in the situation described in 35

section 83(1)(c)(ii) if the officer has reasonable grounds for believing there is an imminent threat of injury or harm to the prisoner or any other person.

- (2) After section 85(3), insert:
- (3A) The Minister must consider sufficient information relevant to the use of a ~~non-lethal~~ less-lethal weapon to be satisfied of the matters in subsection (3). 5
- (3B) The information must be provided to the Minister by the chief executive and may include, without limitation, the following:
 - (a) operational policies and procedures including, without limitation, those relating to the management of health impacts relating to the use of the weapon: 10
 - (b) training manuals:
 - (c) manufacturers’ safety and operational information:
 - (d) any reports by domestic or international agencies that relate to the consistency of the use of the weapon with the humane treatment of prisoners. 15
- (3) In section 85(4), replace “non-lethal” with “less-lethal”.

21A Section 88 amended (Reporting on use of force, weapons, and mechanical restraints)

In section 88, replace “non-lethal” with “less-lethal”.

22 Section 92A amended (Meaning of scanner search for purposes of this Act) 20

Replace section 92A(1) with:

- (1) For the purposes of this Act, **scanner search** means—
 - (a) 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— 25
 - (i) in a person’s body:
 - (ii) beneath or within clothing or possessions; or
 - (b) a search of a person using an electronic device (whether or not the device uses imaging technology) designed to measure a person’s body temperature. 30

23 Section 92C amended (Particular matters relating to imaging technology searches)

Replace section 92C(2) with:

- (2) An image produced as a result of an imaging technology search for the purpose of detecting any unauthorised item must be disposed of within 24 hours. 35

(2A) An image produced as a result of an imaging technology search for the purpose of measuring a person's body temperature must be disposed of within 1 hour.

24 Section 92D amended (Particular restrictions when imaging technology search used as alternative to strip search)

(1) In the heading to section 92D, after “alternative to”, insert “rub-down search or”. 5

(2) Replace section 92D(1) with:

(1) The restrictions in section 92C(1) do not apply if an imaging technology search is used as—

- (a) an alternative to a rub-down search under **section 98B(2)**; or 10
- (b) an alternative to a strip search under **section 98F**.

25 Section 94 amended (Restrictions on searches)

Replace section 94(1)(c) with:

- (c) an imaging technology search that is used as— 15
 - (i) an alternative to a rub-down search under **section 98B(2)**; or
 - (ii) an alternative to a strip search under **section 98F**.

26 New section 94A inserted (Prisoner's preference in relation to searches)

After section 94, insert:

94A Prisoner's preference in relation to searches

(1) Despite sections 92D(2)(a) and 94(1) and (1A), if the chief executive has determined under regulations made under this Act that a prisoner is ~~male or female for the purpose of accommodation~~ to be detained in a prison for male prisoners or a prison for female prisoners, the prisoner may choose the sex of a person who is to— 20

- (a) carry out any specified search of the prisoner; or 25
- (b) view any specified image of the prisoner; or
- (c) be present during any strip search of the prisoner.

(2) Any specified search of the prisoner may only be carried out by a person of the sex chosen by the prisoner, unless there are reasonable grounds for not complying with this subsection. 30

(3) Any specified image of the prisoner may only be viewed by an officer or constable of the sex chosen by the prisoner, unless there are reasonable grounds for not complying with this subsection.

(4) A strip search of the prisoner must not be carried out in view of any person who is not of the sex chosen by the prisoner, unless there are reasonable grounds for not complying with this subsection. 35

- (5) For the purposes of this section,—
- specified image** means an image that is produced using imaging technology, if imaging technology is used as—
- (a) an alternative to a rub-down search under **section 98B(2)**; or
 - (b) an alternative to a strip search under **section 98F**
- specified search** means the following:
- (a) a rub-down search:
 - (b) a strip search:
 - (c) an imaging technology search that is used as—
 - (i) an alternative to a rub-down search under **section 98B(2)**; or
 - (ii) an alternative to a strip search under **section 98F**.

27 Section 96 amended (Authority to search property)

In section 96(1), after “scanner search”, insert “(as defined in **section 92A(1)(a)**)”.

28 Section 98 replaced (Search of prisoners and cells)

Replace section 98 with:

98 Search of cells

- (1) An officer may conduct a search of any cell in a prison, at any time, for the purpose of detecting any unauthorised item.
- (2) Nothing in this section limits or affects any power or authority to search or inspect any cell in any prison for any purpose relating to the security of the prison.

98A Scanner search of prisoners

Detecting unauthorised item

- (1) An officer may conduct a scanner search (as defined in **section 92A(1)(a)**) of any prisoner, at any time, for the purpose of detecting any unauthorised item.

Measuring body temperature

- (2) An officer ~~may, in accordance with an authorisation under **section 103AAA**,~~ conduct may conduct a scanner search (as defined in **section 92A(1)(b)**) of any prisoner for the purpose of measuring the prisoner’s body temperature to ascertain any risk that they may be carrying a communicable disease.

- (3) A scanner search under **subsection (2)** may only be carried out in accordance with an authorisation under **section 103AAA**.

98B Rub-down search of prisoners

- (1) An officer may conduct a rub-down search of any prisoner, at any time, for the purpose of detecting any unauthorised item.
- (2) An officer may conduct an imaging technology search of any prisoner as an alternative to a rub-down search ~~if—~~ if the chief executive has approved the device used in the imaging technology search as suitable for the purpose of replacing a rub-down search. 5
- ~~(a) the prisoner is returning to the prison; and~~
- ~~(b) the prisoner does not express a preference for a rub-down search; and~~
- ~~(c) the chief executive has approved the device used in the imaging technology search as suitable for the purpose of replacing a rub-down search.~~ 10

98C Strip search of prisoner required in specified circumstances

- (1) Every prisoner must be required to undergo a strip search conducted by an officer—
- (a) on first being admitted to a prison; and 15
- (b) on being received in a prison on transfer from another prison.
- (2) Every at-risk prisoner must be required to undergo a strip search conducted by an officer—
- (a) each time the prisoner enters an at-risk cell, until an at-risk management plan is established for the prisoner: 20
- (b) in the situations set out in the at-risk management plan for the prisoner.
- (3) **Subsection (2)(a)** does not apply if—
- (a) a strip search has been conducted under **subsection (1) or section 98D(1)**; and
- (b) the prisoner has been supervised by an officer since the strip search was conducted; and 25
- (c) an officer (who may be the same officer as under **paragraph (b)** or a different officer) considers a strip search under **subsection (2)(a)** to be unnecessary.

