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Public Safety (Public Protection Orders) Act 2014

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Commencement see section 2

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Public Safety (Public Protection Orders) Act 2014.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Detention and supervision of persons posing very high risk of imminent serious sexual or violent offending

Subpart 1—Interpretation, objective, and principles

3 Interpretation

In this Act, unless the context otherwise requires,—

chief executive means the chief executive of the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act

coercive power—

- (a) means a power that authorises a residence manager, staff member of a residence, or a corrections officer to use force; and
- (b) includes the powers conferred by any of sections 63 to 68 and 71 to 74

contract residence means a residence that is for the time being managed under a residence management contract

controlled drug has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975

corrections officer has the same meaning as the term officer in section 3(1) of the Corrections Act 2004

court means the High Court

department means the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Corrections Act 2004

deputy residence manager means a person appointed or engaged as the deputy manager of a residence under section 115

determinate sentence has the same meaning as determinate sentence of imprisonment in section 4(1) of the Sentencing Act 2002

electronic communication device—

- (a) means an electronic communication device (other than a device used to assist with a disability) that is capable of any or all of the following actions:
 - (i) transmitting sound:
 - (ii) computing information:
 - (iii) functioning as a telephone:
 - (iv) communicating in any other way using any technology (including telecommunication, radiocommunication, Internet, and broadcasting technology); and
- (b) includes any part of an electronic communication device (for example, a SIM card) regardless of whether the part—
 - (i) is capable of any of the actions specified in paragraph (a); and
 - (ii) is detachable and may be used in other electronic communication devices; and
- (c) includes any device that enables or facilitates the functioning of an electronic communication device (for example, a recharger or charging device)

guidelines or instructions means guidelines or instructions provided under section 120

health assessor means a health practitioner who—

- (a) is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine, and who is a practising psychiatrist; or
- (b) is a registered psychologist

imminent, in relation to the commission of serious sexual or violent offences by a person, means that the person is expected to commit such an offence as soon as he or she has a suitable opportunity to do so

inspector means an inspector appointed under section 127

interim detention order means an order made under section 107

Judge means a Judge of the High Court

lawyer has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006

management plan, in relation to a resident, means the plan prepared for the resident, under section 42, as varied from time to time under this Act

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

mentally disordered has the same meaning as in the Mental Health (Compulsory Assessment and Treatment) Act 1992

Minister means the Minister of the Crown for the time being responsible for the department

precursor substance has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975

prison has the same meaning as in section 3(1) of the Corrections Act 2004

prison detention order means an order made under section 85

probation officer means an officer appointed by the chief executive in accordance with section 24 of the Corrections Act 2004

prohibited item, in relation to a resident, means—

- (a) any article that could, while in the possession of the resident, be harmful to that resident or to any other person:
- (b) any medicines (within the meaning of section 3 of the Medicines Act 1981), except for medicines prescribed for the resident under that Act:
- (c) any controlled drugs and precursor substances, except for medicines prescribed for the resident under the Medicines Act 1981:
- (d) any psychoactive substance:
- (e) any alcohol:
- (f) any other intoxicating substance:
- (g) any tobacco:
- (h) any equipment used for smoking tobacco or any other substance:
- (i) any electronic or non-electronic material that the residence manager reasonably considers to be pornographic:

- (j) any electronic or non-electronic representation, which the residence manager reasonably considers to be inappropriate, of a naked or partially naked person who is or appears to be under 18 years of age:
- (k) any computer or other electronic device on which a prohibited item is stored:
- (l) any electronic communication device:
- (m) any thing that could be used for the purpose of facilitating the escape from lawful custody of any person:
- (n) any article or substance that could be used for the purpose of altering the results of a drug or alcohol test:
- (o) any live animal:
- (p) any other article or substance that the resident is not permitted to possess under rules made under section 119

protective supervision order means an order made under section 93

psychoactive substance has the same meaning as in section 9 of the Psychoactive Substances Act 2013

public protection order means an order made under section 13

registered psychologist means a health practitioner who is, or is deemed to be, registered with the Psychologists Board continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of psychology

residence means a residence established under section 114

residence management contract means a contract for the management of a residence entered into under section 130

residence manager or **manager** means a person appointed or engaged as the manager of a residence under section 115, and includes a deputy residence manager appointed under that section

resident means a person subject to a public protection order but not to a prison detention order

respondent, in relation to an application for a public protection order, means the person against whom the order is sought

review panel means the review panel established by section 122

rub-down search has the same meaning as in section 89 of the Corrections Act 2004

scanner search has the same meaning as in section 91 of the Corrections Act 2004

serious sexual or violent offence means an act committed before, on, or after the commencement of this section that—

- (a) is committed in New Zealand and is—

- (i) a sexual crime under Part 7 of the Crimes Act 1961 punishable by 7 or more years' imprisonment, including a crime under section 144A or 144C of that Act; or
 - (ii) an offence against any of sections 172 to 177, 188, 189(1), 191, 198 to 199, 208 to 210, 234, 235, and 236 of the Crimes Act 1961; or
- (b) is committed overseas and would come within the description of paragraph (a) if it had been committed in New Zealand

serious sexual or violent offending means the commission of 1 or more serious sexual or violent offences

staff member, in relation to a residence, means a person appointed under section 115(1)(c) or (2)(c)

strip search has the same meaning as in section 90 of the Corrections Act 2004

threshold, in relation to a public protection order, has the meaning given to it by section 7

victim means a person—

- (a) who is a victim of a serious sexual or violent offence committed by a person—
 - (i) who is a respondent to an application made by the chief executive under this Act; or
 - (ii) who is subject to an order made under this Act; and
- (b) who has asked for notice or advice of matters or decisions or directions, and copies of orders and conditions, and has given his or her current address, under section 31 of the Victims' Rights Act 2002

x-ray search has the same meaning as in section 92 of the Corrections Act 2004.

Section 3 **controlled drug**: inserted, on 15 May 2017, by section 4(1) of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

Section 3 **medical practitioner**: inserted, on 15 May 2017, by section 4(1) of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

Section 3 **precursor substance**: inserted, on 15 May 2017, by section 4(1) of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

Section 3 **prohibited item** paragraph (c): replaced, on 15 May 2017, by section 4(2) of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

Section 3 **prohibited item** paragraph (d): replaced, on 15 May 2017, by section 4(2) of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

Section 3 **psychoactive substance**: inserted, on 15 May 2017, by section 4(1) of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

4 Objective of Act

- (1) The objective of this Act is to protect members of the public from the almost certain harm that would be inflicted by the commission of serious sexual or violent offences.
- (2) It is not an objective of this Act to punish persons against whom orders are made under this Act.

5 Principles

Every person or court exercising a power under this Act must have regard to the following principles:

- (a) orders under this Act are not imposed to punish persons and the previous commission of an offence is only 1 of several factors that are relevant to assessing whether there is a very high risk of imminent serious sexual or violent offending by a person:
- (b) a public protection order should only be imposed if the magnitude of the risk posed by the respondent justifies the imposition of the order:
- (c) a public protection order should not be imposed on a person who is eligible to be detained under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003:
- (d) persons who are detained in a residence under a public protection order should have as much autonomy and quality of life as possible, while ensuring the orderly functioning and safety within the residence.

6 Act binds the Crown

This Act binds the Crown.

Subpart 2—Public protection orders

Imposition of public protection orders

7 Threshold for imposition of public protection order

- (1) A person aged 18 years or older meets the threshold for the imposition of a public protection order if—
 - (a) the person—
 - (i) is detained in a prison under a determinate sentence for a serious sexual or violent offence; and
 - (ii) must be released from detention not later than 6 months after the date on which the chief executive applies for a public protection order against the person; or
 - (b) the person is subject to an extended supervision order and—

- (i) is, or has been, subject to a condition of full-time accompaniment and monitoring imposed under section 107K of the Parole Act 2002; or
- (ii) is subject to a condition of long-term full-time placement in the care of an appropriate agency, person, or persons for the purposes of a programme under sections 15(3)(b) and 16(c) of the Parole Act 2002; or
- (c) the person is subject to a protective supervision order; or
- (d) the person—
 - (i) has arrived in New Zealand within 6 months of ceasing to be subject to any sentence, supervision conditions, or order imposed on the person for a serious sexual or violent offence by an overseas court; and
 - (ii) has, since that arrival, been in New Zealand for less than 6 months; and
 - (iii) resides or intends to reside in New Zealand; or
- (e) the person—
 - (i) has committed a serious sexual or violent offence; and
 - (ii) in respect of that offence,—
 - (A) has been determined to be a returning prisoner under the Returning Offenders (Management and Information) Act 2015; or
 - (B) is a returning offender to whom subpart 3 of Part 2 of that Act applies; and
 - (iii) is subject to release conditions under the Returning Offenders (Management and Information) Act 2015.
- (2) For the purposes of this Act, a person meets the threshold for a public protection order if the person meets the threshold at the time that the chief executive applies for that order against the person.
- (3) In this section, **extended supervision order** means an order imposed, whether before, on, or after the commencement of this section, under section 107I of the Parole Act 2002 on a person who was an eligible offender (within the meaning of section 107C(1) of that Act) because the person had been sentenced to imprisonment for a relevant offence (within the meaning of that section) that is also a serious sexual or violent offence (within the meaning of section 3).

Section 7(1)(d)(iii): amended, on 18 November 2015, by section 36(2) of the Returning Offenders (Management and Information) Act 2015 (2015 No 112).

Section 7(1)(e): inserted, on 18 November 2015, by section 36(3) of the Returning Offenders (Management and Information) Act 2015 (2015 No 112).

8 Chief executive may apply for public protection order

- (1) The chief executive may apply to the court for a public protection order against a person who meets the threshold for such an order on the ground that there is a very high risk of imminent serious sexual or violent offending by the person.
- (2) As soon as practicable after an application is made under subsection (1), the chief executive must advise every victim of the respondent that the application has been made.

9 Reports by health assessors

The application under section 8 must be accompanied by at least 2 reports that—

- (a) have been separately prepared by health assessors, at least one of whom is a registered psychologist; and
- (b) address the questions whether—
 - (i) the respondent exhibits to a high level each of the 4 characteristics described in section 13(2); and
 - (ii) there is a very high risk of imminent serious sexual or violent offending by the respondent.

10 Right to independent expert assessment

- (1) The court may, on its own initiative, direct a health assessor selected by the court to assess the respondent.
- (2) The respondent may request a health assessor selected by the respondent to assess the respondent.
- (3) A health assessor who assesses a respondent in accordance with a direction or request under this section must prepare a report that addresses the questions stated in section 9(b).
- (4) The report may also comment on the reports of health assessors that the chief executive has served on the respondent.
- (5) Where the respondent has been granted legal aid for responding to the application for the public protection order, the fees and expenses of preparing the assessment report under this section must be met out of the grant of legal aid.
- (6) Where the court directs a health assessor under this section in a case where the respondent has not been granted legal aid, the fees and expenses of preparing the assessment report must be met out of public money appropriated by Parliament for the purpose.

11 Issue of summons to attend hearing

A Judge or the Registrar of the High Court may from time to time issue a summons requiring the respondent to an application for a public protection order to attend at a specified date and time for the hearing of the application.

12 Assessment whether respondent mentally disordered or intellectually disabled

- (1) This section applies where a court is satisfied that it could make a public protection order against a respondent and it appears to the court that the respondent may be mentally disordered or intellectually disabled.
- (2) The court may, instead of making a public protection order, direct the chief executive to consider the appropriateness of an application in respect of the respondent under section 45 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or under section 29 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.
- (3) Where the court gives a direction under subsection (2), the court must, if the respondent is not then detained under section 107, order the interim detention of the respondent under that section.
- (4) For the purposes of any application under section 45 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or under section 29 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 made as a result of the consideration directed under subsection (2) and for any determination arising out of such an application, the respondent is taken to be detained in a prison under an order of committal.

