



ANALYSIS

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1985, No. 123

An Act to amend the Penal Institutions Act 1954

[20 August 1985]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Penal Institutions Amendment Act 1985, and shall be read together with and deemed part of the Penal Institutions Act 1954 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of October 1985.

2. Interpretation—(1) The principal Act is hereby amended by repealing section 2, and substituting the following section:

“2. In this Act, unless the context otherwise requires,—

“‘Inmate’ means any person for the time being in the legal custody of the Superintendent of any penal institution;

“‘Minister’ means the Minister of Justice;

“ ‘Officer’ means the Superintendent or any officer or employee of a penal institution appointed or employed under section 6 of this Act:

“ ‘Penal institution’, or ‘institution’, means any prison, corrective training institution, or police jail established under this Act:

“ ‘Sentence of imprisonment’ does not include imprisonment imposed, whether by committal, sentence, or order, for—

“ (a) Non-payment of a sum of money; or

“ (b) Disobedience of a Court order; or

“ (c) Contempt of Court.”

(2) The following enactments are hereby consequentially repealed:

(a) Section 2 (1) of the Penal Institutions Amendment Act 1975:

(b) Section 2 of the Penal Institutions Amendment Act 1980.

3. Administration of Act—(1) Section 3 (3) of the principal Act (as substituted by section 2 (1) of the Penal Institutions Amendment Act 1983) is hereby amended by omitting the words “control of the Minister and to the general”.

(2) Section 3 (3) of the principal Act (as so substituted) is hereby further amended by inserting in paragraph (b), after the word “officer”, the words “or employee”.

(3) Section 3 (4) of the principal Act (as so substituted) is hereby amended by inserting, after the word “officer”, the words “or employee”.

(4) Section 3 of the principal Act (as amended by section 2 of the Penal Institutions Amendment Act 1983) is hereby further amended by adding the following subsections:

“(5) Any authorisation under subsection (3) of this section may be given to any specified officer or employee or to the holder or holders for the time being of any specified office or class of offices.

“(6) Every such authorisation shall be revocable at will, and no such authorisation shall prevent the exercise of any power, duty, or function by the Secretary for Justice.

“(7) Every such authorisation shall, until revoked, continue in force according to its tenor notwithstanding that the Secretary by whom it was made has ceased to hold office, and shall continue to have effect as if made by the successor in office to that Secretary for Justice.”

4. Establishment of penal institutions—(1) Section 4 of the principal Act (as substituted by section 3 (1) of the Penal Institutions Amendment Act 1980) is hereby amended by repealing subsection (1) (b).

(2) Where, at the commencement of this Act, any penal institution is declared to be a youth prison, it shall hereafter be deemed to be a prison (but without prejudice to any other designation attaching to the institution by virtue of any declaration made under section 4 of the principal Act).

5. Superintendent and other officers of penal institutions—(1) The principal Act is hereby amended by repealing section 6, and substituting the following section:

“6. (1) For every institution, not being a police jail, there shall from time to time be appointed or employed under the State Services Act 1962 a Superintendent and such other officers and employees as may be required.

“(2) The Secretary for Justice may from time to time appoint or employ for any institution in part-time capacities such persons as may be required as chaplains, counsellors, education officers, or other officers or employees.

“(3) For every institution there shall be one or more medical officers, each of whom shall be a medical practitioner and who may be appointed or employed under subsection (1) or under subsection (2) of this section.

“(4) With respect to every person appointed or employed under subsection (2) of this section, the following provisions shall apply:

“(a) The person shall not by virtue of that appointment or employment become an officer or employee of the Public Service, and nothing in the State Services Act 1962 or the Government Superannuation Fund Act 1956 shall apply to the appointment or employment:

“(b) The person may be paid out of money appropriated by Parliament for the purpose such remuneration by way of salary or fees and such allowances as may be determined by the Minister, with the concurrence of the Minister of Finance:

“(c) The appointment or employment may be held in conjunction with any office, appointment, or employment if the Secretary for Justice is satisfied that the duties of that office, appointment, or position are not inconsistent with those of an officer or employee engaged in a penal institution.

“(5) The Commissioner of Police may from time to time appoint any member of the Police to be the Superintendent or any other officer of any police jail.

