



Corrections (Contract Management of Prisons) Amendment Act 2009

Public Act 2009 No 59
Date of assent 7 December 2009
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Corrections (Contract Management of Prisons) Amendment Act 2009.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act amended**
This Act amends the Corrections Act 2004.

Part 1
Amendments to allow contract management of prisons

- 4 Interpretation**
Section 3(1) is amended by inserting the following definition in its appropriate alphabetical order:
“**prison management contract** means a contract for the management of a corrections prison entered into pursuant to section 198(1)”.

5 New sections 198 to 199K substituted

Sections 198 and 199 are repealed and the following sections substituted:

“198 Management of prisons under contract

- “(1) The chief executive may from time to time, in the name and on behalf of the Crown, enter into a contract with any other person for the management, by that other person, of a corrections prison.
- “(2) The chief executive must not, without the prior written consent of the Minister in each case,—
- “(a) enter into a prison management contract; or
 - “(b) agree to an extension of the term of a prison management contract.
- “(3) No prison may be managed by a person other than the Crown except under a prison management contract.

“Compare: 1954 No 51 s 4A

“199 Requirements of prison management contracts

- “(1) Every prison management contract must provide for—
- “(a) objectives and performance standards for the contractor in relation to the management of the prison that are no lower than the standards applicable to prisons managed by the department; and
 - “(b) objectives and performance standards for the contractor in relation to the management and care of prisoners in the prison that are no lower than the standards applicable to prisoners in prisons managed by the department; and
 - “(c) the appointment or engagement by the contractor of—
 - “(i) a suitable person as manager of the prison, which appointment or engagement must be subject to approval by the chief executive; and
 - “(ii) sufficient suitable staff members to enable the contractor to carry out the contractor’s statutory and contractual obligations in relation to the prison; and
 - “(d) the training to be provided, at the expense of the contractor, to staff members of the prison, which training must be—

- “(i) to the standard appropriate for the particular position; and
- “(ii) to a standard no lower than the standard of training received by staff members of prisons managed by the department; and
- “(e) the co-ordination of services and processes of the prison with those of prisons managed by the department and by other contractors, including any co-ordination necessary for the operation of any systems established to implement the requirements of sections 47 and 48; and
- “(f) the arranging and maintenance by the contractor of adequate insurance against the contractor’s liability for any claims arising out of, or in connection with, the contract; and
- “(g) the avoidance of conflicts of interest that might arise in relation to the exercise or performance, by the contractor or any staff member of the prison, of any power, duty, or function conferred or imposed by or under the contract, or by or under this Act or any regulations made under this Act; and
- “(h) the provision by the contractor of programmes designed—
 - “(i) to ascertain and address the causes of prisoners’ offending; and
 - “(ii) to assist the reintegration of prisoners into society; and
- “(i) the respective obligations (including financial obligations) of the parties to the contract in relation to any voluntary organisations that undertake work in the prison; and
- “(j) the management of the prison pending the resolution of any dispute between the chief executive and the contractor in relation to the prison; and
- “(k) the termination of the contract for breach of contract; and
- “(l) the obligations of the contractor, in the event of the termination or expiry of the contract, to co-operate with the chief executive and to comply with any instructions issued by the chief executive in order to ensure the or-

- derly and efficient transfer of the management of the prison.
- “(2) Every prison management contract must impose on the contractor, in relation to the management of the prison, a duty to comply with—
- “(a) the requirements of this Act, of any regulations made under this Act, and of any instructions or guidelines issued by the chief executive under section 196, in so far as those requirements are applicable to contract prisons; and
 - “(b) the requirements of the New Zealand Bill of Rights Act 1990, as if the prison were a prison managed by the department; and
 - “(c) the requirements of the Public Records Act 2005, as if records relating to the prison and to prisoners in the prison were records created or received by the department; and
 - “(d) all relevant international obligations and standards; and
 - “(e) the requirements of sections 56(1) and (2) and 58(3) of the State Sector Act 1988 (which relate to personnel and equal employment policies), as if the contractor were the chief executive of a department within the meaning of that Act and as if those requirements applied, not only in respect of employees of a contractor, but in respect of all staff members of a contract prison.
- “(3) A prison management contract may contain other provisions, as agreed between the chief executive and the contractor, that are not inconsistent with—
- “(a) this Act; or
 - “(b) any regulations made under this Act; or
 - “(c) any instructions or guidelines issued by the chief executive under section 196 that are or will be applicable to the prison.