13 Court may make public protection order

- (1) After considering all of the evidence offered in a proceeding on an application for a public protection order, and, in particular, the evidence given by 2 or more health assessors, including at least 1 registered psychologist, the court may make a public protection order against the respondent if the court is satisfied, on the balance of probabilities, that—
 - (a) the respondent meets the threshold for a public protection order; and
 - (b) there is a very high risk of imminent serious sexual or violent offending by the respondent if,—
 - (i) where the respondent is detained in a prison, the respondent is released from prison into the community; or
 - (ii) in any other case, the respondent is left unsupervised.
- (2) The court may not make a finding of the kind described in subsection (1)(b) unless satisfied that the respondent exhibits a severe disturbance in behavioural functioning established by evidence to a high level of each of the following characteristics:
 - (a) an intense drive or urge to commit a particular form of offending;
 - (b) limited self-regulatory capacity, evidenced by general impulsiveness, high emotional reactivity, and inability to cope with, or manage, stress and difficulties:

- (c) absence of understanding or concern for the impact of the respondent's offending on actual or potential victims (within the general sense of that term and not merely as defined in section 3):
- (d) poor interpersonal relationships or social isolation or both.

14 Notification of victims

As soon as practicable after an application for a public protection order is determined or suspended, the chief executive must advise every victim of the respondent of the outcome of the application.

Review by review panel

15 Review of public protection order by review panel

- (1) During the currency of a public protection order, the review panel must review the continuing justification of the order—
 - (a) within 1 year after the order is made; and
 - (b) then—
 - (i) within every succeeding year after the most recent previous review of the order by the review panel; but
 - (ii) if an application (other than an application for leave) under section 16 or 17 is pending before the court, within 1 year after the date on which the application is determined or withdrawn.
- (2) If the review panel considers that there may no longer be a very high risk of imminent serious sexual or violent offending by the person subject to the public protection order, the review panel may direct the chief executive to apply to the court for a review of the order under section 16.
- (3) Where, in the case of a resident, the review panel does not give a direction under subsection (2), the review panel—
 - (a) must review the management plan of the resident to ascertain whether the plan continues to be appropriate; and
 - (b) may make any recommendations to the manager of the residence in which the resident is required to stay.

Review by court

16 Application by chief executive for review of public protection order

- (1) During the currency of a public protection order, the chief executive must apply to the court for a review of the continuing justification of the order—
 - (a) within 5 years after the order is made; and
 - (b) then, within 5 years after the first review; and
 - (c) then, at intervals of not more than 5 years; and

- (d) whenever the review panel directs the chief executive to apply.
- (2) Despite subsection (1)(c), the court may direct that the chief executive apply for any subsequent reviews at intervals of not more than 10 years.
- (3) For the purpose of calculating any period specified in subsection (1) or (2), if the court grants leave for an application under section 17, the period is suspended until the application is determined or withdrawn.
- (4) As soon as practicable after an application is made under subsection (1), the chief executive must advise every victim of the person subject to the public protection order that the application has been made.

17 Application for review by person subject to public protection order

- (1) A person who is subject to a public protection order may, with the leave of the court, apply to the court for a review of the order.
- (2) As soon as practicable after an application is made under subsection (1), the chief executive must advise every victim of the person subject to the public protection order that the application has been made.

18 Review of public protection order

- (1) On a review of a public protection order, the court must be provided with all reports provided to the review panel and may call for any further or supplementary reports from any person, including, without limitation, from—
 - (a) the chief executive:
 - (b) if the person subject to the order is required to stay in a residence, the manager of the residence:
 - (c) if the person subject to the order is detained in a prison, the manager of the prison:
 - (d) any health assessor.
- (2) The court must consider whether there still is a very high risk of imminent serious sexual or violent offending by the person subject to the public protection order.
- (3) In its consideration under subsection (2), the court must take into account whether the reports provided to the court indicate that the person continues to exhibit a severe disturbance in behavioural functioning of the kind described in section 13(2).
- (4) If, following its consideration under subsection (2), the court is satisfied, on the balance of probabilities, that there no longer is a very high risk of imminent serious sexual or violent offending by the person subject to the public protection order, the court must make a finding to that effect.
- (5) The chief executive must advise every victim of the person subject to the public protection order of the outcome of the review.

19 Review of management plan

If, on a review of a public protection order relating to a resident, the court does not make a finding under section 18(4), the court—

- (a) must review the management plan of the resident to ascertain whether the plan continues to be appropriate; and
- (b) may make any recommendations to the manager of the residence in which the resident is required to stay.

Subpart 3—Status of residents**20 Detention of residents**

A resident must stay in the residence that the chief executive designates by written notice given to the resident and to the manager of that residence.

21 Legal custody of residents

- (1) The chief executive has the legal custody of every resident.
- (2) Legal custody under subsection (1) of a resident commences as soon as a Judge pronounces an interim detention order or a public protection order and continues while the resident—
 - (a) is detained in a residence; or
 - (b) is for any reason outside the residence under the control or supervision of any of the following persons who is acting under the authority of the Act:
 - (i) the manager;
 - (ii) a staff member of the residence;
 - (iii) a corrections officer or Police employee acting under section 73(1).

Compare: 2004 No 50 s 38(1)

22 Residents must obey lawful directions

A resident must comply with every lawful direction given to him or her by—

- (a) the residence manager; or
- (b) a staff member of the residence; or
- (c) a corrections officer or Police employee acting under section 73(1).

Compare: 2004 No 50 s 40

23 Residents may not possess prohibited items

- (1) A resident may not possess a prohibited item.
- (2) If the residence manager is satisfied that an item found in, or sent or delivered to, the residence, or found in the course of a search under section 63 or 64, is a prohibited item, the manager must take possession of, and retain, the item.

- (3) The residence manager may deal with any item taken and retained under subsection (2) as the manager considers appropriate, including by—
 - (a) giving it to the Police; or
 - (b) giving it to a person (other than a resident) who appears to be entitled to it; or
 - (c) destroying it.
- (4) This section does not apply to any item that is in the possession of, or that is delivered to, a resident who is permitted to possess the item in accordance with a permission given under rules made under section 119.

24 Transfers between residences

A resident may be transferred, on the direction of the chief executive given after considering the advice of the manager of the residence and any other advice the chief executive considers appropriate, from a residence to any other residence for 1 or more of the following reasons:

- (a) to ensure the safety of the resident or of other persons who are in, or who visit, the residence:
- (b) where the residence in which the resident lived has been destroyed or has become uninhabitable:
- (c) where the risk posed by the resident has lessened, to allow the resident to live in a residence with fewer restrictions:
- (d) to place the resident in a residence closer to his or her family:
- (e) to respond to the needs of that resident, as identified in the management plan:
- (f) to facilitate medical or psychiatric care for the resident:
- (g) to reduce the risk of self-harm by the resident if he or she is identified as being at risk:
- (h) to reduce the risk to the resident if he or she is identified as being vulnerable to mistreatment by other residents:
- (i) to grant a request by a resident for a transfer.

Compare: 2004 No 50 s 54

25 Information to be given to residents about transfers

- (1) A resident must, at least 7 days before a proposed transfer, be informed of the location of the new residence to which the resident is to be transferred, and the reasons for the proposed transfer.
- (2) Subsection (1) does not apply if—
 - (a) there are reasonable grounds to believe the resident to be transferred will create a management difficulty before the transfer is made or as a result of the transfer; or

- (b) the transfer is being made because there are reasonable grounds to believe that the safety of the resident or others at the residence within which the resident currently resides is at risk.
- (3) If the resident has been transferred to a new residence without having been informed of the reasons beforehand, the resident must be informed of those reasons as soon as practicable after he or she is transferred to the new residence.
- (4) The resident may, not later than 1 month after he or she is transferred to a new residence, request the chief executive in writing to review the decision to transfer the resident.
- (5) On receiving a request under subsection (4), the chief executive must review the decision to transfer the resident and inform the resident of the outcome of the review.

26 Leave

- (1) The chief executive may grant a resident leave of absence from the residence in which he or she is detained for a specified time for any of the following purposes:
 - (a) to undergo or receive medical or dental examinations or treatment;
 - (b) to attend hearings in proceedings under this Act to which the resident is a party;
 - (c) to attend any other hearings in a proceeding if the attendance of the resident is required by the court or under an enactment;
 - (d) to attend a rehabilitation programme identified in the resident's management plan;
 - (e) for humanitarian reasons.
- (2) In deciding whether to grant leave under subsection (1)(d) and (e), the chief executive must have regard to—
 - (a) whether the risk of serious sexual or violent offending during the duration of the leave is reasonably manageable; and
 - (b) the extent to which the resident must be supervised while absent; and
 - (c) the benefit of the proposed leave to the resident and others.
- (3) During the resident's absence from the residence, the resident must be escorted and supervised by a person who has been directed to do so under section 73(1).

Rights of residents

27 Rights of residents

- (1) A resident has the rights of a person of full capacity who is not subject to a public protection order except to the extent that those rights are limited by—
 - (a) this Act; or

- (b) any rules, guidelines or instructions, or regulations made under this Act; or
 - (c) a decision of the manager taken in accordance with this section.
- (2) Without limiting the generality of subsection (1), the rights of a resident include the rights set out in sections 28 to 40.
 - (3) The manager may limit the rights of a resident to the extent reasonably necessary to prevent the resident from harming himself or herself or any other person or from disrupting the orderly functioning of the residence.
 - (4) In making a decision that affects a resident, the manager must be guided by the following principles:
 - (a) a resident must be given as much autonomy and quality of life as is compatible with the health and safety and well-being of the resident and other persons and the orderly functioning of the residence;
 - (b) a decision that adversely affects a resident must be reasonable and proportionate to the objective sought to be achieved.
 - (5) Residents must be given the opportunity to provide input into the making of rules for the residence and into the running of the residence for the purpose of the orderly functioning of the residence and the creation and maintenance of a residence community.

28 Earnings from work

- (1) A resident who is able to earn money by working in the residence or in a prison, whether in a self-employed capacity or as an employee or a contractor, may perform that work—
 - (a) in the residence, with the approval of the manager; or
 - (b) in the prison in which the residence is physically located, with the approval of the manager of that prison and the manager of the residence.
- (2) A resident to whom subsection (1) applies may retain any money earned from that work, subject to section 40.

29 Right to legal advice

- (1) A resident is entitled to obtain legal advice on his or her status as a resident and on any other relevant legal question.
- (2) A residence manager must, so far as is reasonably practicable and consistent with the safety and security of the residence,—
 - (a) ensure that a resident is provided with adequate facilities to prepare for legal proceedings to which the resident is a party; and
 - (b) facilitate contact between the resident and any person (other than another resident) who provides advice or other assistance to help the resident prepare for those proceedings.

30 Right to vote

A resident may be registered as an elector in accordance with the Electoral Act 1993 and may vote, within the residence, at elections in accordance with that Act, the Local Electoral Act 2001, or any enactment under which a referendum is held.

31 Recreational and cultural activities

A resident may participate in recreational, educational, and cultural activities within the residence.

32 Right to receive and send written communications

Subject to section 45, every resident is entitled to be promptly given any written communications received for the resident and to the prompt dispatch of any written communications put out by the resident for posting.

33 Access to media

- (1) A resident must be given access to news media (for example, newspapers, television, or radio) and, if Internet facilities are available in the residence, to Internet sites approved by the manager.
- (2) Subsection (1) does not entitle a resident to unsupervised access to the Internet or to the use of email.