“(6) In every institution in which females are received there shall be a sufficient number of female officers or female employees.”

(2) Every person who, immediately before the commencement of this Act, was holding office as a chaplain, a welfare officer, an education officer, or other officer pursuant to an appointment made by the Minister under section 6 (2) of the principal Act (as originally enacted) shall be deemed to have been appointed, and shall continue in office as if that person had been appointed, by the Secretary for Justice under section 6 (2) of the principal Act (as substituted by subsection (1) of this section), and as if, in the case of a person who was appointed as a welfare officer, that person had been appointed as a counsellor.

6. Classification of offenders—(1) Section 8A of the principal Act (as inserted by section 4 of the Penal Institutions Amendment Act 1980) is hereby repealed.

(2) The following enactments are hereby consequentially repealed:

(a) Section 4 of the Penal Institutions Amendment Act 1980:

(b) Section 3 (1) of the Penal Institutions Amendment Act 1983.

7. Classification committees—(1) Section 9 of the principal Act is hereby amended by omitting from subsection (1) the word “Minister”, and substituting the words “Secretary for Justice”.

(2) Every person who, immediately before the commencement of this Act, was holding office as a member of a classification committee pursuant to an appointment made by the Minister under section 9 (1) of the principal Act (as originally enacted) shall be deemed to have been appointed, and shall continue in office as if that person had been appointed, by the Secretary for Justice under section 9 (1) of the principal Act (as amended by subsection (1) of this section).

8. Detention of inmates—(1) Section 12 of the principal Act (as substituted by section 5 (1) of the Penal Institutions Amendment Act 1980) is hereby amended by omitting from subsection (1) the words “or by any direction given under section 8A of this Act, and subject to section 43 (2c) of the

Criminal Justice Act 1954,” and substituting the words “and subject to sections 71 and 137 of the Criminal Justice Act 1985”.

(2) Section 12 of the principal Act (as so substituted) is hereby further amended by repealing paragraphs (a) and (b) of subsection (1), and substituting the following paragraph:

“(a) A person who is sentenced to imprisonment or preventive detention or is transferred to a prison under section 23 of this Act shall serve the sentence in a prison:”.

(3) Section 12 of the principal Act (as so substituted) is hereby further amended by omitting from paragraph (d) of subsection (1), and also from paragraph (e) of that subsection, the words “or paragraph (b)”.

(4) Section 12 of the principal Act (as so substituted) is hereby further amended by repealing subsection (2), and substituting the following subsection:

“(2) Subject to the provisions of this Act or of any other enactment, a person may be held in custody on remand in—

“(a) Any police jail; or

“(b) Any other penal institution designated for the purpose by the Secretary for Justice.”

(5) Section 3 (2) of the Penal Institutions Amendment Act 1983 is hereby consequentially repealed.

9. Separation of male and female inmates no longer required—Section 18 of the principal Act is hereby repealed.

10. Part-time release to engage in employment—(1) Section 21A of the principal Act (as inserted by section 2 of the Penal Institutions Amendment Act 1961) is hereby amended by repealing subsection (1), subsection (2) (as substituted by section 6 (1) of the Penal Institutions Amendment Act 1980), subsections (2A) to (2C) (as substituted by section 3 (2) of the Penal Institutions Amendment Act 1961), and subsections (3) and (4), and substituting the following subsections:

“(1) The Superintendent of any penal institution may direct that any specified inmate who is serving a sentence of imprisonment or preventive detention and who wishes to be released under this section shall be released from day to day to engage in employment (including self-employment).

“(2) Any direction under subsection (1) of this section shall be given subject to any conditions regarding the nature of employment in which the person may be permitted to work and such other matters as the Superintendent thinks fit.

“(3) In the performance of any function under subsections (1) and (2) of this section, the Superintendent shall have regard to any guidelines that may be issued from time to time by the Secretary for Justice.

“(4) Any direction given under subsection (1) of this section may be revoked at any time by the Superintendent of the penal institution in which the inmate is detained.”