98D Strip search of prisoner for purpose of detecting unauthorised item 30

- (1) An officer may conduct a strip search of a prisoner if the officer—
- (a) has reasonable grounds for believing that the prisoner has in their possession an unauthorised item; and
- (b) has obtained the manager's approval for the conduct of a strip search.
- (2) The power to conduct a strip search of a prisoner under **subsection (1)** may only be exercised— 35
- (a) for the purpose of detecting any unauthorised item; and

- (b) if a strip search is necessary in the circumstances for the purpose of detecting an unauthorised item.
- (3) Despite **subsection (1)(b)**, it is not necessary to obtain the approval of a prison manager for the conduct of a strip search if the delay involved in obtaining the approval would endanger the health or safety of any person or prejudice the maintenance of security at the prison. 5

98E Strip search of prisoner for purpose of detecting use of drugs or alcohol

- (1) This section applies to a prisoner who is required under section 124 (other than in the situation referred to in section 124(2)(d)) to submit to a prescribed procedure for the purpose of detecting whether the prisoner has used drugs or consumed alcohol, or both. 10
- (2) Immediately before the prisoner supplies a sample in accordance with the prescribed procedure, the prisoner may be required to undergo a strip search conducted by an officer.
- (3) A strip search of the prisoner may only be required under **subsection (2)** if— 15
 - (a) the nature of the prescribed procedure is such that there is a risk that the prisoner may dilute, contaminate, or otherwise tamper with the sample; and
 - (b) a strip search is necessary to ensure that such dilution, contamination, or tampering does not occur. 20

98F ~~Scanner~~ Imaging technology search may be alternative to strip search

~~A scanner search may be undertaken~~ An officer may conduct an imaging technology search of any prisoner as an alternative to a strip search under this Act if the chief executive has approved the device used in the ~~scanner~~ imaging technology search as suitable for the purpose of replacing a strip search. 25

29 Section 99 amended (Search of persons other than prisoners)

Replace section 99(1) with:

- (1) A person who wishes to enter a prison or to visit a prisoner may, before being admitted to the prison or before being allowed access to any prisoner, be required to undergo ~~a scanner search conducted by an officer for the purpose of~~ the following: 30
 - ~~(a) detecting any unauthorised item; or~~
 - (a) a scanner search (as defined in **section 92A(1)(a)**) conducted by an officer for the purpose of detecting any unauthorised item;
 - (b) ~~in accordance with an authorisation under **section 103AAA**, a scanner~~ search (as defined in **section 92A(1)(b)**) conducted by an officer for the purpose of measuring the person’s body temperature to ascertain any risk that they may be carrying a communicable disease. 35

(1A) A scanner search under **subsection (1)(b)** may only be carried out in accordance with an authorisation under **section 103AAA**.

30 New section 103AAA inserted (Scanner search authorised to ascertain risk of communicable disease)

After section 103, insert:

5

103AAA Scanner search authorised to ascertain risk of communicable disease

(1) The prison manager may authorise a scanner search for the purpose of measuring a person's body temperature if—

(a) the prison manager considers that the scanner search is necessary and justifiable to ascertain any risk that the person entering the prison may be carrying a communicable disease; and

10

(b) the prison manager has taken into account advice from a registered health professional on the matter; and

(c) the chief executive has approved the device used in the search as suitable for the purpose.

15

(2) The authorisation may apply to 1 or more persons or classes of persons.

(3) The authorisation may apply only for a period of time that is reasonable in the circumstances based on the advice obtained from the registered health professional under **subsection (1)(b)**.

(4) The period of time must be specified in the authorisation.

20

(5) The authorisation may be extended or revoked in the same manner in which it was made.

31 Section 108 amended (Withholding mail)

In section 108(1)(d), after “correspondence”, insert “or mail”.

31A Section 110A amended (Restrictions on disclosure of mail)

25

In section 110A, replace “contained in any” with “or”.

31B Section 110B amended (Warnings in relation to mail)

Replace section 110B(a) and (b) with:

(a) that—

(i) their mail may be opened and withheld, and of the grounds on which it may be withheld; and

30

(ii) their correspondence may be read and withheld, and of the grounds on which it may be withheld; and

(b) about—

(i) the types of mail that are exempted from being opened and withheld, and the extent to which the exemptions apply; and

35

(ii) the types of correspondence that are exempted from being read and withheld, and the extent to which the exemptions apply.

31C Section 110C amended (Application of Privacy Act 2020)

In section 110C, after “correspondence”, insert “or mail”.

32 Sections 111 to 122 and cross-heading repealed 5

Repeal sections 111 to 122 and the cross-heading above section 111.

33 New subpart 4A of Part 2 inserted

After section 127, insert:

Subpart 4A—Monitoring, collecting, using, and disclosing prisoner communications and information sources for intelligence purpose 10

127A Interpretation

In this subpart, unless the context otherwise requires,—

authorised intelligence person means—

- (a) the chief executive; and
- (b) a person who is authorised by the chief executive under **section 127F** 15

collect, in relation to prisoner communications and information sources,—

- (a) means to gather prisoner communications and information sources; and
- (b) includes downloading, photographing, storing, or otherwise making a record of prisoner communications and information sources

contracted provider means a person engaged by the chief executive to provide services in connection with translating, transcribing, or interpreting prisoner communications and information sources 20

~~**digital communication**—~~

- ~~(a) means any form of electronic communication; and~~
- ~~(b) includes any text message, writing, photograph, picture, recording, or other matter that is communicated electronically~~ 25

disclose—

- (a) means to disclose prisoner communications and information sources; and
- (b) includes— 30
 - (i) allowing a person to listen to, watch, read, or examine any of those prisoner communications and information sources; and
 - (ii) giving or lending to a person a copy, printout, recording, video, image, translation, or written document containing those prisoner communications and information sources 35

eligible employee means a person who is an employee of the chief executive or an employee of a contractor

~~**exempt prisoner call** means a prisoner call that is exempt from this subpart under section 127D or 127E~~

exempt prisoner call means the following:

(a) a prisoner call that is exempt from this subpart under **section 127D, 127E, or 127EA:**

(b) information transmitted by any remote access facility to which a prisoner is a party with a court, tribunal, or the New Zealand Parole Board that is conducted while the prisoner is in prison

~~**exempt prisoner communications and information sources** means prisoner communication and information sources that are exempt from this subpart under **section 127D or 127E**~~

exempt prisoner communications and information sources means—

(a) prisoner communications and information sources that are exempt from this subpart under **section 127D, 127E, or 127EA;** and

(b) exempt prisoner calls

monitor, in relation to prisoner communications and information sources, means to do any or all of the following:

(a) listen to, watch, read, examine, and take notes from prisoner communications and information sources:

(b) listen to, watch, read, and take notes from a ~~recording~~ record of prisoner communications and information sources:

(c) process prisoner communications and information sources by technology

prisoner call means any information transmitted by an audio link, a visual link, or an audiovisual link to which a prisoner is a party that is conducted while the prisoner is in prison

prisoner communications and information sources means—

(a) any communications to or from a prisoner ~~(for example, correspondence and mail, digital communications, verbal communications, visits, and visual communications);~~ and

Examples

Communications to or from a prisoner are, for example,—

- conversations:
- correspondence and mail:
- email and text messages:
- writing:
- photographs, pictures, drawings, symbols, and other images:
- prisoner calls:

- visits;
- signs, signals, and gestural language;
- video and other electronic communications;
- recordings of communications to or from a prisoner.