34 Visitors and oral communications with people outside residence

- (1) A resident may, subject to any conditions or restrictions imposed by the residence manager, receive visits from persons who are for the time being permitted by the manager to visit the resident.
- (2) All visits to residents must be supervised unless the residence manager permits a particular visit to be unsupervised in order to meet the resident's rehabilitative needs.
- (3) Subsection (2) does not apply to a visit to a resident by an inspector, or a specified office holder within the meaning of section 128(4), or a lawyer of the resident.
- (4) A resident must be allowed access to a telephone or other electronic communication device to communicate with persons with whom such communications are permitted by the manager.
- (5) Subsection (4) is subject to sections 50 to 62.

Compare: SR 2005/53 r 112(1)

35 Right to medical treatment

- (1) A resident is entitled to medical treatment and other health care appropriate to his or her condition.

- (2) The standard of health care that is available to residents must be reasonably equivalent to the standard of health care available to the public.
- (3) The manager must ensure that—
 - (a) an adequate record of the care or treatment provided to a resident is maintained; and
 - (b) full medical records (including dental records) of residents or former residents are kept securely; and
 - (c) the medical record of any resident or former resident is kept separate from other information relating to the resident.

36 Right to rehabilitative treatment

A resident is entitled to receive rehabilitative treatment if the treatment has a reasonable prospect of reducing the risk to public safety posed by the resident.

37 Right to information

A resident is entitled to be informed about rules, guidelines or instructions, entitlements, obligations, and decisions that affect the resident.

38 Respect for cultural identity

A resident is entitled to be dealt with in a manner that respects the resident's cultural and ethnic identity, language, and religious or ethical beliefs.

39 Right to benefits

- (1) A resident is not disentitled from obtaining a benefit (as defined in Schedule 2 of the Social Security Act 2018).
- (2) For the purpose of calculating the benefit, the resident is taken to be a patient in a hospital (within the meaning of, as the case requires, sections 206 and 207 and Schedule 2 of that Act, or section 19(1) of the New Zealand Superannuation and Retirement Income Act 2001) for more than 13 weeks.

Section 39: replaced, on 26 November 2018, by section 459 of the Social Security Act 2018 (2018 No 32).

40 Receipts for residents to be paid into trust accounts

- (1) All money earned by a resident or due to the resident as a benefit must be paid into a trust account operated by the residence manager for the resident.
- (2) Where any money that a resident earns from work is paid into the resident's trust account, the manager must deduct from that money any amount required to be deducted under guidelines or instructions to offset the cost of the resident's care.
- (3) Residents may have access to funds held on their behalf in the trust account to dispose of as they see fit, subject to any reasonable limitation imposed in accordance with this Act.

- (4) A resident must be paid all money held exclusively for that resident in a trust account when the resident is released from the residence under section 93.
- (5) If a resident dies while in legal custody, any money held for that resident in the trust account must be paid to the executor or administrator of the resident's estate.

Subpart 4—Management of residents

Management plans

41 Needs assessment

- (1) As soon as practicable after a resident first commences to stay in a residence, the manager of the residence must assess the needs of the resident in consultation with the resident.
- (2) The assessment must identify—
 - (a) any special medical requirements of the resident:
 - (b) any cultural or religious needs of the resident:
 - (c) any skills or capacities of the resident:
 - (d) any educational needs of the resident:
 - (e) steps to be taken to facilitate the resident's rehabilitation and reintegration into the community.
- (3) The assessment must have regard to the resident's aspirations for his or her personal development, so far as those aspirations are compatible with his or her detention in the residence.

42 Management plans

- (1) As soon as practicable after completion of the assessment under section 41, the manager must prepare a management plan for the resident.
- (2) The plan must be prepared in accordance with any relevant guidelines or instructions.
- (3) The plan must set out—
 - (a) the reasonable needs of the resident based on the assessment completed under section 41:
 - (b) the extent to which, and manner in which, those needs can reasonably be met within the residence:
 - (c) a personalised management programme for the goals of the resident that will contribute towards his or her eventual release from the residence and reintegration into the community:
 - (d) the nature and extent of supervision required to protect the health and safety of the resident and others within the residence, including staff:

- (e) where any right of the resident is to be limited, the nature of, and the reasons for, the limit:
- (f) any treatment and programmes that may be offered to the resident in accordance with section 36, and that the resident elects to receive or participate in:
- (g) the intervals at which the manager must review the plan, which must not exceed 12 months:
- (h) any other matter required to be included in guidelines or instructions:
- (i) any matters, consistent with this Act and any regulations, rules, or guidelines or instructions made under it, that the manager considers necessary to meet the needs of the resident.

43 Management plan may bar communications between resident and specified persons

- (1) A provision in a resident's management plan may state that the resident—
 - (a) is not to send written communications or items to a named person or a class of persons:
 - (b) is not to receive written communications or items from a named person or a class of persons.
- (2) However, no provision in a resident's management plan may bar the resident from communicating in writing with a person described in section 46(3).

44 Reviews and variations of management plan

- (1) The manager must review a resident's management plan—
 - (a) at the intervals stated in the management plan; and
 - (b) whenever the court, the review panel, an inspector, or an Ombudsman recommends that the management plan be reviewed or changed; and
 - (c) whenever the manager receives a request, made by or on behalf of the resident, that the management plan be changed, unless the manager is satisfied that the request is frivolous or vexatious or is not made in good faith; and
 - (d) whenever the manager considers that a change in the circumstances of the resident is likely to require a change to the management plan.
- (2) If, following a review under subsection (1), the manager proposes to make a change to the management plan, the manager must consult the resident about the proposed change.
- (3) Where the review has been requested under subsection (1)(c) on behalf of the resident by another person, the consultation under subsection (2) must also include that other person.

- (4) After taking into account any views expressed in the course of the consultation under subsection (2), the manager may change any matter in the management plan that was the subject of that consultation.

Monitoring of written communications

45 Checking and withholding of written communications in certain cases

- (1) If there are reasonable grounds for believing that the receipt by, or the dispatch on behalf of, a resident of any written communication may contravene the resident's management plan or may otherwise be detrimental to the interests and treatment of the resident or of other persons, the manager of the residence may direct that the communication be checked.
- (2) If, on checking a written communication under subsection (1), the manager considers that the receipt or dispatch of the communication contravenes the resident's management plan or may otherwise be detrimental to the interests of the resident or of other persons, the manager may direct that the communication be withheld from the resident or not be dispatched, as the case requires.

Compare: 1992 No 46 ss 123(1), (2), 124(1)–(3)

46 Written communications not to be withheld if sent by or to certain persons

- (1) Despite section 45, a written communication must not be checked or withheld from a resident if it is sent by, or on behalf of, any of the persons described in subsection (3).
- (2) Despite section 45, a written communication must be dispatched, without being checked, if it is addressed to any of the persons described in subsection (3).
- (3) The persons referred to in subsections (1) and (2) are—
- (a) a member of Parliament:
 - (b) a Judge or an officer of the court, or a member or an officer of another judicial body:
 - (c) an Ombudsman:
 - (d) the Privacy Commissioner:
 - (e) the Health and Disability Commissioner:
 - (f) a Human Rights Commissioner:
 - (g) an inspector:
 - (h) a lawyer:
 - (i) a health professional:
 - (j) a minister of religion.

Compare: 1992 No 46 s 123(3)

Approval and inspection of items

47 Delivery of items must be approved

An item may not be delivered to a residence for a resident unless the delivery is approved by the residence manager.

48 Items intended for, or intended to be sent by, resident may be inspected

- (1) The residence manager may inspect any item that is—
 - (a) sent or delivered to the residence for a resident; or
 - (b) intended to be sent by the resident.
- (2) The purpose of an inspection under subsection (1) is to ascertain whether—
 - (a) the item is a prohibited item; or
 - (b) the receipt of the item by, or the dispatch of the item on behalf of, the resident concerned may—
 - (i) contravene the resident’s management plan; or
 - (ii) be otherwise detrimental to the interests and treatment of the resident or of other persons.
- (3) If the manager is satisfied, under subsection (2), that an item inspected is a prohibited item (other than an item that the resident concerned is permitted to possess under rules made under section 119), the manager must deal with the item in accordance with section 23(2) and (3).
- (4) If the manager considers that subsection (2)(b) applies to the item, the manager may direct that the item be withheld from the resident or not be dispatched, as the case requires.

Written communications or items withheld or not sent

49 Procedure where written communication or item withheld or not sent

- (1) If, under section 45, the residence manager withholds from a resident a written communication or, under section 48(4), withholds an item from a resident, the communication or item must be dealt with as follows:
 - (a) if the address of the sender is known to the manager, it must be returned to the sender;
 - (b) if the address of the sender is not known to the manager, it must either be—
 - (i) sent to an inspector; or
 - (ii) produced to the inspector when he or she next visits the residence after the receipt of the communication or item.
- (2) If the manager directs, under section 45 or 48(4), that a written communication or an item not be dispatched, the communication or the item must either be—

- (a) sent to an inspector; or
 - (b) produced to the inspector when he or she next visits the residence following the manager's direction.
- (3) The manager must inform the resident that a written communication or an item has been withheld or has not been dispatched unless the manager is satisfied that to do so would be detrimental to the interests of the resident or of another person.

Telephone calls may be monitored

50 Interpretation

In this section and in sections 51 to 61, unless the context otherwise requires,—

completely erased means erased so that it is not retrievable

contracted provider means a person engaged by the chief executive to provide services in connection with telephone monitoring

device, in relation to a telephone call, includes any answering machine, computer, fax, printer, tape recorder, or telephone

disclose a resident call means to disclose the substance, meaning, or purport of a resident call, or of any part of it; and includes—

- (a) to allow any person to listen to or read a recording of a resident call; and
- (b) to give or lend to any person a recording of a resident call

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

exempt call means a resident call to which section 53 applies

information includes data in digital form

monitor means to do any or all of the following:

- (a) listen to, record, and take notes from:
- (b) listen to, read, and take notes from a recording of

recording, in relation to a resident call, means any means by which all or any part of the call has been captured; and includes—

- (a) a copy or printout of such a means:
- (b) a transcript, written translation, or written translation of a transcript, of the call:
- (c) a copy of a recording of a transcript, written translation, or written translation of a transcript, of the call

resident call—

- (a) means any information transmitted by means of a telephone call to which a resident is a party that is conducted while the resident is in the residence; and
- (b) includes part of a resident call

telephone call means a call made, using any part or parts of 1 or more telephone systems, between a device and any other device or devices

telephone system includes a telephone network

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

Compare: 2004 No 50 s 111

51 Purposes of monitoring resident calls

- (1) The principal purpose of monitoring resident calls is to increase the safety of the community by making it easier to—
 - (a) prevent and discourage the commission of offences by, for the benefit of, or with the help or encouragement of, residents; and
 - (b) detect and investigate offences committed by, for the benefit of, or with the help or encouragement of, residents; and
 - (c) prosecute, convict, and punish—
 - (i) residents 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, residents; and
 - (d) prevent and discourage escapes from residences.
- (2) Monitoring resident calls also has the purpose of making it easier to—
 - (a) maintain the security, good order, and discipline of residences; and
 - (b) protect the safety of residents.