“Compare: 1954 No 51 s 4B

“199A Delegation of powers and functions of contractor

Without limiting sections 41 and 42 of the State Sector Act 1988, but subject to section 10 of this Act, those sections of that Act apply in relation to a contract prison as if—

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

“Compare: 1954 No 51 s 3A

“199B Liability of contractor

- “(1) The Crown is entitled to be indemnified by a contractor—
 - “(a) against any claim arising out of any act or omission of the contractor, or the contractor’s employees or agents, for which the Crown is held liable (in whole or in part); and
 - “(b) for any act or omission of the contractor, or the contractor’s employees or agents, that results in damage to, or loss of, any property of the Crown.
- “(2) For the purposes of determining the liability of the Crown or the contractor for any act or omission of a contractor or a contractor’s employees or agents, neither the contractor nor the contractor’s employees or agents are to be treated as agents of the Crown.
- “(3) This section does not limit any other right to indemnification that may be provided in a prison management contract.

“Compare: 1954 No 51 s 4C

“199C Subcontractors

- “(1) A contractor may subcontract any of its management responsibilities under a prison management contract only with the prior written approval of the chief executive and only to the extent permitted by an approval of that kind.
- “(2) An approval granted by the chief executive under subsection (1) may be granted subject to any conditions that the chief executive thinks fit.
- “(3) If, with the approval of the chief executive, any management responsibility of a contractor under a prison management contract is subcontracted to any person, the provisions of this Act, of any regulations made under this Act, and of any instructions or guidelines issued by the chief executive under section 196, in so far as those provisions relate to that management re-

sponsibility, apply to the subcontractor as if that subcontractor were the contractor.

“Compare: 1954 No 51 s 4E

“199D Reporting responsibilities

- “(1) If there is any variation of the controlling interests in a contractor, that contractor must promptly give notice of that variation to the chief executive and to the monitor appointed in respect of that prison under section 199E(1)(a).
- “(2) The manager of a contract prison must, at any intervals (not exceeding 4 months) that are determined by the chief executive, arrange for written reports on the following matters to be prepared and forwarded to the chief executive and to the monitor appointed in respect of that prison under section 199E(1)(a):
- “(a) the training provided to staff members of the prison (including the amount and quality of that training), and the level of training achieved by those staff members:
 - “(b) the number and nature of complaints made by prisoners at the prison, and how those complaints were resolved:
 - “(c) the number and nature of any incidents in the prison involving—
 - “(i) violence against any person; or
 - “(ii) self-inflicted injuries to prisoners of the prison:
 - “(d) the programmes provided for prisoners at the prison, and the extent of attendance at, and completion of, those programmes by prisoners:
 - “(e) the employment provided for prisoners by or at the prison:
 - “(f) the skills gained by prisoners as a result of employment or education provided by or at the prison:
 - “(g) the compliance, by staff members of the prison, with the requirements of sections 83, 84, 85, 87, and 88:
 - “(h) the exercise, by officers of the prison, of the powers conferred by sections 98 to 101:
 - “(i) the number and nature of—
 - “(i) any disciplinary proceedings taken against prisoners at the prison; and
 - “(ii) any disciplinary actions taken against staff members of the prison:

- “(j) the reasons for, and outcomes of, disciplinary proceedings or disciplinary actions, including any penalties imposed:
 - “(k) the operation of random-testing programmes in the prison:
 - “(l) any matters relating to the financial management of the prison that the chief executive from time to time determines, which may include the provision of financial forecasts and audited accounts:
 - “(m) any other matters in respect of which the chief executive reasonably considers that information is necessary to enable the chief executive to carry out his or her responsibilities under this Act or any other enactment.
- “(3) The manager of a contract prison must, promptly after the occurrence in that prison of any of the events specified in subsection (4), arrange for a written report on that occurrence to be prepared and forwarded to the chief executive and to the monitor appointed in respect of that prison under section 199E(1)(a).
- “(4) The events are—
- “(a) any escape or attempted escape by a prisoner:
 - “(b) the death of a prisoner.
- “(5) Nothing in subsections (1) to (4) limits any other duty to report that is imposed by or under any prison management contract or by or under any other provision of this Act or of any other enactment.
- “Compare: 1954 No 51 s 4F

“199E Monitors

- “(1) The chief executive—
- “(a) must appoint, under the State Sector Act 1988, 1 monitor in respect of each contract prison; and
 - “(b) may appoint, under the State Sector Act 1988, 1 or more additional monitors in respect of a contract prison, to assist the monitor appointed under paragraph (a).
- “(2) The chief executive may appoint, under the State Sector Act 1988, 1 or more monitors for particular purposes specified by the chief executive.