- (b) the following information sources: 5
- (i) images (for example, ~~photos~~ photographs, drawings, or symbols) made by a prisoner:
 - (ii) video footage and images of a prisoner:
 - (iii) ~~Internet and intranet sources used by a prisoner~~ Internet and intranet sources with which a prisoner interacts: 10
 - ~~(iv) open source information relevant to a prisoner; and~~
 - (iv) publicly available and legally accessible information (for example, information in the news media and on social media) relevant to a prisoner; and
- (c) the substance of, or any information that is transmitted by,— 15
- (i) communications to or from a prisoner; or
 - (ii) an information source described in **paragraph (b)**; and
- (d) information held by the department about a prisoner (for example, incident reports, ~~biometric~~ information collected or taken from a prisoner under section 41, and trust account details) 20

prisoner health records means health records referred to in section 165

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

use, in relation to prisoner communications and information sources, ~~means~~ includes to collate, analyse, or synthesise, or draw conclusions from prisoner communications and information sources to inform decision-making about the management of prisoners or the operation of prisons. 25

~~**verbal communications** includes, without limitation,—~~

- ~~(a) prisoner calls and video calls; and~~
- ~~(b) conversations to which a prisoner is a party~~ 30

~~**visual communications** includes, without limitation, communications by signs, signals, and gestural language.~~

127B Meaning of intelligence purpose

- (1) An **intelligence purpose**, in relation to a purpose for monitoring, collecting, using, or disclosing prisoner communications and information sources, means— 35
- (a) to identify risk and to deter and prevent harm:

(b)	to support the good order, safety, and security of prisons.	
(2)	Examples of what constitutes an intelligence purpose are the following:	
(a)	to prevent and discourage the commission of offences by, or for the benefit of, or with the help or encouragement of, prisoners:	
(b)	to detect and investigate offences committed by, for the benefit of, or with the help or encouragement of, prisoners:	5
(c)	to prosecute, convict, and penalise—	
(i)	prisoners who commit offences, or who help or encourage other people to commit offences; and	
(ii)	people who commit offences for the benefit of, or with the help or encouragement of, prisoners:	10
(d)	to detect and prevent non-compliance with directions given under section 168A (no-contact conditions if family violence offence defendant remanded in custody) of the Criminal Procedure Act 2011:	
(e)	to prevent and discourage escapes from prisons.	15
127C	Relationship of this subpart to monitoring, collecting, using, or disclosing information by other means	
(1)	Nothing in this subpart limits, or otherwise affects,—	
(a)	sections 103A to 110C (withholding mail):	
(b)	sections 180 to 182E (disclosure of information):	20
(c)	sections 189A to 189D (detection, interception, etc, of radiocommunications within prison boundaries).	
(2)	Nothing in this subpart limits, or otherwise affects, the use <u>operation</u> of security surveillance cameras or other technology in a prison.	
	<i>Exemptions</i>	25
127D	Exemptions for specified prisoner communications and information sources	
	The following prisoner communications and information sources are exempt from being monitored, collected, used, or disclosed under this subpart:	
(a)	prisoner health records held by the department, including psychological information that is recorded and created to provide treatment to prisoners:	30
(b)	prisoner communications and information sources in connection with restorative justice processes.	

127E Exemptions for prisoner communications and information sources with specified persons

- (1) ~~Communications~~ Prisoner communications and information sources between a prisoner and the following persons are exempt from being monitored, collected, used, or disclosed under this subpart: 5
 - (a) if the prisoner communications ~~or~~ and information sources are related to legal affairs,—
 - (i) the prisoner’s legal adviser; or
 - (ii) a barrister or solicitor with whom the prisoner is discussing the possibility of the person acting for the ~~prisoner;~~ prisoner; or 10
 - (iii) a member of the Armed Forces with whom a member of the Armed Forces detained in a prison is discussing the possibility of the person representing the prisoner in the Court Martial or other proceedings;
 - (b) a statutory visitor: 15
 - (c) a Justice of the Peace acting in an official capacity:
 - (d) a person from an official agency acting in an official capacity:
 - (e) a member of Parliament acting in an official capacity:
 - (f) a person acting in their official capacity on behalf of the International Criminal ~~Court;~~ Court. 20
 - (g) ~~a person who—~~
 - (i) ~~is in a class of persons whose communications with prisoners have been exempted by an Order in Council made under this paragraph for 1 or more specific purposes; and~~
 - (ii) ~~is acting for a purpose specified in the order;~~ 25
 - (h) ~~a person (other than a prisoner) who has been exempted under this section by the chief executive for a specified period.~~
- (2) Section 110 applies to the monitoring of mail between a prisoner and a legal adviser under this subpart.
- (3) ~~An order under **subsection (1)(g)** is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).~~ 30

127EA Powers of Governor-General and chief executive to exempt prisoner communications and information sources

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister, specify— 35
 - (a) 1 or more classes of persons whose prisoner communications and information sources with prisoners must not be monitored, collected, used, or disclosed under this subpart; and

- (b) the purpose for which the prisoner communications and information sources are exempt.
- (2) The chief executive may, in writing, specify—
- (a) a named individual (other than a prisoner) whose prisoner communications and information sources with 1 or more prisoners must not be monitored, collected, used, or disclosed under this subpart; and 5
- (b) the purpose and the period for which the prisoner communications and information sources are exempt.
- (3) The purpose of the exemption must take into account the following:
- (a) the purpose of the corrections system set out in section 5 and the principles guiding the corrections system set out in section 6: 10
- (b) the meaning of an intelligence purpose set out in **section 127B**:
- (c) the general considerations set out in **section 127G**.
- (4) A reason must be specified in the order, or in writing by the chief executive, for the exemption. 15
- (5) An order under **subsection (1)** is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

Authorised intelligence persons

127F Authorised intelligence persons

- (1) The chief executive may authorise an eligible employee to be an authorised intelligence person for the purpose of monitoring, collecting, using, and disclosing prisoner communications and information sources under this subpart. 20
- (2) The chief executive must be satisfied that the eligible employee is suitable to exercise the powers and duties and perform the functions of an authorised intelligence person. 25
- (3) The chief executive may impose, amend, and revoke conditions on the authorisation.
- (4) A person who is authorised under **subsection (1)** ceases to be an authorised intelligence person if—
- (a) the chief executive revokes the authorisation; or 30
- (b) the person ceases to be an eligible employee.

General considerations

127G General considerations

As far as practicable in the circumstances, an authorised intelligence person must take the following considerations into account when monitoring, collecting, using, or disclosing prisoner communications and information sources under this subpart: 35

- (a) the need to protect the privacy of prisoners and their correspondents and visitors:
- (b) the benefits to prisoners of maintaining contact with persons and organisations outside the prison.

Monitoring, collecting, and using information under this subpart 5

127H Authorised intelligence person may monitor, collect, and use prisoner communications and information sources

- (1) An authorised intelligence person may monitor, collect, and use prisoner communications and information sources if—
 - (a) it is reasonably necessary to do so for an intelligence purpose; and 10
 - (b) the monitoring, collection, and use of the prisoner communications and information sources are aimed at individuals who present a serious risk of harm to the good order, safety, and security of prisons or to public safety.
- ~~(2) If an authorised intelligence person does not have reasonable grounds to believe that a prisoner communication or information source is an exempt prisoner communication and information source, the person may monitor, collect, and use the prisoner communication or information source under **subsection (1)**.~~ 15
- ~~(3) **Subsections (1) and (2)** do not apply to visits between a prisoner and a visitor.~~ 20
- (2) **Subsection (1)** does not apply to the following:
 - (a) exempt prisoner communications and information sources;
 - (b) the making of recordings of prisoner calls (see **section 127I**);
 - (c) visits between a prisoner and a visitor (see **section 127J**). 25

127I Recording of prisoner calls

- (1) ~~An authorised intelligence person may record any~~ Any prisoner call that is not an exempt prisoner call may be recorded for a purpose including, without limitation, an intelligence purpose.
- (2) See **section 127H(1)** in relation to other types of monitoring, collection, and use under this subpart of a prisoner call and any recording of the prisoner call. 30

127J Monitoring of visits and use of information collected

- (1) The chief executive may approve—
 - (a) the monitoring by an authorised intelligence person of visits between a prisoner and a visitor, including communications during the visits; and 35
 - (b) the collection by an authorised intelligence person of information from communications during the visits.