Compare: 2004 No 50 s 112

52 Resident calls that may be monitored

- (1) Any resident call that is not an exempt call may be monitored under this Act.
- (2) An exempt call may be monitored under this Act if the person undertaking the monitoring does not have reasonable grounds to believe that it is an exempt call.
- (3) A person listening to a resident call or a recording of a resident call under this Act who forms the view that there are reasonable grounds to believe that it is an exempt call—
 - (a) must promptly stop listening to it; and

- (b) must take all practicable steps to ensure that every recording of it is destroyed or completely erased.
- (4) Subsection (2) is subject to subsection (3).
Compare: 2004 No 50 s 113

53 Certain resident calls must not be monitored

- (1) A resident call to which subsection (2) applies is exempt from monitoring under this Act.
- (2) This subsection applies to a resident call if, and only if, it is—
 - (a) a call between a resident and a member of Parliament; or
 - (b) a call, relating to the resident's legal affairs, between a resident and a lawyer—
 - (i) who acts for the resident; or
 - (ii) with whom the resident is discussing the possibility of the person's acting for the resident; or
 - (c) a call between a resident and a person acting, in respect of the resident, in an official capacity as—
 - (i) an Ombudsman; or
 - (ii) an inspector; or
 - (iii) the Health and Disability Commissioner; or
 - (iv) the Privacy Commissioner; or
 - (v) a member of the Human Rights Commission continued by section 4 of the Human Rights Act 1993, or an employee of the Commission; or
 - (vi) a member of the Independent Police Conduct Authority; or
 - (vii) the Children's Commissioner; or
 - (viii) a Justice of the Peace; or
 - (d) a call between a resident and a person acting, in his or her official capacity, on behalf of the International Criminal Court; or
 - (e) a call between a resident and a person (other than a resident) who—
 - (i) is a person of a kind or description for the time being exempted from monitoring under this Act by the Governor-General by Order in Council (being an order specifying a purpose or purposes for which the exemption is granted); and
 - (ii) is acting for a purpose specified in the order; or
 - (f) a call between a resident and a person (other than a resident) for the time being exempted from monitoring under this Act by the chief executive.

- (3) An order under subsection (2)(e)(i) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 2004 No 50 s 114

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives, unless it relates exclusively to an individual (in which case a transitional exemption applies under Schedule 1 of the Legislation Act 2019)	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 53(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

54 Only certain persons may monitor resident calls

- (1) No person other than the chief executive or a person who is an eligible employee authorised by the chief executive to monitor resident calls (in subsection (2), and sections 56, 57, and 59 referred to as an **authorised person**) may monitor a resident call under this Act.
- (2) A person authorised to monitor resident calls under subsection (1) ceases to be an authorised person if—
- (a) the chief executive cancels the authority; or
 - (b) the person ceases to be an eligible employee.
- (3) A person to whom subsection (4) applies may listen to a resident call or a recording of a resident call, or read a transcript of a resident call, if doing so is necessary for, or incidental to any other action or process necessary for, the effective undertaking of the work concerned.
- (4) This subsection 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—
- (a) by or from which recordings of resident calls are made; or
 - (b) in which recordings of resident calls are stored.
- (5) Subsection (1) is subject to subsection (2) and to section 56(4) to (6).

Compare: 2004 No 50 s 115

55 Warnings

The chief executive must take all practicable steps to ensure that,—

- (a) on or reasonably promptly after being admitted to a residence, residents are informed in writing—
 - (i) that some of their telephone calls may be monitored; and
 - (ii) which types of call are exempt from monitoring; and

- (iii) the purposes for which information obtained from monitoring may be used; and
- (b) there are prominently placed in every residence, near telephones that residents are authorised to use, written notices—
 - (i) warning residents that their telephone calls (other than exempt calls) may be monitored; and
 - (ii) stating in general terms the purposes for which information obtained from monitoring may be used; and
- (c) at the start of every outward resident call that is being or is to be monitored, the resident hears, and there is transmitted to the device to which the call is made, a message to the effect that the call may be monitored.

Compare: 2004 No 50 s 116

56 Authorised disclosure of information

- (1) An authorised person may disclose a resident call for a purpose set out in section 51 as a purpose of monitoring resident calls.
- (2) An authorised person may disclose a resident call if the authorised person believes on reasonable grounds that the disclosure—
 - (a) is necessary to avoid prejudice to the maintenance of the law by a public sector agency (within the meaning of the Privacy Act 2020), including the prevention, detection, investigation, prosecution, and punishment of offences; or
 - (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 and imminent threat to public health, public safety, or the life or health of any person; or
 - (d) has been authorised by the Privacy Commissioner under section 30 of the Privacy Act 2020.
- (3) An authorised person may disclose a resident call to the resident concerned.
- (4) An authorised person who is listening to a resident call may allow any eligible employee to listen to the call for the purpose of interpreting it.
- (5) An authorised person may allow any eligible employee to listen to a recording of a resident for the purpose of providing a transcript, a written translation, or both.
- (6) An authorised person may allow any eligible employee to read a transcript of a resident call for the purpose of providing a written translation.

Compare: 2004 No 50 s 117

Section 56(2)(a): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Section 56(2)(d): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

57 Restrictions on disclosure of information

- (1) An authorised person must not knowingly disclose a resident call otherwise than under section 56 or in accordance with the Privacy Act 2020.
- (2) An authorised person who is listening to a resident call must not knowingly allow any other person to listen to it, except under section 56.
- (3) An eligible employee (other than an authorised person) who, under section 56, has been allowed to listen to a resident call or a recording of a resident call, or to read a transcript of a resident call, must not knowingly disclose the call except to an authorised person.
- (4) A person who, under section 56(2), has heard a resident call or a recording of a resident call, or read a transcript of a resident call, must not knowingly disclose the call except to an authorised person.

Compare: 2004 No 50 s 118

Section 57(1): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

58 Application of Privacy Act 2020

The Privacy Act 2020 applies to the monitoring of resident calls under sections 51 to 61.

Section 58: replaced, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

59 Destruction of recordings

- (1) The chief executive must take all practicable steps to ensure that every recording of a resident call held by the chief executive is destroyed, or completely erased,—
 - (a) on or before the expiration of the period of 6 months after the call was made; or
 - (b) as soon after that expiration as it appears that no information contained in it would be likely to be—
 - (i) required for the purposes of an investigation into an offence or possible offence; or
 - (ii) required for the purposes of an investigation into the possibility that an offence may be committed in the future; or
 - (iii) required for evidence in a prosecution or possible prosecution for an offence; or
 - (iv) required to be disclosed under the Privacy Act 2020.
- (2) Despite subsection (1), 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 the recording, the recording must not be destroyed or erased in accordance with that subsection until the Privacy Commissioner has notified the chief executive in writing that the complaint has—
 - (a) not been proceeded with; or

- (b) been finally disposed of.
- (3) The Commissioner of Police or, as the case may be, the chief executive or board of a public service agency must take all practicable steps to ensure that every recording of a resident call held by the Police or that department that was obtained by the monitoring of the call under this Act is destroyed, or completely erased, as soon as it appears that no proceedings (or no further proceedings) will be taken in which any information contained in it would be likely to be required to be produced in evidence.
- (4) Nothing in subsections (1) and (3) applies to any record of any information adduced in proceedings in any court or tribunal.
- (5) Subsection (6) applies if—
- (a) 2 or more recordings of resident calls are stored in such a way that it is not practicable to destroy or completely erase one without destroying or completely erasing the others; and
- (b) subsection (1) requires the destruction or complete erasure of 1 or more, but not all, of them.
- (6) If this subsection applies, an authorised person may arrange for the recording or recordings that are not required to be destroyed or completely erased to be copied, so that the copy or copies may be retained and all the recordings may be destroyed or completely erased.
- (7) Any copy made in accordance with subsection (6) is admissible in evidence to the same extent that the destroyed recording it is a copy of would have been.
- (8) For the purpose of subsection (3),—
- (a) **public service agency** has the meaning given to it in section 5 of the Public Service Act 2020:
- (b) if the recording referred to in subsection (3) 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 its host department or, as the case may be, servicing department.

Compare: 2004 No 50 s 120

Section 59(1)(b)(iv): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Section 59(2): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Section 59(3): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 59(8): inserted, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

60 Notice to be given of intention to produce evidence of recording

Particulars of a recording of a resident call must not be received in evidence by any court against any person unless the party intending to offer it has given the person reasonable notice of the party's intention to do so, together with—

- (a) either—
 - (i) a transcript of the recording, if the party intends to offer it in the form of a recording; or
 - (ii) a written statement setting out the full particulars of the recording, if the party intends to offer oral evidence of it; and
- (b) a statement of the time, place, and date of the call, and of the names and addresses of the parties to the call, if they are known.

Compare: 2004 No 50 s 121

61 Privileged evidence

- (1) This subsection applies to evidence that—
 - (a) has been obtained by the monitoring of a resident call under sections 51 to 60; and
 - (b) but for the monitoring, would have been privileged by virtue of—
 - (i) any provision of subpart 8 of Part 2 of the Evidence Act 2006; or
 - (ii) any rule of law governing legal professional privilege.
- (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.

Compare: 2004 No 50 s 122

Restrictions on contacts with persons outside residence

62 Visits from, or oral communication with, certain persons may be excluded

- (1) The residence manager may decline to permit a resident to receive visits from any person or to communicate orally with any person if there are reasonable grounds for believing that such visits or communications are likely to be harmful to the resident or to any other person or to the orderly functioning of the residence.
- (2) The residence manager must not permit a person who is, or who appears to be, under the age of 18 years to visit a resident unless the manager considers that the visit is likely to meet the resident's rehabilitative needs.
- (3) Visits from, or oral communications with, a person specified in section 46(3) may not be declined, but any visit that, in the opinion of the residence manager unduly interferes with the programme of the residence, may be rescheduled to a reasonable time and date agreed on by the manager, the visitor, and the resident.

- (4) Any decision taken under subsection (1) or (2) must be recorded in a register as prescribed in guidelines or instructions.

Searches

63 Search of residents and residence

- (1) For the purpose of detecting a prohibited item or an item that may endanger the health and safety of a resident or any other person, the residence manager, a staff member of the residence, or a corrections officer may conduct—
 - (a) a search of any resident:
 - (b) a search of any item carried by, or in the possession of, any resident:
 - (c) a search of the residence or any part of the residence:
 - (d) a search of any item that is in, or is taken or delivered to, the residence.
- (2) A search conducted under subsection (1) may take the form of a rub-down search, a scanner search, or an x-ray search, but may only include a strip search of the resident if the person conducting the search has reasonable grounds for believing that the resident has in his or her possession any prohibited item or an item that may endanger the health and safety of a resident or any other person.
- (3) Every resident may be strip searched by the residence manager, a staff member of the residence, or a corrections officer when the resident enters or leaves the residence or the prison within which the residence is physically located.
- (4) Despite subsections (1) and (2), a corrections officer may not search a resident while the resident is in the residence.
- (5) Despite subsection (2), a resident may not be strip searched under that subsection by a person other than the residence manager without the prior approval of that manager.
- (6) Any search conducted under this section must comply with any guidelines or instructions issued that are relevant to the conduct of searches.

64 Search of persons other than residents

- (1) The residence manager or a staff member of the residence may, for the purpose of detecting any prohibited item, conduct a scanner search of any person who wishes to enter the residence or who is in the residence.
- (2) If the residence manager or a staff member of the residence has reasonable grounds to suspect that any person who wishes to enter a residence or who is in a residence has in his or her possession any prohibited item, the residence manager or the staff member may, with that person's consent, conduct a rub-down search of that person.
- (3) Any person who refuses to submit to a scanner search or to a rub-down search—
 - (a) must be refused admission to the residence:

- (b) if the person is already inside the residence, may be required to leave the residence.

Compare: 2004 No 50 s 99(1), (3), (4)

65 Authority to search property

- (1) Authority conferred by this Act to conduct a scanner search of any person includes the authority to search any item carried by, or in the possession of, that person.
- (2) Authority conferred by this Act to conduct a rub-down search of any person includes the authority to search—
 - (a) any item carried by, or in the possession of, that person:
 - (b) any outer clothing removed, raised, lowered, or opened for the purposes of the search:
 - (c) any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search.
- (3) Authority conferred by this Act to conduct a strip search or x-ray search of any resident includes the authority to search—
 - (a) any item of clothing removed, raised, lowered, or opened for the purposes of the search:
 - (b) any item carried by, or in the possession of, that resident.
- (4) Authority conferred by this Act to search any item includes the authority to use any force that is reasonable in the circumstances for the purpose of breaking open that item.
- (5) Authority to search a residence or an item includes the authority to use an aid or aids such as a chemical substance or x-ray or imaging equipment or some other mechanical, electrical, or electronic device, or other similar aid.