(2) Section 21A of the principal Act (as so inserted) is hereby further amended by adding the following subsection:

“(9) In this section references to persons sentenced to imprisonment include references to persons on whom imprisonment is imposed (whether by committal, sentence, or order) for non-payment of a sum of money or for disobedience of a Court order or for contempt of Court.”

(3) Every direction for the release of an inmate given under section 21A of the principal Act and in force immediately before the date of the commencement of this Act shall be deemed to have been given under that section (as amended by this section) by the Superintendent of the penal institution in which the inmate is detained.

(4) The following enactments are hereby consequentially repealed:

- (a) Subsections (1), (2), (3) (a), (3) (b), and (3) (c) of section 3 of the Penal Institutions Amendment Act 1963:
- (b) Section 2 (3) (a) of the Criminal Justice Amendment Act 1963:
- (c) Section 22 of the Penal Institutions Amendment Act 1978:
- (d) Section 6 of the Penal Institutions Amendment Act 1980.

11. Appeals by inmates against decisions relating to release to work—(1) The principal Act is hereby amended by repealing section 21B (as inserted by section 2 of the Penal Institutions Amendment Act 1961), and substituting the following section:

“21B. (1) Any inmate who is dissatisfied with any decision of the Superintendent made pursuant to subsection (1) of section 21A of this Act, or any condition imposed by the Superintendent pursuant to subsection (2) of that section, may apply to the appropriate District Prisons Board constituted under the Criminal Justice Act 1985 for a review of the decision, and the Board shall review the decision as soon as practicable.

“(2) On reviewing any such decision or condition, the Board may confirm, reverse, or modify the Superintendent’s decision or any condition imposed by the Superintendent.

“(3) On any such review, both the inmate and the Superintendent shall be entitled to be heard.

“(4) Notwithstanding anything in section 132 of the Criminal Justice Act 1985, no Superintendent of a penal institution shall act as a member of the District Prisons Board for the purpose of hearing any review under this section.

“(5) Where the District Prisons Board reverses or modifies any decision of the Superintendent on review under this section, the Superintendent shall give such direction, or impose, modify, or cancel such conditions, under section 21A of this Act as may be necessary to give effect to the Board’s decision.”

(2) Section 3 (3) (d) of the Penal Institutions Amendment Act 1963 is hereby consequentially repealed.

12. Earnings of employed inmate—(1) Section 21C of the principal Act (as inserted by section 2 of the Penal Institutions Amendment Act 1961) is hereby amended by omitting from subsection (3) the words “this section”, and substituting the words “section 21A of this Act”.

(2) Section 21C of the principal Act (as so inserted) is hereby further amended by inserting in subsection (4) (e), after the word “fine”, the words “or reparation”.

(3) Section 21C of the principal Act (as so inserted) is hereby further amended by repealing subsections (5) and (6), and substituting the following subsections:

“(5) Where any Superintendent of an institution is satisfied that an inmate of that institution—

“(a) Has failed to observe any condition imposed on the inmate’s release under section 21A of this Act; or

“(b) Has failed to work satisfactorily for any period during which the inmate is released under that section; or

“(c) Has failed, without lawful excuse, to return before or at the expiry of any period for which the inmate was released,—

the Superintendent may as a disciplinary measure pay into the Public Account a sum not exceeding \$100 from any money that is held to the credit of the inmate and that has been paid to the Secretary under subsection (1) or subsection (2) or subsection (3) of this section, and that sum shall be forfeited to the Crown and shall not be applied or paid under subsection (4) or subsection (6) of this section:

“Provided that the Superintendent shall not pay any sum into the Public Account under this section until the inmate has

been informed of the reason for the proposed payment and has been given an opportunity to make an explanation to the Superintendent or to an Inspector of Penal Institutions.

“(6) Any sum held to the credit of an inmate and not applied or forfeited in accordance with subsection (4) or subsection (5) of this section shall be paid by the Secretary to the inmate on his or her release, or, if the inmate is released on conditions under Part VI of the Criminal Justice Act 1985, by such instalments and at such times as shall be determined by the probation officer under whose supervision the inmate then is.”

(4) Section 3 (3) (e) of the Penal Institutions Amendment Act 1963 is hereby consequentially repealed.