- (2) The chief executive must have reasonable grounds, based on information previously collected under **section 127H or 127I**, to believe that the monitoring and collection of information under **subsection (1)** is necessary for an intelligence purpose and it is likely that information communicated in the visit may— 5
- (a) threaten the security, good order, and discipline of the prison; or
 - (b) threaten the safety of any person; or
 - (c) promote or encourage the commission of an offence, or involve, or facilitate the commission or possible commission of, an offence.
- (3) An authorised intelligence person may, for an intelligence purpose, if it is reasonably necessary to do so, monitor and use information that is collected under this section. 10
- (4) An authorised intelligence person ~~may~~ must not, in respect of a visit between a prisoner and a person ~~specified in **section 127E(1)**~~ whose communications are exempt under this subpart,— 15
- (a) monitor the visit or communications during the visit; or
 - (b) ~~collect or use~~ monitor, collect, or use information from communications during the visit.

127K Monitoring of exempt prisoner communications and information sources

An authorised intelligence person who is monitoring, collecting, or using prisoner communications and information sources under this subpart and who forms the view that there are reasonable grounds to believe that the prisoner communications and information sources are exempt prisoner communications and information sources must— 20

- (a) promptly stop monitoring, collecting, or using them; and 25
- (b) ensure that all ~~practical~~ practicable steps are taken to destroy any information collected under this subpart.

127L Monitoring that is incidental to other work

- (1) This section applies to a person who is undertaking, with the chief executive's authority, work comprising the administration, installation, maintenance, repair, testing, or upgrading of a system— 30
- (a) by or from which recordings, copies, printouts, transcripts, or translations of prisoner communications and information sources are made; or
 - (b) in which recordings, copies, printouts, transcripts, or translations of prisoner communications and information sources collected under this subpart are stored. 35
- (2) The person may listen to, watch, read, or examine prisoner communications and information sources (including exempt prisoner communications and infor-

mation sources) if doing so is necessary for, or incidental to, the effective undertaking of the work concerned.

Disclosure

127M Disclosure of prisoner communications and information sources to eligible employees 5

- (1) This section applies to the disclosure to eligible employees of prisoner communications and information sources collected under this subpart.
- (2) An authorised intelligence person may disclose the prisoner communications and information sources to—
 - (a) another authorised intelligence person for a purpose described in **section 127N(2) to (7)**: 10
 - (b) an eligible employee (who is not an authorised intelligence person) for a purpose described in **section 127N(2), (6), or (7)**.
- (3) An authorised intelligence person may also disclose prisoner communications and information sources to an eligible employee (who is or is not an authorised intelligence person) so that the employee may translate, transcribe, or interpret the prisoner communications and information sources. 15
- (4) An eligible employee (who is not an authorised intelligence person) may disclose the prisoner communications and information sources to another eligible employee (including an authorised intelligence person) for an intelligence purpose. 20

127N Disclosure of prisoner communications and information sources to persons other than eligible employees

- (1) This section applies to the disclosure to persons other than eligible employees of prisoner communications and information sources ~~collected~~ monitored, collected, or used under this subpart. 25
- (2) An authorised intelligence person may disclose the prisoner communications and information sources for an intelligence purpose.
- (3) An authorised intelligence person may disclose the prisoner communications and information sources if they believe on reasonable grounds that the disclosure— 30
 - (a) is necessary to avoid prejudice to the maintenance of the law by a public sector agency (as defined in section 7(1) of the Privacy Act 2020), including the prevention, detection, investigation, prosecution, and punishment of offences); or 35
 - (b) is necessary for the conduct of proceedings (already commenced or reasonably in contemplation) before a court or tribunal; or
 - (c) is necessary to prevent or lessen a serious threat (as defined in section 7(1) of the Privacy Act 2020) to—

- (i) public health or public safety; or
- (ii) the life or health of any person; or
- (d) has been authorised by the Privacy Commissioner under section 30 of the Privacy Act 2020.
- (4) An authorised intelligence person may disclose the prisoner communications and information sources to an intelligence and security agency only if the authorised intelligence person believes, on reasonable grounds, that the disclosure is necessary to enable the agency to perform any of its functions under section 10, 11, 13, or 14 of the Intelligence and Security Act 2017. 5
- (5) An authorised intelligence person may disclose the prisoner communications and information sources to a public sector agency or contracted provider for the purpose of enabling an employee of the agency or contracted provider to translate, transcribe, or interpret the prisoner communications and information sources. 10
- (6) An authorised intelligence person or an eligible employee may disclose the prisoner communications and information sources if disclosure is— 15
- (a) authorised by another provision of this Act; or
- (b) required by any other legislation (including the Official Information Act 1982 and the Privacy Act 2020).
- (7) An authorised intelligence person or an eligible employee may disclose the prisoner communications and information sources to the prisoner concerned. 20
- 127O Employee must not knowingly disclose prisoner communications and information sources**
- ~~An authorised intelligence person or an eligible employee must not knowingly disclose prisoner communications and information sources collected under this subpart except as provided in **sections 127M(2) to (4) and 127N(2) to (7)**.~~ 25
- Disclosure to eligible employees*
- (1) An authorised intelligence person must not knowingly disclose prisoner communications and information sources collected under this subpart to an eligible employee except under **section 127M(2) or (3)**. 30
- (2) An eligible employee (who is not an authorised intelligence person) must not knowingly disclose prisoner communications and information sources collected under this subpart to another eligible employee except under **section 127M(4)**.
- Disclosure to persons other than eligible employees* 35
- (3) In **subsections (4) and (5)**, B means a person other than an eligible employee.

- (4) An authorised intelligence person must not knowingly disclose prisoner communications and information sources monitored, collected, or used under this subpart to B except under **section 127N(2) to (7).**
- (5) An eligible employee (who is not an authorised intelligence person) must not knowingly disclose prisoner communications and information sources monitored, collected, or used under this subpart to B except under **section 127N(6) or (7).**

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Warnings

127P Warnings

Warnings generally

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- (1) The chief executive must take all practicable steps to ensure that when, or promptly after, prisoners are received in a prison, they are informed that prisoner communications and information sources may be monitored, collected, used, and disclosed under this subpart.
- (2) The chief executive must ensure that there are prominently placed in every prison written notices warning prisoners of the monitoring, collection, use, and disclosure of prisoner communications and information sources under this subpart.

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Additional requirements for prisoner calls ~~and video calls~~

- (3) The chief executive must ensure that at the start of every outward prisoner call ~~or video call~~ that is being or is to be monitored or collected, the prisoner hears, ~~and~~ or there is transmitted to the device to which the call is made, a message to the effect that the call may be monitored or collected.

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Additional requirements for visits

- (4) The chief executive must ~~take all practicable steps to~~ ensure that there are prominently placed in visiting areas in every prison written notices—
 - (a) warning prisoners and visitors that their visits may be monitored, and that communications in the visits may be monitored and collected; and
 - (b) stating in general terms the purposes for which collected information may be ~~used~~ monitored, used, and disclosed under this subpart.