Compare: 2004 No 50 s 96(1)–(3), (6), (7)

66 Use of dogs for searching

- (1) In exercising any power of search conferred by this Act, the residence manager, a staff member of the residence, or a corrections officer conducting the search may have with him or her, and use for the purposes of searching, any dog.
- (2) Any dog used for searching must be under the control of—
 - (a) the residence manager, a staff member of the residence, or a corrections officer conducting the search; or
 - (b) any other person (being a constable, an officer of Customs, or any member of the Armed Forces) who may accompany the person conducting the search for the purposes of that search.
- (3) When a dog is used for the purposes of searching any person, the person who has control of the dog must not allow that dog to come into physical contact with the person being searched.

- (4) The residence manager, staff member of the residence, or corrections officer who uses a dog for the purposes of searching a person must conduct the search with decency and sensitivity and in a manner that affords to the person being searched the greatest degree of dignity consistent with the purpose of the search.

Compare: 2004 No 50 s 97

67 Taking and inspecting items appearing to be prohibited

- (1) If, in the course of a search under section 63 or 64, the residence manager suspects on reasonable grounds that an item is a prohibited item, the manager may take possession of the item, by force if necessary.
- (2) The manager may retain any item taken under subsection (1) for the purpose of inspecting the item.
- (3) If the residence manager is not satisfied that an item taken under subsection (1) is a prohibited item, or considers that the resident concerned is permitted to possess the item in terms of a permission given under rules made under section 119, the residence manager must return the item to the person entitled to it.
- (4) If the residence manager is satisfied that the item is a prohibited item (other than an item that the resident concerned is permitted to possess in terms of a permission given under rules made under section 119), the residence manager must deal with the item in accordance with section 23(3).

Drug or alcohol tests

68 Resident may be required to submit to drug or alcohol test

- (1) If the manager has reasonable grounds to believe that a resident has used any substance that falls within any of paragraphs (b) to (d) of the definition of prohibited item in section 3, or consumed alcohol without permission, the manager may require the resident to submit to a test for the purpose of detecting whether the resident has used any of those substances or consumed alcohol, or both.
- (2) The tests administered under subsection (1) must comply with any guidelines or instructions that are relevant to the administration of such tests.
- (3) The guidelines or instructions may specify the kinds of sample that a resident may be required to supply (including, without limitation, a sample of saliva, hair, breath, or urine, or other bodily sample) and the circumstances and manner in which any sample is to be supplied.
- (4) However, in no case may a resident be required to supply a sample of his or her blood.

69 Resident must be informed of results of test

If, under section 68, a resident submits to a test, the manager must ensure that the resident is informed, promptly and in writing, of the result of the procedure.

Compare: 1954 No 51 s 36BC

70 Restrictions on use of result of test

- (1) Neither the fact that a resident has been required, under section 68, to submit to a drug or alcohol test nor any information obtained from that test is admissible as evidence against any resident or any other person in any proceedings other than any application under section 16, 17, 85, 88, or 89.
- (2) To avoid doubt, subsection (1) does not prevent any fact or information from being presented to, or considered by, the review panel.

Seclusion

71 Seclusion

- (1) For the purposes of this section, **seclusion**, in relation to a resident, means placing the resident without others in a room or other area that—
 - (a) provides a safe environment for the resident throughout the resident's stay in the room or area; but
 - (b) does not allow the resident to leave without help.
- (2) The manager may place a resident in seclusion if it is necessary to prevent the resident from doing 1 or more of the following:
 - (a) endangering the health or safety of the resident or of others;
 - (b) seriously compromising the care and well-being of other persons;
 - (c) significantly disrupting the orderly functioning of the residence.
- (3) The manager who places a resident in seclusion—
 - (a) must ensure that the resident is not placed in seclusion for longer than is necessary to achieve the purpose of placing the resident in seclusion; and
 - (b) must comply with guidelines or instructions that are relevant to placing the resident in seclusion.
- (4) The following provisions must be followed when a resident is placed in seclusion:
 - (a) in cases other than an emergency, seclusion must be authorised by the manager personally;
 - (b) in an emergency, a resident may be placed in seclusion, without the prior authority of the manager, by a person who, under a delegation given by the manager, has immediate responsibility for the resident, but that person must immediately bring the case to the attention of the manager;
 - (c) the duration and circumstances of each episode of seclusion must be recorded in a register kept in accordance with guidelines or instructions.

Compare: 2003 No 116 s 60

*Restraint***72 Restraint of residents**

- (1) A residence manager may restrain a resident if that is necessary to prevent the resident from doing 1 or more of the following:
 - (a) endangering the health or safety of the resident or of others:
 - (b) seriously damaging property:
 - (c) seriously compromising the care and well-being of the resident or of other persons:
 - (d) escaping from lawful custody.
- (2) The following provisions must be followed when a resident is restrained:
 - (a) a person exercising the power of restraint may not use a greater degree of force, and may not restrain the resident for longer, than is required to achieve the purpose for which the resident is restrained:
 - (b) no resident may be kept under mechanical restraint for more than 24 hours unless the restraint is approved in writing by a medical practitioner:
 - (c) a person exercising the power of restraint must comply with guidelines or instructions that are relevant to the restraint of the resident:
 - (d) in cases other than an emergency, the restraint of a resident must be authorised by the manager personally:
 - (e) in an emergency, a resident may be restrained, without the prior authority of the manager, by a person who, under a delegation given by the resident's manager, has immediate responsibility for the resident, but that person must immediately bring the case to the attention of the manager:
 - (f) the duration and circumstances of each episode of restraint must be recorded in a register kept in accordance with guidelines or instructions.

Compare: 2003 No 116 s 61

73 Escort of persons subject to detention orders

- (1) A staff member of the residence, corrections officer, or Police employee who is directed by the chief executive or the residence manager to escort a person subject to an interim detention order or a public protection order to or from a place or to supervise that person while outside the residence or a prison has, in relation to that person, all the powers and functions specified in subsections (2) and (3).
- (2) A person who may exercise any power under subsection (1) may use any force, and apply any mechanical restraint, that is reasonably necessary for that purpose.
- (3) The functions and powers, in relation to the person described in subsection (1), are—

- (a) preventing that person's escape from lawful custody:
- (b) preventing, or detecting and reporting on, the commission or attempted commission by that person of unlawful acts:
- (c) ensuring good order and discipline on that person's part:
- (d) attending to that person's well-being:
- (e) attending to the security of any property of that person that is in that person's possession.

Emergencies

74 Responses to security emergencies

- (1) If there is a security emergency in a residence, the manager of the prison in which the residence is physically located may, on request by the residence manager, direct 1 or more corrections officers to assist in restoring order at the residence.
- (2) A corrections officer who is directed under subsection (1) may—
 - (a) apply any physical force that is reasonably necessary to prevent residents from—
 - (i) harming, or continuing to harm, themselves or others; or
 - (ii) damaging, or continuing to damage, property; and
 - (b) detain and take to a prison any resident who appears to pose such an unacceptably high risk to the resident or to others, or to both, that the resident cannot be safely managed in the residence.
- (3) An officer who uses physical force for any of the purposes referred to in subsection (2) may not use any more physical force than is reasonably necessary in the circumstances.
- (4) A resident who is taken to a prison under subsection (2)(b) may be detained in the prison, but if the resident's detention exceeds a period of 24 hours, the chief executive must, within the next working day after the day on which that period of 24 hours expires, apply to the court, in respect of the resident, for a prison detention order and an order under subsection (5).
- (5) If it appears to the court on the papers that the application for a prison detention order against the resident is properly made, the court may make an order (an **interim prison detention order**) ordering that, while that application is pending, the resident continue to be detained in the prison.
- (6) Section 86 applies to a person who is taken to a prison under subsection (2)(b) or who is subject to an interim prison detention order as if the person were subject to a prison detention order.
- (7) The interim prison detention order ceases to have effect when the application for the prison detention order is finally determined or is discontinued.

- (8) If the court declines to grant an interim prison detention order, the resident must be immediately returned to a residence.
- (9) In this section, **security emergency** means a state of affairs, brought about by the conduct of 1 or more persons in a residence, that leads the residence manager reasonably to believe that persons or property in the residence cannot be protected from harm or damage without assistance.

Compare: 2004 No 50 s 83(2)

75 Assumption of control by manager of prison during civil defence emergency

- (1) If a civil defence emergency affects the area in which a prison and a residence are physically located, the manager of the prison may, by written notice to the manager of the residence, assume control over the residence and the residents in the residence.
- (2) Despite subsection (1), a notice under that subsection may be given orally if the manager of the prison considers that the notice is required as a matter of urgency and, in that case, the manager of the prison must provide the manager of the residence with a written record of the notice as soon as practicable.
- (3) As soon as a notice is given under subsection (1), the manager of the residence must exercise or perform his or her powers, duties, and functions under this Act subject to the direction of the manager of the prison.
- (4) A notice under subsection (1) ceases to have effect as soon as the manager of the prison informs the manager of the residence in writing that the notice is no longer required.
- (5) In this section, **civil defence emergency** means a situation that—
 - (a) is the result of any happening, whether natural or otherwise, including, without limitation, any explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, technological failure, infestation, plague, epidemic, failure of or disruption to an emergency service or a lifeline utility, or actual or imminent attack or warlike act; and
 - (b) causes or may cause loss of life or injury or illness or distress or in any way endangers the safety of persons or property.

76 Relocation of residents to prison where residence becomes uninhabitable

- (1) Where, for any reason, a residence is destroyed or becomes uninhabitable, the manager of the prison in which the residence is physically located may, on request by the residence manager, direct 1 or more corrections officers to detain and take the residents to the prison or, if that prison has also been destroyed or has become uninhabitable, to another prison.
- (2) Where 1 or more residents are taken to a prison under subsection (1), the residents may be detained in the prison, but if the residents' detention exceeds a

period of 72 hours, the chief executive must, within the next working day after the day on which that period of 72 hours expires, apply to the court under section 77 for a transitional detention warrant authorising the continued detention of those residents.

- (3) Nothing in this section limits section 75.
- (4) Section 86 applies to a person who is taken to a prison under subsection (1).

77 Transitional detention warrants

- (1) The chief executive may make 1 or more applications to the court for a transitional detention warrant in respect of 1, some, or all of the residents who have been taken to a prison under section 76.
- (2) An application for a transitional detention warrant must set out the following particulars:
 - (a) the names of the residents in respect of whom the application is made and details of the orders that have been made under this Act against each resident;
 - (b) the circumstances that led to the residents being taken to a prison under section 76;
 - (c) why it is currently impossible, or impracticable, or undesirable to transfer the residents to another residence.
- (3) The court may issue a transitional detention warrant in respect of 1 or more residents if satisfied that—
 - (a) the residence in which the residents previously resided has been destroyed or has become uninhabitable; and
 - (b) it is currently impossible, or impracticable, or undesirable to transfer the residents to another residence.
- (4) A transitional detention warrant expires on the close of the 90th day after the date on which it is issued, but the chief executive may apply for a further transitional detention warrant in respect of 1 or more residents who are subject to such a warrant.
- (5) Section 86 applies to a person to whom a transitional detention warrant applies.