13. Transfer of inmates from one institution to another—(1) Section 22 of the principal Act is hereby amended by repealing subsection (2) (as added by section 3 of the Penal Institutions Amendment Act 1976).

(2) Section 3 of the Penal Institutions Amendment Act 1976 is hereby consequentially repealed.

14. Transfer of corrective training inmate to prison—(1) Section 23 of the principal Act (as substituted by section 8 of the Penal Institutions Amendment Act 1975) is hereby amended by omitting from subsection (1) the word “medically”, and substituting the words “, by reason of his physical or mental condition,”.

(2) Section 23 of the principal Act (as so substituted) is hereby further amended—

(a) By omitting from subsection (2) the words “Minister is satisfied on the recommendation of the Secretary for Justice”, and substituting the words “Secretary for Justice is satisfied”:

(b) By omitting from that subsection the word “Minister” where it secondly occurs, and substituting the words “Secretary for Justice”.

(3) Section 23 of the principal Act (as so substituted) is hereby further amended by omitting from subsection (4) the word “Minister”, and substituting the words “Secretary for Justice”.

15. Removal of inmate for judicial purposes—(1) The principal Act is hereby amended by repealing section 26, and substituting the following section:

“26. (1) An inmate may be brought up for trial, summary hearing, or sentence (or for any bail application, remand, adjournment, or other ancillary proceeding), and may be

removed by or under the direction of the Superintendent from one institution to another or from one place of confinement to another for such purpose or for the purpose of undergoing sentence.

“(2) Where—

“(a) An inmate is charged with an offence, not being the offence for which the inmate is in custody; or

“(b) In any other case the interests of justice require the attendance for judicial purposes of an inmate,—

any Court or Judge or Registrar may, by order in writing, direct the Superintendent of the institution in which the inmate is detained to bring the inmate or cause the inmate to be brought before the Court or, as the case may require, to arrange the attendance of the inmate for those judicial purposes, as often as may be necessary; and the Superintendent shall obey the order.

“(3) For the purposes of producing an inmate in accordance with an order given under subsection (2) of this section, the inmate may be held in custody in any institution (other than one of the kind in which the inmate is required or permitted by law to be detained) or a police station for not more than 7 days or such longer period as the Court or Judge or Registrar thinks necessary or expedient and directs in the order.

“(4) The Court or Judge or Registrar making any order under subsection (2) of this section shall, if the order is made in a civil proceeding, and may, if it is made in any other proceeding, require any person applying for the order to deposit a sum sufficient to pay the expenses of bringing the inmate before the Court or, as the case may require, arranging the attendance of the inmate for judicial purposes and returning the inmate to the institution in which he or she is required by law to be detained, including the expenses of the inmate’s maintenance and custody from the time the inmate leaves the institution until the time he or she is so returned.

“(5) In this section ‘attendance for judicial purposes’, in relation to an inmate, means the attendance of that inmate, whether as a party or as a witness,—

“(a) Before any Court; or

“(b) Before any tribunal constituted by or under any enactment; or

“(c) At any meeting or examination convened or conducted under the authority of any enactment.”

(2) Section 11 of the Penal Institutions Amendment Act 1975 is hereby consequentially repealed.

16. Length of sentence—(1) The following enactments are hereby repealed:

- (a) Section 29 of the principal Act and the heading above that section:
- (b) Section 30 of the principal Act:
- (c) Sections 31 and 31A of the principal Act (as substituted by section 14 (1) of the Penal Institutions Amendment Act 1975).

(2) The following enactments are hereby consequentially repealed:

- (a) Section 3 of the Penal Institutions Amendment Act 1961:
- (b) Section 14 of the Penal Institutions Amendment Act 1975:
- (c) The Penal Institutions Amendment Act (No. 2) 1978:
- (d) Sections 10 and 11 of the Penal Institutions Amendment Act 1980.

17. Powers of Visiting Justice in relation to offences by inmates—(1) Section 33 (3) of the principal Act is hereby amended by repealing paragraph (a) (as substituted by section 15 of the Penal Institutions Amendment Act 1975), and substituting the following paragraph:

“(a) Postponement for a specified period of any eligibility of the inmate for remission of sentence in accordance with section 80 of the Criminal Justice Act 1985 in respect of any sentence that the inmate is then serving; but no period of postponement shall exceed the shorter of the following periods:

“(i) Three months; or

“(ii) A period which by itself or when added to such other period or periods of postponement as there may be affecting the same sentence is equal to one-half of the term already served under the sentence.”.