- “(3) The monitor appointed under subsection (1)(a) in respect of a contract prison—
- “(a) is responsible to the chief executive for the assessment and review of the management of that prison; and
 - “(b) must report to the chief executive, at any intervals (not exceeding 4 months) that are determined by the chief executive, and at any other time that the monitor considers appropriate, on—
 - “(i) the management of that prison; and
 - “(ii) whether or not the contractor responsible for the management of that prison is complying with that contractor’s prison management contract and with the provisions of this Act, and any regulations made under this Act, and any instructions or guidelines issued by the chief executive under section 196 that are applicable to the prison.
- “(4) A monitor appointed under subsection (1)(a) may, at any time that he or she considers appropriate, make recommendations to the chief executive on any matters relating to the contract prison in respect of which the monitor is appointed.
- “(5) A monitor appointed under subsection (2) may, at any time that he or she considers appropriate, make recommendations to the chief executive on any matters relating to any prison.
- “(6) The office of monitor may be combined with any other office, appointment, or position if the chief executive is satisfied that the duties of that other office, appointment, or position are not incompatible with the duties of a monitor.
- “(7) The chief executive must ensure a regular change of the monitor or monitors appointed under subsection (1) in respect of each contract prison.

“Compare: 1954 No 51 s 4G

“**199F Accommodation and access**

- “(1) Every contractor must ensure that there is available in the contract prison managed by that contractor suitable office accommodation for use by the monitor or monitors appointed under section 199E(1) in respect of that prison.
- “(2) Every contractor must ensure that any monitor has free and unfettered access at all times to—

- “(a) every part of the contract prison managed by that contractor; and
 - “(b) all prisoners in that prison; and
 - “(c) all persons who work in that prison, but only when they are actually in the prison; and
 - “(d) all records held by the contractor that relate to—
 - “(i) that prison; or
 - “(ii) any prisoner or former prisoner; or
 - “(iii) any staff member or former staff member of that prison.
- “(3) Despite subsection (2), a monitor must not be given access to the medical records of any person unless that person consents to that access.
- “Compare: 1954 No 51 s 4H

“199G Monitors to report on certain matters

- “(1) Without limiting section 199E(3), the monitor appointed in respect of a contract prison under section 199E(1)(a) must, for the purposes of the report under section 199E(3)(b), review the following matters:
- “(a) determinations made under Part 1 of the Parole Act 2002 of—
 - “(i) the start date, expiry date, non-parole period, and release date of sentences; and
 - “(ii) the parole eligibility date and statutory release date of offenders:
 - “(b) calculations made under Part 1 of the Parole Act 2002 of how much time an offender has served under a sentence of imprisonment, including records and determinations of how much time an offender has spent in pre-sentence detention:
 - “(c) reports made by the manager of the prison for the purposes of section 43(1) of the Parole Act 2002:
 - “(d) in respect of sections 57 to 61 of this Act,—
 - “(i) compliance by officers of that prison with the requirements of those sections; and
 - “(ii) if any function, duty, or power of the chief executive under those sections has been delegated to any officer or officers of that prison, the per-

- formance of that function or duty, or the exercise of that power:
- “(e) work undertaken by prisoners at the direction of the prison manager under section 66:
 - “(f) decisions made by the prison manager (whether or not under delegated authority) under—
 - “(i) sections 53 and 54 (which relate to the transfer of prisoners); and
 - “(ii) sections 62 to 64 (which relate to the temporary release from custody of prisoners and the temporary removal of prisoners from prison):
 - “(g) decisions of officers of the prison to apply, under section 45 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, for an assessment of a prisoner:
 - “(h) the procedures in place to assess—
 - “(i) the suitability of persons for appointment or engagement under section 11(2) and (4) in the prison; and
 - “(ii) the ongoing suitability of persons so appointed or engaged:
 - “(i) the matters in respect of which the monitor is entitled to receive a report under section 199D(2) or (3).
- “(2) Without limiting section 199E(3), a monitor appointed in respect of a contract prison under section 199E(1)(a) may, at the request of the chief executive or on the monitor’s own initiative, investigate any matter relating to that prison, or any prisoner in that prison, and report to the chief executive the results of that examination.
- “(3) A monitor appointed in respect of a contract prison under section 199E(1)(b) may, at the request of the monitor appointed in respect of the prison under section 199E(1)(a), or at the request of the chief executive, investigate any matter relating to that prison, or any prisoner in that prison, and report to that person the results of that investigation.
- “(4) A monitor appointed for a particular purpose under section 199E(2) may, at the request of the chief executive or on the monitor’s own initiative, investigate any matter relating to any

1 or more prisons, or any prisoner in any prison, and report to the chief executive the results of that investigation.