Subpart 5—Inspections and complaints into alleged breaches of rights

78 Visits by inspectors

- (1) An inspector must visit each residence for which he or she is responsible at regular intervals in each year.
- (2) Each residence must be visited, under subsection (1), at least twice a year or on a greater number of occasions that the chief executive directs.
- (3) An inspector may, without previous notice, visit a residence as often as the inspector thinks fit.

- (4) An inspector may visit a residence at any time and for any length of time that the inspector thinks fit.

Compare: 1992 No 46 s 96

79 Inspectors' access to persons and documents

- (1) An inspector who visits a residence for the purposes of this Act must be given access to every part of the residence and to every person in it, whether or not that person is a resident under this Act.
- (2) The manager must present to the inspector—
- (a) every record relating to a resident, including the resident's court order and management plan; and
 - (b) every communication or item withheld by the manager under section 45 or 48(4).

Compare: 1992 No 46 s 97

80 Complaints about breaches of rights

- (1) Anyone may complain to an inspector about the breach of a resident's rights.
- (2) The manager or staff member of a residence who receives a complaint about a breach of the resident's rights must refer the complaint to an inspector.

81 Investigation by inspectors

- (1) An inspector may, on his or her own initiative or on receipt of a complaint, commence an investigation into an alleged breach of this Act or of regulations made under this Act or of any guidelines or instructions.
- (2) As soon as is reasonable in the circumstances after an inspector receives an oral or written complaint made by or on behalf of a resident, the inspector must investigate the complaint unless satisfied that the complaint is frivolous or vexatious or is not made in good faith.
- (3) If, after investigating the complaint, the inspector is satisfied that the complaint has substance, the inspector must, as soon as is reasonable in the circumstances,—
- (a) conduct an inquiry under section 83 into the complaint; or
 - (b) report the matter, together with any recommendations, to the manager.
- (4) The inspector must send a copy of any report prepared under subsection (3)(b) to the chief executive.

Compare: 2003 No 116 s 98

82 Resident to be informed of outcome of investigation

- (1) On receiving a report on an investigation under section 81(3)(b), the manager must report in writing the outcome of the investigation to—
- (a) the resident whose rights were in issue in the investigation; and

- (b) any person who complained on behalf of the resident.
- (2) If the resident is not satisfied with the outcome of the complaint, he or she may request the chief executive to examine the complaint, and the chief executive must consider if further investigation is warranted.

Compare: 1992 No 46 s 75

83 Inquiries by inspector

- (1) Any inspector may inquire into an alleged breach of this Act or of regulations made under this Act or of any guidelines or instructions.
- (2) The chief executive may direct an inspector to conduct an inquiry under subsection (1), and that inspector must comply with that direction as soon as is reasonable in the circumstances.
- (3) For the purpose of conducting an inquiry under this Act, an inspector has the same powers and authority to summon witnesses and receive evidence as are conferred on an inquiry by the Inquiries Act 2013, and the provisions of that Act, except section 28 (which relates to costs), apply accordingly.
- (4) As soon as practicable after concluding an inquiry under this section, the inspector must send a full report of the inquiry to—
 - (a) the manager and to the chief executive; and
 - (b) if applicable, the resident whose rights were in issue in the investigation; and
 - (c) if applicable, any person who complained on behalf of the resident.

Compare: 1992 No 46 s 95

84 Duty of manager to correct deficiencies

On receiving a report under section 81(3)(b) or 83(4)(a), the manager must take all steps reasonably necessary to correct every deficiency identified in the report.

Compare: 2003 No 116 s 100

Subpart 6—Prison detention orders

85 Order for detention in prison

- (1) The court may, on the application of the chief executive, order that a person subject to a public protection order be detained in a prison instead of a residence.
- (2) The court may make an order under subsection (1) only if satisfied that—
 - (a) the person would, if detained or further detained in a residence, pose such an unacceptably high risk to himself or herself or to others, or to both, that the person cannot be safely managed in the residence; and

- (b) all less restrictive options for controlling the behaviour of the person have been considered and any appropriate options have been tried.
- (3) The court may make an order under subsection (1) against a person immediately after making a public protection order against that person.
- (4) A prison detention order ceases to have effect if the person against whom it is made ceases to be subject to a public protection order.

86 Rights and obligations of person subject to prison detention order

A person who is subject to a prison detention order, during the currency of that order,—

- (a) must be treated in the same way as a prisoner who is committed to prison solely because he or she is awaiting trial; and
- (b) has the rights and obligations of such a prisoner; and
- (c) has all the rights conferred on residents by this Act, to the extent that those rights are compatible with the provisions of the Corrections Act 2004 that apply to prisoners described in paragraph (a).

Review by review panel

87 Review of prison detention orders by review panel

- (1) During the currency of a prison detention order, the review panel must review the continuing justification of the order—
 - (a) within 1 month after the order is made; and
 - (b) then—
 - (i) within every succeeding 6 months after the most recent previous review of the order by the review panel; but
 - (ii) if an application (other than an application for leave) under section 88 or 89 is pending before the court, within 6 months after the date on which the application is determined or withdrawn.
- (2) If the review panel considers that the person subject to the prison detention order is no longer eligible to have an order under section 85 imposed on him or her, the review panel may direct the chief executive to apply to the court for a review of the order under section 88.

Review by court

88 Application by chief executive for review of prison detention order

- (1) During the currency of a prison detention order, the chief executive must apply to the court for a review of the continuing justification of the order—
 - (a) within 1 year after the order is made; and

- (b) then, after the first or any subsequent review, at intervals not exceeding 1 year after each previous review; and
 - (c) whenever the review panel directs the chief executive to apply.
- (2) For the purpose of calculating any period specified in subsection (1), if the court grants leave for an application under section 89, the period is suspended until the application is determined or withdrawn.

89 Application for cancellation by person subject to prison detention order

A person who is subject to a prison detention order may, with the leave of the court, apply to the court for the cancellation of the order.

90 Court must be provided with relevant reports on person subject to prison detention order

On an application under section 88 or 89, the court must be provided with all reports provided to the review panel and may call for any further or supplementary reports by any person, including the chief executive, the manager of the prison in which the person subject to the prison detention order is detained, and any health assessor.

91 Cancellation of prison detention order

The court may, on an application under section 88 or 89, cancel a prison detention order if satisfied that the person subject to the prison detention order is no longer eligible to have an order under section 85 imposed on him or her.

92 Consequence of cancellation of prison detention order

Where, as a result of the cancellation under section 91, a person ceases to be subject to a prison detention order but continues to be subject to a public protection order, the person must be transferred from prison to a residence and then has the status, rights, and obligations of a resident under this Act.

Subpart 7—Protective supervision

92A Interpretation

In this subpart, unless the context otherwise requires,—

bodily sample means—

- (a) a sample of a person’s blood, breath, hair, or urine; or
- (b) any other sample of a similar kind from the person

drug or alcohol monitoring device means a device, connected to a person’s body, that is able to detect the presence in the person’s body of 1 or more of the following:

- (a) a controlled drug used by the person:
- (b) a psychoactive substance used by the person:

(c) alcohol consumed by the person

drug or alcohol requirement means a requirement imposed under section 94 on a person under a protective supervision order that prohibits the person from doing 1 or more of the following:

- (a) using a controlled drug (other than a medicine prescribed for the person under the Medicines Act 1981):
- (b) using a psychoactive substance:
- (c) consuming alcohol

medical laboratory technologist means a health practitioner who is, or is deemed to be, registered with the Medical Sciences Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medical laboratory science

medical officer means—

- (a) a person acting in a hospital who, in the normal course of the person's duties, takes blood specimens; or
- (b) a nurse; or
- (c) a medical laboratory technologist

nurse means a health practitioner who is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing whose scope of practice permits the performance of general nursing functions

testing of a person for a controlled drug, a psychoactive substance, or alcohol includes, without limitation, the person's permitting the collection for analysis of a bodily sample

Section 92A: inserted, on 15 May 2017, by section 5 of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

93 Replacement of public protection order with protective supervision order

- (1) Where, in the course of a proceeding under section 16 or 17, the court makes a finding under section 18(4) in respect of a person subject to a public protection order, the court must—
 - (a) cancel the public protection order; and
 - (b) impose a protective supervision order on the person.
- (2) Before the court makes the orders under subsection (1), the court must give each party an opportunity to make submissions on the requirements that should be included in the protective supervision order under section 94.
- (3) As soon as practicable after a protective supervision order is imposed on a person, the person must be released from detention in the residence or the prison, as the case may be.

- (4) If the court imposes a protective supervision order on a person, the chief executive must notify every victim of the person of that order.

94 Requirements may be included in protective supervision order

The court may include in any protective supervision order under section 93 any requirements that the court considers necessary to—

- (a) reduce the risk of reoffending by the person under protective supervision:
- (b) facilitate or promote the rehabilitation and reintegration into the community of the person under protective supervision:
- (c) provide for the reasonable concerns of victims (within the general sense of that term and not merely as defined in section 3) of the person under protective supervision.

95 Notification of requirements

Notice of any requirements imposed by the court on a person under a protective supervision order must be provided, in writing, to the following:

- (a) the person under protective supervision:
- (b) the chief executive:
- (c) the Police.

Compare: 2002 No 10 s 107K(8)

Drug or alcohol requirements

Heading: inserted, on 15 May 2017, by section 6 of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

95A Imposition, and effect, of drug or alcohol requirement

- (1) This section applies if a court imposes a drug or alcohol requirement on a person subject to a protective supervision order.
- (2) The court cannot direct, indicate, or require that the person subject to the order undergo or submit to drug or alcohol testing or continuous monitoring, but the requirement means that the person must comply with all directions arising from an authorised person giving the person notice under section 95B(2).
- (3) The court must advise the person that the person must do any 1 or more of the following things if directed to do so by notice given by an authorised person under section 95B(2):
 - (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol:
 - (b) submit to continuous monitoring of the person's compliance with the drug or alcohol requirement through a drug or alcohol monitoring device connected to the person's body:

- (c) contact an automated system, and undergo testing for a controlled drug, a psychoactive substance, or alcohol if required by a response notice given by the automated system.

Section 95A: inserted, on 15 May 2017, by section 6 of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

95B Person with drug or alcohol requirement may be directed to undergo testing or submit to continuous monitoring

- (1) This section applies to a person who is subject to a protective supervision order with a drug or alcohol requirement.
- (2) An authorised person may, by notice given to a person to whom this section applies, direct the person to do any 1 or more of the following:
 - (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol using a testing procedure prescribed in rules made under section 103C(a):
 - (b) submit, during a reasonable period specified in the notice, to continuous monitoring of the person's compliance with the drug or alcohol requirement through a drug or alcohol monitoring device of a type prescribed in rules made under section 103C(d):
 - (c) contact, in 1 or more specified reasonably practicable ways, during 1 or more specified periods on specified days, a specified automated system and, if required by a response notice given by the automated system, undergo testing for a controlled drug, a psychoactive substance, or alcohol, using a specified testing procedure prescribed in rules made under section 103C(a).
- (3) An authorised person exercising that person's discretion under subsection (2)—
 - (a) must comply with any rules made under section 103C; and
 - (b) may—
 - (i) select a person to do what is specified in subsection (2)(a), (b), or (c) in any manner (including randomly); and
 - (ii) make a determination in respect of the person with or without evidence that the person has breached the condition; and
 - (c) must, if directing the person to do what is specified in subsection (2)(a) or (c), determine the prescribed testing procedure to be used for the testing the person is directed to do under subsection (2)(a), or required if the person is selected to undergo testing by an automated system that the person is directed to contact under subsection (2)(c).
- (4) A notice given to a person under subsection (2)(b) may include a direction that the person comply with instructions specified in the notice that are reasonably necessary for the effective administration of the continuous monitoring (for example, an instruction to charge the monitoring device regularly or protect it

from events, such as submersion in water, that may damage it or interfere with its functioning).