(2) Section 33 (3) (e) of the principal Act is hereby repealed.

(3) Section 33 (5) of the principal Act (as added by section 15 (3) of the Penal Institutions Amendment Act 1975) is hereby repealed.

(4) The following enactments are hereby consequentially repealed:

- (a) Section 15 (1) of the Penal Institutions Amendment Act 1975:
- (b) Section 4 (1) of the Penal Institutions Amendment Act 1979.

(5) For the purposes of the principal Act and of the Criminal Justice Act 1985, the postponement by a Visiting Justice, at

any time before the commencement of this Act, for a specified period of any eligibility of the inmate for release in accordance with section 31 of the principal Act shall be deemed to be a postponement for the same period of any eligibility of the inmate for remission of sentence in accordance with section 80 of the Criminal Justice Act 1985.

18. Powers of Superintendent in relation to certain offences by inmates—(1) Section 34 (3) of the principal Act is hereby amended by repealing paragraph (a) (as substituted by section 16 (1) of the Penal Institutions Amendment Act 1975), and substituting the following paragraph:

“(a) Postponement for a specified period of any eligibility of the inmate for remission of sentence in accordance with section 80 of the Criminal Justice Act 1985 in respect of any sentence that the inmate is then serving; but no period of postponement shall exceed the shorter of the following periods:

“(i) Seven days; or

“(ii) A period which by itself or when added to such other period or periods of postponement as there may be affecting the same sentence is equal to one-half of the term already served under the sentence:”.

(2) Section 34 (3) (e) of the principal Act is hereby repealed.

(3) Section 34 (5) of the principal Act (as added by section 16 (3) of the Penal Institutions Amendment Act 1975) is hereby repealed.

(4) The following enactments are hereby consequentially repealed:

(a) Section 16 (1) of the Penal Institutions Amendment Act 1975:

(b) Section 4 (2) of the Penal Institutions Amendment Act 1979.

(5) For the purposes of the principal Act and of the Criminal Justice Act 1985, the postponement by the Superintendent, at any time, before the commencement of this Act, for a specified period of any eligibility of the inmate for release in accordance with section 31 of the principal Act shall be deemed to be a postponement for the same period of any eligibility of the inmate for remission of sentence in accordance with section 80 of the Criminal Justice Act 1985.

19. Superintendent to deliver calendar of persons committed for trial—Section 39 of the principal Act is hereby repealed.

20. Subsidies to after-care associations—Section 43 of the principal Act is hereby repealed.

21. Regulations—(1) Section 45 (2) of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraph:

“(ca) Without limiting anything in paragraph (c) of this subsection, requiring the separation of accused persons and convicted persons who are under the age of 20 years from such persons who are of or over that age, except in circumstances specified in the regulations:”.

(2) Section 45 (2) (g) of the principal Act (as substituted by section 2 of the Penal Institutions Amendment Act 1981) is hereby repealed.

22. Pre-release hostels—(1) The Penal Institutions Amendment Act 1978 is hereby repealed.

(2) Section 14 of the Penal Institutions Amendment Act 1980 is hereby consequentially repealed.

(3) The repeal by subsection (1) of this section of the Penal Institutions Amendment Act 1978 shall not affect the amendment effected by section 25 of that Act of section 41A of the principal Act.

23. Consequential amendments and repeal—(1) Section 2 of the Juries Act 1981 is hereby amended by repealing the definition of the term “pre-release hostel”.

(2) Section 8 (h) (iii) of the Juries Act 1981 is hereby amended by omitting the words “or pre-release hostel”.

(3) Section 2 (1) of the Summary Offences Act 1981 is hereby amended by omitting from the definition of the term “prison officer” the words “; and includes any Warden, officer, or employee of a pre-release hostel appointed under section 4 of the Penal Institutions Amendment Act 1978”.

(4) The Penal Institutions Amendment Act 1981 is hereby consequentially repealed.