“Compare: 1954 No 51 s 4I

“199H Control of contract prison in emergency

- “(1) This section applies if the chief executive believes, on reasonable grounds,—
- “(a) that either—
 - “(i) there exists in respect of any contract prison an emergency affecting the safety or health of the prisoners or any class or group of prisoners, or the security of the prison; or
 - “(ii) there is an imminent threat of such an emergency; and
 - “(b) that the contractor responsible for the management of that prison is unwilling or unable to immediately deal with that emergency or, as the case requires, that threat to the satisfaction of the chief executive.
- “(2) If this section applies, the chief executive may take over the management of the contract prison from the contractor for any period that the chief executive considers necessary in order to deal with the emergency or threatened emergency, and for that purpose the chief executive—
- “(a) has and may exercise and perform, in respect of the prison, all the powers, functions, and duties that would otherwise be exercisable or performed by the contractor;
 - “(b) has all other powers that are necessary or desirable.
- “(3) If the chief executive takes over the management of a contract prison under this section, the chief executive must immediately give written notice to the contractor of that action, and of the reasons for that action.
- “(4) Without limiting any other remedy available to the chief executive (whether under the prison management contract or otherwise), if the chief executive acts under subsection (2), then, unless it would be unreasonable or unfair in the circumstances,—

- “(a) the chief executive is entitled to be reimbursed by the contractor for any costs and expenses incurred in taking that action; and
 - “(b) those costs and expenses are recoverable as a debt due to the Crown.
- “(5) This section applies despite anything in any prison management contract, and nothing in this section limits or affects—
- “(a) any other right or remedy available to the chief executive or the Crown, whether under any prison management contract or otherwise; or
 - “(b) any liability of the contractor under the prison management contract or otherwise.
- “(6) Neither the chief executive, nor the Crown, nor any other person acting by or under the authority of the chief executive is under any civil or criminal liability for anything the chief executive or any such person may do or fail to do in the course of the exercise or performance or intended exercise or performance of any powers, functions, or duties under this section, unless it is shown that the chief executive or that other person acted, or failed to act, in bad faith.

“Compare: 1954 No 51 s 4J

“199I Prison management contracts to be presented to House of Representatives

- “(1) Within 12 sitting days after a prison management contract is entered into, the Minister must present a copy of that contract to the House of Representatives.
- “(2) Within 12 sitting days after a prison management contract is varied or renewed, the Minister must present a copy of the terms of that variation or renewal to the House of Representatives.

“Compare: 1954 No 51 s 4L

“199J Release of prisoner information to and by contract prisons

- “(1) For the purposes of enabling the chief executive or any staff member of the department to exercise or perform any of his or her powers, duties, or functions, the chief executive or any staff member of the department may access any information

that is held (or deemed for the purposes of the Official Information Act 1982 to be held) by a contract prison and that relates to that contract prison or to any prisoner.

- “(2) For the purposes of enabling any staff member of a contract prison to exercise or perform any of his or her powers, duties, or functions, any staff member of a contract prison may have access to any information that is held (or deemed for the purposes of the Official Information Act 1982 to be held) by the department and that relates to any prisoner.
- “(3) If the department is authorised by any enactment to access or to disclose information relating to any prisoner,—
- “(a) a staff member of a contract prison is authorised to access or disclose that information as if the contract prison were a part of the department; and
 - “(b) the chief executive may require the contractor to access or disclose that information.