- (5) An automated system specified in a notice given under subsection (2)(c) must include an automated selection method that determines, in any manner consistent with rules made under section 103C(b) (including randomly), whether the person is required to undergo testing.
- (6) Only a medical practitioner or medical officer may collect a blood sample from a person under this section.
- (7) In this section and in sections 95C to 95E and 103A, **authorised person** means a person who is—
 - (a) a constable; or
 - (b) an employee of the department authorised by the chief executive to direct persons to whom this section applies to undergo testing or monitoring.

Section 95B: inserted, on 15 May 2017, by section 6 of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

95C How notice of direction to undergo testing or to submit to continuous monitoring may be given

- (1) An authorised person may give a person to whom section 95B applies a notice under section 95B(2) in any of the following ways:
 - (a) by giving the notice personally and in writing to the person:
 - (b) by giving the notice personally and orally to the person, then, unless the notice directs the person only to undergo breath screening, as soon as practicable recording it in writing and giving a copy to the person:
 - (c) if the notice is given under section 95B(2)(a), by giving the notice to the person by telephone or other means of electronic communication (as defined in section 209 of the Contract and Commercial Law Act 2017), then as soon as practicable recording it in writing (if it is not already in writing) and giving a copy to the person.
- (2) An automated system must, in response to a person contacting it as directed by a notice given under section 95B(2)(c) and subsection (1), give the person a spoken or written response notice specifying whether the person is required to undergo testing.
- (3) A notice given by an authorised person under subsection (1)(c), or a response notice that is given by an automated system under subsection (2) and that requires a person to undergo testing, must specify the name and location of a testing facility to which the person is required to report to undergo testing, and the time or times when the person is required to report, under section 95D.

Section 95C: inserted, on 15 May 2017, by section 6 of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

95D Where prescribed testing procedure may be carried out

- (1) An authorised person may require a person to whom section 95B applies to undergo testing at the place where the person is given notice under section 95B(2) personally by the authorised person.
- (2) Subsection (1) applies even if the place where the person is given notice personally by the authorised person is—
 - (a) a public place (as defined in section 2(1) of the Summary Offences Act 1981); or
 - (b) a place that is wholly or partly outside a dwelling house, or any other building, at the person’s residential address.
- (3) However, a person cannot be required to undergo a prescribed testing procedure in a place specified in subsection (2)(a) or (b) if the testing procedure involves the collection of blood or urine.
- (4) A person given notice personally (in writing or orally) by the authorised person may be required by the authorised person, if subsection (3) applies or if it is not reasonably practicable to require the person to undergo testing at the place where the person is given notice, to accompany the authorised person to any other place where it is likely that it will be reasonably practicable for the person to undergo testing.
- (5) A person given a notice under section 95C(1)(c) or (2) that requires the person to undergo testing is required to report to the testing facility whose name and location are specified in the notice, at the time or times specified, to undergo testing.

Section 95D: inserted, on 15 May 2017, by section 6 of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

95E Information obtained from drug and alcohol testing or monitoring

- (1) Information obtained following a direction under section 95B(2) (from a prescribed testing procedure or a drug or alcohol monitoring device) about a person subject to a protected supervision order with a drug or alcohol requirement—
 - (a) may be used for all or any of the following purposes:
 - (i) verifying compliance by the person with the drug or alcohol requirement;
 - (ii) detecting non-compliance by the person with the drug or alcohol requirement, and providing evidence of that non-compliance;
 - (iii) verifying that the person has not tampered or otherwise interfered with a drug or alcohol monitoring device;
 - (iv) any purpose for which the person has requested to use the information or consented to its use; and

- (b) must not, except at the request or with the consent of the person, be used—
 - (i) as evidence that the person committed an offence, other than an offence against section 103, 103A, or 103B; or
 - (ii) for any other purpose not listed in paragraph (a).
- (2) A court may, in the absence of evidence that is available to the court and that is to the contrary effect, presume that any information that an authorised person has certified in writing was obtained from a prescribed testing procedure or a drug or alcohol monitoring device—
 - (a) is accurate; and
 - (b) was obtained in the manner required by sections 95B to 95D.

Section 95E: inserted, on 15 May 2017, by section 6 of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

Variation of requirements

Heading: inserted, on 15 May 2017, by section 6 of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

96 Court may vary requirements of protective supervision order

- (1) The chief executive or the person subject to a protective supervision order may apply to the court at any time for a variation or the discharge of a requirement of a protective supervision order.
- (2) On a review under section 99 or on an application under subsection (1), the court may vary or discharge any requirement forming part of the order.

97 Review panel may modify requirements to render them less restrictive

The review panel may, on an application by the chief executive or the person subject to a protective supervision order, modify a requirement of a protective supervision order, but only if the review panel is satisfied that the modification will render the requirement less restrictive.

98 Notification of changes

If the requirements of a protective supervision order are varied or discharged, the chief executive must give notice of the variation or discharge to—

- (a) the person subject to the protective supervision order;
- (b) the probation officer involved;
- (c) the Police.

Compare: 2002 No 10 s 107O(1)

Review of order

Heading: inserted, on 15 May 2017, by section 7 of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

99 Application by chief executive for review of protective supervision order

- (1) The chief executive must apply to the court for a review of a protective supervision order—
 - (a) within 5 years after the order is made; and
 - (b) then, within 5 years after the first review; and
 - (c) then, at intervals of not more than 10 years.
- (2) The chief executive may apply at any time for a review of the protective supervision order.
- (3) As soon as practicable after an application is made under this section, the chief executive must advise every victim of the person subject to the public protection order that the application has been made.

100 Application for review by person subject to protective supervision order

- (1) A person who is subject to a protective supervision order may, with the leave of the court, apply to the court for a review of the order.
- (2) As soon as practicable after an application is made under this section, the chief executive must advise every victim of the person subject to the protective supervision order that the application has been made.

101 Review of protective supervision order

- (1) On a review of a protective supervision order, the court must be provided by the chief executive with current reports on the person subject to the order.
- (2) On a review, the court must consider the continuing appropriateness of the requirements included in the protective supervision order and, where the court has jurisdiction under section 102, whether the order should be cancelled.

102 Cancellation of protective supervision order

- (1) On a review or on an application made for the purpose by the chief executive or the person who is subject to a protective supervision order, the court may cancel the order if, during a period of 5 years in which the person has been subject to the order, the person has neither—
 - (a) committed any serious sexual or violent offences; nor
 - (b) breached any requirements included in the order.
- (2) If a protective supervision order is cancelled, the chief executive must give notice of the cancellation to—
 - (a) the person under protective supervision;
 - (b) the probation officer involved;

- (c) the Police;
- (d) every victim of the person formerly subject to protective supervision; but the chief executive may withhold notice of a particular matter if disclosure of the matter would unduly interfere with the privacy of any other person (other than the person formerly subject to protective supervision).

Offences

Heading: inserted, on 15 May 2017, by section 8 of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

103 Offence to breach protective supervision order

A person who is subject to a protective supervision order and who breaches, without reasonable excuse, any requirements included in that order is liable on conviction to imprisonment for a term not exceeding 2 years.

103A Offences related to drug or alcohol requirements

- (1) A person who is subject to a protective supervision order with a drug or alcohol requirement commits an offence if the person—
 - (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when directed to do so under section 95B(2)(a) and 95D; or
 - (ii) to submit to continuous monitoring when directed to do so under section 95B(2)(b); or
 - (iii) to accompany an authorised person, when required to do so under section 95D(4), to a place where it is likely that it will be reasonably practicable for the person subject to the order to undergo testing; or
 - (iv) to contact a specified automated system when directed to do so under section 95B(2)(c); or
 - (v) to report, at any time or times when required to do so under section 95D(5), to a specified testing facility to undergo testing; or
 - (vi) to undergo a testing procedure when required to do so under sections 95B(2)(c) and 95D; or
 - (b) does anything with the intention of diluting or contaminating a bodily sample required under section 95B(2)(a) or (c) for the purposes of a prescribed testing procedure; or
 - (c) tampers with a drug or alcohol monitoring device required under section 95B(2)(b) or does anything with the intention of interfering with the functioning of that device.
- (2) A person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 2 years.

Section 103A: inserted, on 15 May 2017, by section 9 of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

103B Offence to refuse authorised person entry to residential address

- (1) This section applies to a person who is—
 - (a) subject to a protective supervision order with a drug or alcohol requirement; and
 - (b) directed, under section 95B(2)(b), to submit to continuous monitoring of the person's compliance with the requirement.
- (2) A person to whom this section applies commits an offence if the person refuses or fails, without reasonable excuse, to allow an authorised person to enter the person's residential address for all or any of the following purposes:
 - (a) attaching a drug or alcohol monitoring device to, or removing the device from, the person:
 - (b) servicing or inspecting the device:
 - (c) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device.
- (3) A person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000.
- (4) In subsection (2), **authorised person** means any of the following:
 - (a) an authorised person (as defined in section 95B(7)) who has produced evidence of that person's identity to the person to whom this section applies:
 - (b) a person accompanying a person described in paragraph (a):
 - (c) a person who—
 - (i) has produced evidence of that person's identity to the person to whom this section applies; and
 - (ii) is authorised in writing by an authorised person (as defined in section 95B(7)) to enter the residential address of the person to whom this section applies for all or any of the following purposes:
 - (A) attaching a drug or alcohol monitoring device to, or removing the device from, the person:
 - (B) servicing or inspecting the device:
 - (C) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device; and
 - (iii) has produced that written authority to the person to whom this section applies.

Section 103B: inserted, on 15 May 2017, by section 9 of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

Rules

Heading: inserted, on 15 May 2017, by section 9 of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

103C Rules about testing and monitoring of persons with drug or alcohol requirements

- (1) The chief executive may make rules for all or any of the following purposes:
- (a) prescribing, for the purposes of section 95B(2)(a) and (c), 1 or more types of testing procedure that a person to whom section 95B applies may be directed to undergo:
 - (b) specifying how often each of the prescribed testing procedures may be carried out:
 - (c) prohibiting authorised persons from directing a person to whom section 95B applies to undergo certain testing procedures if other less intrusive testing procedures are available and are sufficient in the circumstances:
 - (d) prescribing, for the purposes of section 95B(2)(b), 1 or more types of drug or alcohol monitoring device that may be connected to a person to whom section 95B applies:
 - (e) specifying restrictions as to how often, and for how long,—
 - (i) continuous monitoring may be carried out:
 - (ii) a person may be required to contact an automated system:
 - (f) prescribing, for any 1 or more of the following, minimum levels that must be present in a bodily sample collected from a person in order for the sample to be used as evidence that the person has breached a drug or alcohol requirement:
 - (i) controlled drugs:
 - (ii) psychoactive substances:
 - (iii) alcohol.
- (2) Rules under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must: <ul style="list-style-type: none">• publish it in the <i>Gazette</i>• publish it on an Internet site that is maintained by or on behalf of the department and that is, so far as practicable, publicly available free of charge• make it available for inspection free of charge• make it available for sale at a reasonable price	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 103C: inserted, on 15 May 2017, by section 9 of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

Section 103C(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 103C(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

103D Further provisions concerning rules made under section 103C

- (1) Rules made under section 103C(a) may, without limitation, prescribe testing procedures that do all or any of the following:
 - (a) include, as part of the procedure, either or both of the following:
 - (i) breath screening;
 - (ii) the collection and analysis of a bodily sample;
 - (b) require a person to be supervised by another person of the same sex during the collection of a bodily sample required for testing;
 - (c) provide for a person to elect, if the person meets in advance all actual and reasonable costs, to have part of a bodily sample (or 1 bodily sample from a set of samples collected at the same time) independently tested in a manner prescribed in the rules.
- (2) The chief executive may make rules under section 103C only if satisfied that the rules—
 - (a) prescribe testing procedures that are no more intrusive than is reasonably necessary to ensure compliance with a drug or alcohol requirement; and
 - (b) allow for persons with drug or alcohol requirements to be tested no more often than is reasonably necessary to ensure compliance with the requirement; and
 - (c) ensure that persons liable to testing and monitoring are afforded as much privacy and dignity as is reasonably practicable.
- (3) Subsection (1)(b) overrides subsection (2)(c).