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- ~~(5) The chief executive must ensure that a prisoner and their visitor are informed if the chief executive has authorised the monitoring of, and the collection of information from, the prisoner’s visits under this subpart.~~

- (5) The chief executive must ensure that a prisoner and their visitor are informed—
 - (a) if the chief executive has approved the monitoring of, and the collection of information from, visits between the prisoner and their visitor; and
 - (b) that the information collected may be monitored, used, and disclosed under this subpart.

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Additional requirements for mail

- (6) The chief executive must ensure that there are prominently placed in every prison written notices warning prisoners of the monitoring, collecting, using, and disclosing of mail under this subpart.

Disposal of records collected under this subpart

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127Q Disposal of record held by department delayed pending resolution of complaint

- (1) This section applies to a record that was obtained from the collection of prisoner communications and information sources under this subpart and is held by the department.

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- (2) If the Privacy Commissioner has notified the chief executive in writing that a complaint has been made under the Privacy Act 2020 in relation to a record described in **subsection (1)**, the record must not be disposed of until the Privacy Commissioner has notified the chief executive in writing that the complaint—

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- (a) has not been proceeded with; or
(b) has been finally disposed of.

- (3) If an Ombudsman has notified the chief executive in writing that a complaint has been made under the Ombudsmen Act 1975 or the Official Information Act 1982 in relation to a record described in **subsection (1)**, the record must not be disposed of until the Ombudsman has notified the chief executive in writing that the complaint—

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- (a) has not been proceeded with; or
(b) has been finally disposed of.

- (4) In this section and **section 127R**, **record** has the meaning given in section 4 of the Public Records Act 2005.

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127R Disposal of records held by Police and other agencies

- (1) This section applies to a record that was obtained from the disclosure of information under **section 127N**.

- (2) The Commissioner of Police must ensure that every record held by the New Zealand Police is disposed of soon as practicable if the information is not required, or is no longer required, by the New Zealand Police for the purpose of its functions.

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- (3) The Director-General of an intelligence and security agency must ensure that every record held by the agency is disposed of as soon as practicable if the information is not required, or is no longer required, by the agency for the purpose of its functions.

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- (4) The chief executive or board of a public service agency (except an intelligence and security agency) must ensure that every record held by the public service agency is disposed of as soon as it appears that no proceedings or disciplinary proceedings (or no further proceedings or disciplinary proceedings) will be taken in which the record would be likely required to be produced in evidence. 5
- (5) Nothing in **subsection (2), (3), or (4)** applies to any record adduced in proceedings in any court or tribunal.
- (6) For the purpose of **subsection (4)**,—
 - (a) **public service agency** has the meaning given to it in section 5 of the Public Service Act 2020: 10
 - (b) if the information referred to in **subsection (4)** is held by a departmental agency or an interdepartmental executive board (within the meaning of those terms in section 5 of the Public Service Act 2020), compliance with that subsection is the responsibility of the agency’s host department ~~or, as the case may be, or~~ the board’s servicing department. 15

Evidence and privilege

127S Notice to be given of intention to produce evidence in disciplinary proceeding

- (1) Particulars of prisoner communications and information sources monitored, collected, or used under this subpart must not be received in evidence ~~by any court against any person, or~~ in any proceedings against a prisoner for a disciplinary offence, unless the party intending to adduce the evidence has given the person reasonable notice of the party’s intention to do so. 20
- (2) The party intending to adduce the evidence must also give the person the following: 25
 - (a) a statement of—
 - (i) the time, place, and date of the prisoner communications and information sources; and
 - (ii) the names and addresses of the relevant parties to the prisoner communications and information sources, if they are known: 30
 - (b) a transcript of the recording, if the party intends to adduce the evidence in the form of a recording:
 - (c) a written statement setting out the full particulars of the prisoner communications and information sources, if the party intends to adduce oral evidence of the prisoner communications and information sources. 35

127T Privileged evidence not to be given in court unless waiver of privilege obtained

- (1) This subsection applies to evidence that—

- (a) has been obtained by monitoring, collecting, using, or disclosing prisoner communications and information sources under this subpart; and
- (b) but for the monitoring, collecting, using, or disclosing would have been privileged by virtue of—
- (i) subpart 8 of Part 2 of the Evidence Act 2006; or
- (ii) any rule of law conferring privilege on communications of a professional character between a barrister or solicitor and a client.
- (2) Evidence to which **subsection (1)** applies remains privileged, and must not be given in any court except with the consent of the person entitled to waive the privilege.
- 34 Section 131 amended (Attempting or aiding commission of offence against discipline)**
- In section 131, after “counsels,”, insert “incites,”.
- 35 Section 133 amended (Powers of hearing adjudicator in relation to offences against discipline)**
- After section 133(4), insert:
- ~~(4A) If the offence is proved, the adjudicator may make an order—~~
- ~~(a) suspending the imposition of any penalties; and~~
- ~~(b) requiring the prisoner to appear for a disciplinary hearing if the prisoner commits a subsequent offence against discipline within a period not exceeding 3 months beginning on the day the order is made.~~
- (4A) Instead of imposing any penalty under subsection (3) or (4) in relation to an offence that has been proved, the hearing adjudicator may order that—
- (a) the prisoner appear for a hearing for the imposition of any penalties in relation to the offence if the prisoner is called to appear; and
- (b) the prisoner be called to appear only if the prisoner commits a subsequent offence against discipline within a period set out in the order that does not exceed 3 months beginning on the day the order is made.
- (4B) However, if the offence proved is the subsequent offence described in **subsection (4A)**, the hearing adjudicator may not make an order under **subsection (4A)** in respect of the subsequent offence.
- 36 New section 133A inserted (Hearing adjudicator may proceed with hearing without prisoner present)**
- After section 133, insert:
- 133A Hearing adjudicator may proceed with hearing without prisoner present**
- (1) Despite section 133(2), the hearing adjudicator may proceed with a hearing without the prisoner present if—

- (a) ~~the hearing~~ adjudicator is satisfied that the prisoner has refused to attend the hearing; or
 - (b) ~~the hearing~~ adjudicator requires the prisoner to leave the hearing on the grounds of the prisoner’s disruptive behaviour.
- (1A) Before making a decision under **subsection (1)(a)**, the hearing adjudicator must receive evidence from an officer that the prisoner has been given the opportunity to attend the hearing and has refused. 5
- (2) If the hearing adjudicator decides to proceed with a hearing without the prisoner present, ~~the hearing~~ adjudicator must record in writing the decision and reasons for ~~proceeding~~ it. 10
- (3) Despite section 136(1), there is no right to appeal to a Visiting Justice solely against a decision of a hearing adjudicator under **subsection (1)** to proceed with a hearing without the prisoner present.