“Compare: 1954 No 51 s 41G

“199K Transferring staff who are contributors to Government Superannuation Fund

- “(1) This subsection applies to any person who—
- “(a) is employed by a contractor to work in a contract prison; and
 - “(b) immediately before that employment was a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956.
- “(2) A person to whom subsection (1) applies is deemed to continue to be employed in the Government service, for the purposes of the Government Superannuation Fund Act 1956, for so long as that person continues to work in a contract prison.
- “(3) The provisions of the Government Superannuation Fund Act 1956 apply to a person described in subsections (1) and (2) in all respects as if service with a contractor were Government service.
- “(4) This subsection applies to any person who—
- “(a) is employed by a contractor to work in a contract prison; and

- “(b) immediately before that employment was a contributor to the Government Superannuation Fund under Part 6B of the Government Superannuation Fund Act 1956.
- “(5) A person to whom subsection (4) applies is deemed to continue to be a member of the Prisons Service, for the purposes of the Government Superannuation Fund Act 1956, for so long as that person continues to work in a contract prison.
- “(6) The provisions of the Government Superannuation Fund Act 1956 apply to a person described in subsections (4) and (5) in all respects as if service with a contractor were service as a member of the Prisons Service.
- “(7) Subject to the Government Superannuation Fund Act 1956, nothing in subsections (1) to (6) entitles a person to become a contributor to the Government Superannuation Fund after that person has ceased to be a contributor.
- “(8) For the purposes of applying the Government Superannuation Fund Act 1956 to a person who is a contributor to the Government Superannuation Fund, and who is in the service of a contractor, the term **controlling authority**, in relation to that person, means that contractor.”

6 Sections 209 to 220 and heading above section 209 repealed

Sections 209 to 220 and the italicised heading above section 209 are repealed.

Part 2
Transitional provision and consequential amendments

7 Transitional matters

- (1) Any transfer of the management of a prison between the department and a contractor does not affect the completion of a matter or thing that relates, or the bringing or completion of proceedings that relate, to an existing right, interest, title, immunity, or duty.
- (2) Despite subsection (1), the contractor and the chief executive, in the name and on behalf of the Crown, may make any arrangements that they consider necessary or desirable to deter-

mine the respective liabilities of the Crown and the contractor in relation to any matter referred to in subsection (1).

8 Consequential amendments

- (1) The principal Act is consequentially amended in the manner set out in Part 1 of the Schedule.
 - (2) The enactments specified in Part 2 of the Schedule are consequentially amended in the manner set out in that Part of the Schedule.
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Schedule

Consequential amendments

s 8

Part 1

Consequential amendments to principal Act

Section 3(1)

Definition of **contract prison**: omit “management contract entered into under section 4A of the Penal Institutions Act 1954” and substitute “prison management contract”.

Definition of **contractor**: omit “management contract entered into under section 4A of the Penal Institutions Act 1954” and substitute “prison management contract”.

Definition of **monitor**: omit “section 215” and substitute “section 199E(1) or (2)”.

Section 7(1)

Paragraph (e): omit and substitute:

- “(e) presenting a copy of the terms of any prison management contract, and of the terms of any variation to a prison management contract, to the House of Representatives in accordance with section 199I.”

Section 10(j)

Omit “section 215” and substitute “section 199E(1) or (2)”.

Section 179(b)

Omit “a contract under section 4A of the Penal Institutions Act 1954” and substitute “a prison management contract”.

Section 190(3)(a)(i)

Omit “section 214(2) or (3) (and, if applicable, the reports forwarded to the chief executive under section 4F(2) or (3) of the Penal Institutions Act 1954)” and substitute “section 199D(2) and (3)”.

Part 1—*continued*

Section 190(3)(a)(ii)

Omit “section 215(2)(b) (and, if applicable, the reports made to the chief executive under section 4G(2)(b) of the Penal Institutions Act 1954)” and substitute “section 199E(3)(b)”.

Part 2

Consequential amendments to other enactments

Corrections Regulations 2005 (SR 2005/53)

Regulation 6(3): insert “prison” before “management”.

District Courts Act 1947 (1947 No 16)

Section 11B(2)(d): omit “management contract entered into under section 4A of the Penal Institutions Act 1954” and substitute “prison management contract entered into under section 198(1) of the Corrections Act 2004”.

Juries Act 1981 (1981 No 23)

Section 8(ha): omit “management contract entered into under section 4A of the Penal Institutions Act 1954” and substitute “prison management contract entered into under section 198(1) of the Corrections Act 2004”.

Legislative history

12 March 2009	Introduction (Bill 20–1)
26 March 2009	First reading and referral to Law and Order Committee
25 September 2009	Reported from Law and Order Committee (Bill 20–2)
17 November 2009	Second reading
24 November 2009	Committee of the whole House, third reading
7 December 2009	Royal assent

This Act is administered by the Ministry of Justice.