37 New section 135A inserted (Imposition of penalties on prisoner who is called to appear before hearing adjudicator) 15

After section 135, insert:

135A Imposition of penalties on prisoner who is called to appear before hearing adjudicator

- (1) This section applies to a prisoner—
- (a) for whom ~~the imposition of penalties was suspended by an order~~ an order was made under **section 133(4A) or 137(5A) 137(4A)** in relation to an offence (the **first offence**); and 20
 - ~~(b) who is called to appear for a hearing for a subsequent offence against discipline that is alleged to have been committed during the period specified in the order.~~ 25
 - (b) who is required to appear for a hearing—
 - (i) for a subsequent offence against discipline that is alleged to have been committed during the period specified in the order; and
 - (ii) for the imposition of any penalties in relation to the first offence if the subsequent offence is proved. 30
- (2) If the subsequent offence is proved, the hearing adjudicator may, with respect to the first offence,—
- (a) impose on the prisoner 1 or more penalties under section 133(3) or (4) or both (whether the first offence was proved under section 133 or 137); or
 - (b) decide not to impose any penalties on the prisoner if, in the adjudicator’s opinion, it is not in the interests of justice to impose any penalty on the prisoner for the first offence. 35

- (3) If the prisoner is dissatisfied with a decision of the hearing adjudicator ~~to impose 1 or more penalties under section 133(3) or (4) or both in relation to the first offence, under **subsection (2)(a)**,—~~
- (a) the prisoner may, no later than 14 days after the date of the decision ~~under **subsection (2)(a)**~~, request that the decision be referred by way of appeal to a Visiting Justice; and 5
 - (b) on receiving the request, the prison manager must promptly refer it to a Visiting Justice; and
 - (c) section 136(5) and (6) applies to the matter.
- 38 Section 136 amended (Right to appeal to Visiting Justice against decision of hearing adjudicator)** 10
- (1) Replace section 136(4)(b) with:
- (b) either—
 - (i) confirm the ~~penalty, or any order suspending the penalty, penalty or any **section 133(4A)** order~~ imposed by the adjudicator; or 15
 - (ii) if in the Visiting Justice's opinion the circumstances require it, impose in its place any ~~penalty, or any order suspending the penalty, penalty or any **section 133(4A)** order~~ that could have been imposed by the adjudicator.
- (2) Replace section 136(5)(b) with: 20
- (b) if in their opinion the circumstances require it, impose in its place any ~~penalty, or any order suspending the penalty, penalty or any **section 133(4A)** order~~ that could have been imposed by the adjudicator.
- (3) After section 136(5), insert:
- (5A) If the appeal to the Visiting Justice relates only to ~~an order made by the hearing adjudicator under **section 133(4A)**~~ a **section 133(4A)** order made by a hearing adjudicator, the Visiting Justice— 25
- (a) must consider whether ~~it is appropriate for the imposition of any penalties to be suspended~~ the order is appropriate in the circumstances; and
 - (b) may— 30
 - (i) confirm the order; or
 - (ii) if in the Visiting Justice's opinion the circumstances require it, impose in its place 1 or more penalties under section 133(3) or (4) or both that could have been imposed by the adjudicator.
- (4) After section 136(6), insert: 35
- (7) If there is an appeal under this section against any **section 133(4A)** order made by the hearing adjudicator ~~under **section 133(4A)**~~,—
- (a) the time period for the subsequent offence continues to run during the period specified in the order; but

- (b) the prisoner may not be called to appear for imposition of any ~~suspended~~ penalty under **section 135A(2)** unless the order is confirmed on appeal.
- (8) In this section, **section 133(4A)** order means an order under **section 133(4A)**.

39 Section 137 amended (Powers of Visiting Justice in relation to offences by prisoners) 5

- (1) ~~In section 137(5), replace “may only impose 1 or more of the penalties set out in section 133(3) and any applicable penalty set out in section 133(4)” with “may only impose 1 or more penalties in section 133(3) or (4) or both or make an order under **section 133(4A)**”.~~ 10

(2) After section 137(5), insert:

- (5A) ~~If the offence is proved, the Visiting Justice may make an order—~~
 - (a) ~~suspending the imposition of any penalties; and~~
 - (b) ~~requiring the prisoner to appear for a disciplinary hearing if the prisoner commits a subsequent offence against discipline within a period not exceeding 3 months beginning on the day the order is made.~~ 15

(1) After section 137(4), insert:

- (4A) Instead of imposing any penalty under subsection (3) or (4) in relation to an offence that has been proved, the Visiting Justice may order that—
 - (a) the prisoner appear for a hearing for the imposition of any penalties in relation to the offence if the prisoner is called to appear; and 20
 - (b) the prisoner be called to appear only if the prisoner commits a subsequent offence against discipline within a period set out in the order that does not exceed 3 months beginning on the day the order is made.

(4B) However, if the offence proved is the subsequent offence described in **subsection (4A)**, the Visiting Justice may not make an order under **subsection (4A)** in respect of the subsequent offence. 25

(2) In section 137(5),—

- (a) replace “Despite subsections (3) and (4),” with “Despite subsections (3), (4), and **(4A)**,”; and 30
- (b) replace “may only impose 1 or more of the penalties set out in section 133(3) and any applicable penalty set out in section 133(4)” with “may only impose 1 or more penalties under section 133(3) or (4), or both, or make an order under **section 133(4A)**”.

(3) In section 137(5)(b), replace “section 135(3).” with “section 135(3); or”. 35

(4) After section 137(5)(b), insert:

- (c) the offence proved was the subsequent offence described in **section 133(4A)**, in which case the Visiting Justice may not make an order under **section 133(4A)** in respect of the subsequent offence.

40 New sections 138A and 138B inserted

After section 138, insert:

138A Visiting Justice may proceed with hearing without prisoner present

(1) Despite section 137(2), the Visiting Justice may proceed with a hearing without the prisoner present if— 5

- (a) the Visiting Justice is satisfied that the prisoner has refused to attend the hearing; or
- (b) the Visiting Justice requires the prisoner to leave the hearing on the grounds of the prisoner's disruptive behaviour.

(1A) Before making a decision under **subsection (1)(a)**, the Visiting Justice must receive evidence from an officer that the prisoner has been given the opportunity to attend the hearing and has refused. 10

(2) If the Visiting Justice decides to proceed with a hearing without the prisoner present, the Visiting Justice must record in writing the decision and reasons for ~~proceeding. it.~~ 15

~~(3) If the hearing before the Visiting Justice proceeds without the prisoner present and a finding is made that the offence is proved,—~~

~~(a) the prisoner may, within 48 hours after receiving the Visiting Justice's decision that the offence is proved, request a rehearing; and~~

~~(b) the prisoner's request must include reasons why they were not present at the hearing; and~~ 20

~~(c) the Visiting Justice may, on receiving the prisoner's request and if the Visiting Justice considers it would be in the interests of justice to do so, allow a rehearing—~~

~~(i) in respect of the finding or penalty or both; but~~ 25

~~(ii) not in respect of the decision to proceed without the prisoner present.~~

~~(4) The Visiting Justice may consider the prisoner's request under **subsection (3)** on the papers.~~

138B Imposition of penalties on prisoner who is called to appear before Visiting Justice 30

(1) This section applies to a prisoner—

(a) for whom ~~the imposition of penalties was suspended by an order an order was~~ made under **section 133(4A) or ~~137(5A) 137(4A)~~** in relation to an offence (the **first offence**); and 35

(b) ~~who is called to appear for a hearing for a subsequent offence against discipline that is alleged to have been committed during the period specified in the order.~~

- (b) who is required to appear for a hearing—
 - (i) for a subsequent offence against discipline that is alleged to have been committed during the period specified in the order; and
 - (ii) for the imposition of any penalties in relation to the first offence if the subsequent offence is proved. 5
- (2) If the subsequent offence is proved, the Visiting Justice may, with respect to the first offence,—
 - (a) impose on the prisoner 1 or more penalties—
 - (i) under section 133(3) or (4) or both, if the first offence was proved under section 133; or 10
 - (ii) under section 137(3) or (4) or both, if the first offence was proved under section 137; or
 - (b) decide not to impose any penalties on the prisoner if, in the ~~adjudicator's~~ Visiting Justice's opinion, it is not in the interests of justice to impose any penalty on the prisoner for the first offence. 15

41 Section 139 replaced (Mode of hearing or reaching decisions)

Replace section 139 with:

139 Use of remote access facilities

- (1) Any hearing or application under any of **sections 133 to 138B** may be conducted ~~or, as the case requires, or~~ determined with all or any of the interested persons participating by audiovisual link. 20
- (2) Any interested person may participate by ~~an audio link or another remote access facility~~ a remote access facility other than an audiovisual link if the hearing adjudicator or Visiting Justice considers that—
 - (a) it is not reasonably practicable for the participant to appear by audiovisual link; and 25
 - (b) it is not contrary to the interests of justice to use the ~~audio link or~~ other remote access facility.
- (3) If the hearing adjudicator or Visiting Justice decides to proceed with a hearing with 1 or more interested persons participating by a remote access facility other than ~~by an~~ audiovisual link, the ~~hearing~~ adjudicator or Visiting Justice must record in writing the decision and reasons for proceeding it. 30

42 Section 146 amended (Offences in relation to mail, information, and images)

In section 146, replace “118” with “**1270**”. 35

43 New sections 180E and 180F and cross-heading inserted

After section 180D, insert:

*Disclosure of prisoner information for taxation purposes***180E Information may be disclosed for taxation purposes**

- (1) The purpose of this section is to facilitate the disclosure of information, by the department to Inland Revenue, for the purposes of the administration or enforcement of the Inland Revenue Acts. 5
- (2) For the purpose of this section, the chief executive may supply to the chief executive of Inland Revenue the information specified in **subsection (3)** in respect of every prisoner who is or was in the legal custody of the chief executive under this Act.
- (3) The information is as follows: 10
- (a) identifying information about the prisoner:
 - (b) the name and address of the prison in which the prisoner is or was detained:
 - (c) whether the prisoner is on remand or has been sentenced:
 - (d) details of the prisoner's sentence (including relevant dates such as the start date of sentence, the date on which the prisoner is eligible for parole, and their statutory release date). 15
- (4) The chief executive may supply the specified information to any officer or employee of Inland Revenue who is authorised in that behalf by the chief executive of Inland Revenue. 20
- (5) No specified information may be supplied under this section except under an agreement entered into between the chief executive of Inland Revenue and the chief executive under **section 180F**.
- (6) Nothing in this section limits the operation of the Privacy Act 2020.
- (7) For the purposes of this section and **section 180F**,— 25
- identifying information**, in relation to any person, includes the person's full name, date and place of birth, sex or gender, location, citizenship, unique identifying number used by the department, and any known alias
- Inland Revenue** means the department of State responsible for the administration of the Inland Revenue Acts 30
- Inland Revenue Acts** means the Acts listed in Schedule 1 of the Tax Administration Act 1994
- specified information** means the information specified in **subsection (3)**.

180F Agreement for disclosing prisoner information for taxation purposes

- (1) An agreement entered into under this section for disclosing specified information about prisoners must set out the operational details about how the information is to be disclosed. 35
- (2) Without limiting **subsection (1)**, the agreement must—

- (a) specify the manner in the which the information may be disclosed; and
- (b) set out how the information privacy principles, as set out in section 22 of the Privacy Act 2020, will be complied with.
- (3) Before an agreement is concluded, reviewed, or amended, the department and Inland Revenue must consult the Privacy Commissioner. 5
- (4) An agreement under this section applies to the specified information held by the department in respect of prisoners, whether the information was obtained before or after the agreement came into force.

44 Section 190 amended (Matters to be included in annual report)

- (1) In section 190(1)(c), after “prisoner calls”, insert “or other prisoner communications and information sources”. 10
- (2) In section 190(1)(d), delete “under section 117(1) and (2)”.
- (3) In section 190(1)(e)(i), replace “section 117(1) and (2)” with “**section 127M**”.
- (4) After section 190(1)(e), insert:

- (ea) state, in relation to the year to which the report relates,— 15
 - (i) the intelligence priorities for the department and any themes and trends;
 - (ii) the methods the department used to monitor prisoner communications and information sources;
 - (iii) the number of requests made to the chief executive to monitor visits and the number of requests that were approved or declined; 20
 - (iv) the agencies to whom disclosures were made under **subpart 4A of Part 2**;
 - (v) the number of eligible employees who were authorised intelligence persons; and 25
- (eb) include a report on the types of programmes for which accused prisoners and convicted prisoners were mixed and the number of prisoners who were mixed for those programmes; and

44A Section 190A amended (Minister may approve subsidies for voluntary groups) 30

In section 190A(1)(a), after “employment-related”, insert “non-offence-based,”.

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

- (1) After section 202(a), insert:
 - (aa) despite section 5(1)(b) and any international obligations and standards, 35
regulating the mixing of prisoners in any of the following circumstances:

- (i) mixing of accused and convicted persons for non-offence-based programmes ~~(such as therapeutic, education, kaupapa Māori, or religious based programmes)~~ if it is not practicable or therapeutic to provide the programmes separately:
- (ii) mixing of accused and convicted persons who are allowed to keep their children with them in prison if it is not practicable or therapeutic to keep the persons separate: 5
- (iii) mixing of young persons (within the meaning given in the Oranga Tamariki Act 1989) and adult prisoners if it is in the best interests of the young persons: 10
- (2) In section 202(j), replace “non-lethal” with “less-lethal”.
- 46 Section 203 amended (Regulations relating to treatment of prisoners)**
- After section 203(ba), insert:
- (bb) prescribing, in relation to case management plans,—
- (i) the purpose of and basis for the plans; and 15
- (ii) the class or classes of prisoners to whom case management plans apply; and
- (iii) the matters that must be included in the plans (and different matters may be prescribed for different classes of prisoners); and
- (iv) the periods in which the plans must be reviewed (and different periods may be prescribed for different classes of prisoners): 20
- (bc) prescribing matters that must be included in non-offence-based programmes, and different matters may be prescribed for different programmes and different classes of prisoners:
- 47 New Schedule 1AA inserted** 25
- Insert the **Schedule 1AA** set out in the **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act.

Consequential amendments

- 47A Consequential amendments**
- Amend the legislation specified in **Schedule 2** as set out in that schedule. 30

Part 2

Amendments to Corrections Regulations 2005

- 48 Principal regulations**
- This Part amends the Corrections Regulations 2005.

- 48A Regulation 3 amended (Interpretation)**
In regulation 3, revoke the definition of **accused prisoner**.
- 49 Regulation 48 amended (Assessment of risk when security classification reviewed)** 5
 In regulation 48(e)(i), replace “management plan” with “case management plan”.
- 50 Regulation 52J amended (Criteria for review)**
 In regulation 52J(a)(i), replace “management plan” with “case management plan”.
- 51 Regulation 62 amended (Treatment of segregated prisoners)** 10
 In regulation 62(2), replace “prisoner management plan” with “case management plan”.
- 52 Regulation 63 amended (Prisoners at risk of self-harm)**
 In regulation 63(7), replace “management plan” with “case management plan”.
- 53 Regulation 84 amended (Copying of correspondence)** 15
 After regulation 84(1)(d), insert:
 (da) it is copied for an intelligence purpose under **subpart 4A of Part 2** of the Act; or
- 54 Regulation 113 amended (Visits not to be recorded without necessary approvals)** 20
 Replace regulation 113(2) with:
 (2) Subclause (1) does not forbid the use of security surveillance cameras or other technology in a prison if—
 (a) the cameras or other technology—
 (i) record only visual images; or 25
 (ii) record sound and visual images for an intelligence purpose under **subpart 4A of Part 2** of the Act; and
 (b) notices are prominently displayed in visiting areas that inform visitors that they are in use in those areas.
- 54A Part 9 heading amended** 30
In the Part 9 heading, replace “**non-lethal**” with “**less-lethal**”.
- 54B Cross-heading above regulation 119A amended**
In the cross-heading above regulation 119A, replace “*Non-lethal*” with “*Less-lethal*”.

- 55 Regulation 119A amended (When non-lethal weapons may be used)**
- (1) In the heading to regulation 119A, replace “non-lethal” with “less-lethal”.
- (2) In regulation 119A(1) and (2), replace “section 83(1)” with “section 83(1) or **85(1A)**”.
- 55A Regulation 119B amended (Warning before use of non-lethal weapon)** 5
- (1) In the heading to regulation 119B, replace “non-lethal” with “less-lethal”.
- (2) In regulation 119B, replace “non-lethal” with “less-lethal”.
- 55B Cross-heading above regulation 127 amended**
- In the cross-heading above regulation 127, replace “non-lethal” with “less-lethal”. 10
- 55C Regulation 128 amended (Reporting use of force or non-lethal weapon)**
- (1) In the heading to regulation 128, replace “non-lethal” with “less-lethal”.
- (2) In regulation 128(1), replace “non-lethal” with “less-lethal” in each place.
- 55D Regulation 129 amended (Minimum requirements)**
- (1) In regulation 129, replace “non-lethal” with “less-lethal”. 15
- (2) In regulation 129(a), (b), (c), (d), (e), and (f), replace “non-lethal” with “less-lethal”.
- 56 Regulation 158 amended (Privileges)**
- In regulation 158(c) and (f), replace “management plan” with “case management plan”. 20
- 57 Schedule 7 amended**
- (1) In Schedule 7, after clause 24, insert:
- 24A Clauses 23 and 24 are subject to **sections 133A and 138A** of the Act.
- (1A) In Schedule 7, after clause 31, insert:
- 31A If the prisoner has refused to attend the disciplinary hearing and the hearing proceeds without the prisoner present,— 25
- (a) a not-guilty plea must be entered on behalf of the prisoner; and
- (b) the person who is holding the hearing may receive any information that the prisoner wishes to provide in support of the prisoner’s case.
- (2) In Schedule 7, replace clause 43 with: 30
- 43 A hearing to decide whether a disciplinary hearing should be adjourned may be held by a remote access facility if—

- (a) the following people agree in writing to the holding of the hearing by way of the remote access facility:
 - (i) the prisoner charged with the disciplinary offence; and
 - (ii) the person prosecuting the disciplinary offence; and
 - (iii) the person holding the disciplinary hearing; and
- (b) for a hearing to be held by a remote access facility other than an audiovisual link, the requirements in **section 139(2) and (3)** of the Act are met.

5

- (3) In Schedule 7, clause 44, replace “telephone conference, electronic device, or video link” with “a remote access facility”.

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- (4) In Schedule 7, clause 50, replace “proven” with “proven, or as to whether to impose any penalty ~~that was suspended by~~ further to an order made under **section 133(4A) or ~~437(5A)~~ 137(4A)** of the Act.”.

Schedule 1
New Schedule 1AA inserted

s 47

Schedule 1AA
Transitional, savings, and related provisions

5

s 3A

Part 1

Provisions relating to Corrections Amendment Act 2023

1 Interpretation

In ~~this Part~~ **clauses 3 to 5**, unless the context otherwise requires, **commencement date** means the day after Royal assent of the Corrections Amendment Act 2023.

10

2 Management plans continue as case management plans

- (1) A management plan that has been devised for a prisoner under section 51 and is in operation immediately before the commencement date is to be considered on or after the commencement date as a case management plan that ~~was~~ was devised in accordance with the Corrections Amendment Act 2023.

15

(a) ~~devised under section 51; and~~

(b) ~~prepared in accordance with any requirements prescribed by regulations made under this Act.~~

20

- (2) In this clause,—

commencement date means the date ~~that~~ on which **section 11** of the Corrections Amendment Act 2023 comes into force

prisoner means a prisoner who has been received in a prison before the commencement date and continues to be in a prison on or after the commencement date.

25

3 Restrictions in at-risk management plans continue to apply

- (1) This clause applies to an at-risk management plan for a prisoner that—
- (a) was established before the commencement date and has not been revoked; and
- (b) specifies any restriction on the opportunity for the prisoner to associate with other prisoners.
- (2) The restrictions in the at-risk management plan referred to in **sub-clause (1)(b)** continue to apply until they are revoked or replaced by a direction given under **section 61CA**.

30

35

- 4 Informing prisoners who have already been received in prison**
- (1) This clause applies to prisoners who have been received in a prison before the commencement date and continue to be in a prison on or after the commencement date.
- (2) The chief executive must take all practicable steps to ensure that the prisoners are promptly informed that prisoner communications and information sources may be monitored, collected, used, and disclosed under **subpart 4A of Part 2**. 5
- 5 Subpart 4A of Part 2 applies to prisoner calls that have been monitored before commencement date** 10
- ~~(1) A prisoner call that has been monitored under section 113 before the commencement date may, after the commencement date, be—~~
- ~~(a) disclosed in accordance with **section 127M or 127N**;~~
- ~~(b) disposed of in accordance with **section 127Q or 127R**;~~
- ~~(c) produced in evidence in accordance with **section 127S**;~~ 15
- ~~(d) subject to privilege in accordance with **section 127T**.~~
- (1) This clause applies to—
- (a) a prisoner call (as defined in section 111) that has been monitored under section 113 but not disposed of before the commencement date; and
- (b) a recording (as defined in section 111) that has not been disposed of before the commencement date. 20
- (2) **Sections 127M and 127N** apply to the disclosure of the prisoner call and recording on or after the commencement date.
- (3) **Sections 127Q and 127R** apply to the disposal of the prisoner call and recording on or after the commencement date. 25
- (4) **Section 127S** applies to the production of the prisoner call and recording in evidence in a disciplinary proceeding on or after the commencement date.
- (5) The prisoner call and recording are subject to privilege in accordance with **section 127T** on or after the commencement date.

Schedule 2
Consequential amendments

s 47A

Crimes Act 1961 (1961 No 43)

In section 216B(4), replace “section 113” with “**section 127H or 127I**”.

5

Criminal Procedure Act 2011 (2011 No 81)

In section 168B(2), replace “sections 111 to 122” with “**section 127H or 127I**”.

Legislative history

21 June 2023
27 June 2023

Introduction (Bill 264–1)
First reading and referral to Justice Committee