Section 103D: inserted, on 15 May 2017, by section 9 of the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86).

103E Availability of rules made under section 103C and status under Legislation Act 2012

[Repealed]

Section 103E: repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Part 2

Procedural, administrative, and miscellaneous matters

Subpart 1—Procedural matters

Procedure governing applications to court

104 Applications to be made by originating application

The following applications must be made by originating application:

- (a) an application for a public protection order or a prison detention order;
- (b) an application for a review of a public protection order, a prison detention order, or a protective supervision order;
- (c) an application under section 96;
- (d) an application under section 102.

105 Service of applications

- (1) When the chief executive makes an application to the court under this Act, the person to whom the application relates must be served personally with—
 - (a) a copy of the application; and
 - (b) copies of any affidavits accompanying the application; and
 - (c) a copy of any health assessor’s report to be provided to the court; and
 - (d) a notice setting out the respondent’s rights and the procedures relating to the application.
- (2) The service must comply with the High Court Rules 2016 governing personal service.

Section 105(2): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

106 Respondent who fails to appear may be brought to court

- (1) If a respondent who has been duly summoned to attend a hearing fails to appear at the hearing, the Judge may issue a warrant for the respondent to be detained and brought before the court.
- (2) The warrant must be directed to every constable.
- (3) The warrant may be executed by any constable.
- (4) For the purposes of executing the warrant, the constable executing it may at any time enter any premises, by force if necessary, if he or she has reasonable grounds to believe that the respondent is on those premises.

107 Court may order interim detention of, or interim imposition of conditions on, respondent

- (1) This section applies when, before an application for a public protection order is finally determined, 1 or more of the following events occur:
 - (a) a respondent is released from detention:
 - (b) a respondent who is subject to an extended supervision order ceases to be subject to conditions of the kind referred to in section 7(1)(b) or (c):
 - (c) the respondent is brought before the court under section 106:
 - (d) the court gives a direction under section 12(2):
 - (e) a respondent to whom section 7(1)(d) applies arrives in New Zealand.
- (2) The court may, on an application by the chief executive, order that, until the application for a public protection order is finally determined, the respondent is to be detained by a person, and in a place, specified in the order.
- (3) When the court makes an order under subsection (2) (an **interim detention order**), the court may suspend that order subject to any conditions that the court thinks fit.
- (4) An order under this section ceases to have effect when the application for a public protection order is finally determined or discontinued.

108 Evidence in proceedings under this Act

- (1) In a proceeding under this Act, a court may receive as evidence any statement, document, information, or matter that it considers relevant, whether or not it would be otherwise admissible in a court of law.
- (2) This section is subject to—
 - (a) subpart 8 of Part 2 of the Evidence Act 2006; and
 - (b) any rule of law governing legal professional privilege.

109 Court may determine whether hearings are held in open or closed court

The court may determine whether to hold any hearing related to a public protection order, prison detention order, or protective supervision order in closed or open court.

110 Court may suppress evidence and submissions

- (1) The court may make an order forbidding publication of any report or account of the whole or any part of the evidence given or the submissions made in any proceeding under this Act.
- (2) The court may make an order under subsection (1) only if the court is satisfied that publication would be likely to—

- (a) cause undue hardship to any victim (within the general sense of that term and not merely as defined in section 3) of a person subject to an order under this Act or against whom such an order is sought; or
- (b) endanger the safety of any person; or
- (c) lead to the identification of a person whose name is suppressed by order or by law; or
- (d) prejudice the maintenance of the law, including the prevention, investigation, and detection of offences; or
- (e) prejudice the security or defence of New Zealand.

111 Suspension of proceedings in certain cases

- (1) This subsection applies if, while an application for a public protection order is pending, the respondent is detained—
 - (a) in a hospital under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (b) in a facility under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or
 - (c) in a prison otherwise than under this Act.
- (2) If subsection (1) applies, the proceeding on the application for the public protection order is suspended until the respondent is no longer detained in the hospital, facility, or prison.

Matters governing reviews by review panel

112 Reports to be provided to review panel

- (1) For the purposes of any review under section 15 or 87, the chief executive must provide the review panel with—
 - (a) a copy of the public protection order made against the person and, where applicable, of the prison detention order and of all reports about the person that were before the court when either order was made; and
 - (b) a copy of the report on the most recent assessment of the person by a health assessor; and
 - (c) in the case of a resident, the resident's management plan and a report by the manager of that residence; and
 - (d) in the case of a person subject to a prison detention order, a report by the manager of the prison; and
 - (e) in the case of a person currently detained in, or on leave from, a hospital under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or a facility under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, a report from the responsible clinician (or the most suitable other health professional to provide such a report) concern-

ing the person and any care programmes that the hospital has put, or intends to put, in place for the person; and

- (f) any further or supplementary reports requested by the review panel, to be provided by any person, including the chief executive, the manager of the prison or the residence in which the person is detained, and any health assessor.
- (2) The responsible clinician (or other health professional) referred to in subsection (1)(e) must, on request by the chief executive, supply a report on the person to the chief executive.

113 Interview of person

For the purposes of any review under section 15 or 87, the review panel must interview the person who is subject to a public protection order or prison detention order, unless the person indicates to the review panel that he or she does not wish to be interviewed.

Subpart 2—Matters relating to management or administration

114 Establishment of residences

- (1) The Minister may, by notice in the *Gazette*, declare any building located in prison precincts or any part of that building and any land adjacent to that building to be a residence.
- (2) Before making a declaration under subsection (1), the Minister must be satisfied that the proposed residence will be separate and secure.
- (3) When the notice takes effect, the building or the part of the building and any adjacent land are excluded from the prison and cease to be subject to the Corrections Act 2004.
- (4) Despite subsection (3), for the purposes of the Resource Management Act 1991, the land specified in the notice continues to be part of the prison in which it is located and the use of the land as a residence is deemed to be an authorised use under any existing designation or provisions of any plan that applies to the prison under that Act.
- (5) Every notice under this section takes effect from the date specified in the notice.
- (6) The building or the part of the building and any adjacent land declared to be a residence may be described in the notice in any way that is sufficient to identify it.

115 Appointment of residence manager

- (1) For every residence that is not subject to a residence management contract, the chief executive must appoint under the Public Service Act 2020—
 - (a) a suitable person as the residence manager; and

- (b) a suitable person as the deputy residence manager; and
 - (c) as many other suitable persons as are required as employees for the purposes of the residence.
- (2) For every residence that is subject to a residence management contract, the contractor must appoint—
- (a) a suitable person as the residence manager; and
 - (b) a suitable person as the deputy residence manager; and
 - (c) as many other suitable persons as are required as employees for the purposes of the residence.
- (3) A person must not perform any functions under the Corrections Act 2004 while that person is a residence manager or an employee for the purposes of the residence.

Section 115(1): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

116 Powers and functions of residence managers

- (1) The residence manager has, in relation to the residence for which the manager is appointed as manager, the following powers and functions:
- (a) ensuring that the residence operates in accordance with the objective set out in section 4 and the principles set out in section 5:
 - (b) ensuring the welfare of residents, staff, and visitors:
 - (c) ensuring the safe custody of residents:
 - (d) making rules for the residence under section 119:
 - (e) protecting the rights of residents and ensuring that any limitation of those rights is lawful:
 - (f) any other powers and functions conferred under this Act or regulations made under this Act or any other enactment.
- (2) On the occurrence from any cause of a vacancy in the office of the residence manager, and in the case of the absence from duty of the person appointed as residence manager (from whatever cause arising), and for so long as any such vacancy or absence continues, the deputy residence manager has and may exercise and perform all of the powers, duties, and functions of the residence manager.
- (3) A person must not perform any functions under the Corrections Act 2004 while that person is a residence manager or an employee for the purposes of the residence.

Compare: 2004 No 50 s 12

117 Manager of residence may delegate powers and functions

- (1) The residence manager may delegate any of his or her powers or functions, except this power of delegation and the power to make rules under section 119, to a person who is suitably qualified to exercise them.
- (2) The manager must make the delegation in writing and sign it.
- (3) The delegation may be subject to any conditions or limits, or both.
- (4) The manager is not prevented from exercising, or affected in his or her exercise of, any of the delegated powers or functions.
- (5) The delegate may exercise the powers or functions in the same manner and with the same effect as if they had been conferred on the delegate directly by this Act.
- (6) Every person purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

118 Status of delegations

- (1) A delegation made under section 117 continues in force according to its tenor until it is revoked.
- (2) If the maker of the delegation ceases to hold office, the delegation continues to have effect as if made by the successor of the office holder.
- (3) The maker of the delegation, or successor, may revoke the delegation at any time by written notice to the delegate.

119 Manager may make rules for residence

- (1) The chief executive may authorise the residence manager to make rules that the manager considers appropriate for the management of the residence and for the conduct and safe custody of the residents.
- (2) An authorisation given by the chief executive under subsection (1) may be subject to any conditions or any limitations placed on the scope or subject matter of the rules.
- (3) Rules made under subsection (1) may, without limitation, authorise the manager to permit residents to possess prohibited items, subject to limits specified in the rules and subject to the manager being satisfied of certain matters specified in the rules concerning the protection of the order of the residence and the health and safety of any person.
- (4) Any rules made under subsection (1) may be revoked at any time by the residence manager or the chief executive.
- (5) Any rules made under subsection (1) must not be inconsistent with this Act or any regulations made under this Act.
- (6) Rules under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

- (7) Rules made under subsection (1) may regulate the exercise of coercive powers conferred by this Act, but may not confer any additional coercive powers.

Compare: 2004 No 50 s 33

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	It is not required to be published	LA19 s 73(2)
Presentation	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 119(6): replaced on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

120 Chief executive may provide guidelines or instructions

- (1) The chief executive may provide to residence managers and to persons exercising powers under section 73(1)—
- (a) guidelines on the exercise of powers under this Act or any regulations made under this Act:
 - (b) instructions or guidelines relating to procedures to be followed or standards to be met—
 - (i) in the management of residences:
 - (ii) in providing for the safe custody of residents:
 - (iii) in escorting persons pursuant to directions under section 73.
- (2) The chief executive must ensure that guidelines are provided, under subsection (1), relating to the exercise of coercive powers.
- (3) Guidelines and instructions under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (4) *[Repealed]*

Compare: 2003 No 116 s 148

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must: <ul style="list-style-type: none">• publish it on a website maintained by the department• make it available for inspection free of charge at the head office of the department during normal office hours• make it available free of charge, or for sale at a reasonable price, at the head office of the department during normal office hours	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 120(3): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 120(4): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

121 Matters to be included in annual report of department

- (1) The department's annual report under section 43 of the Public Finance Act 1989 must state in respect of the year to which the report relates—
 - (a) the number of persons who, at the end of that year, are detained, under this Act, in residences and state, for each person so detained, the number of months for which the person has been detained in a residence:
 - (b) the number of persons who, at the end of that year, are detained, under this Act, in prisons and state, for each person so detained, the number of months for which the person has been detained in prison, and the reasons for that detention:
 - (c) the number of persons who have been released on protective supervision:
 - (d) the number of persons who were on protective supervision and who have again been detained under this Act:
 - (e) the number of times that the chief executive applied to the court, ahead of time and pursuant to a direction of the review panel, for a review of a public protection order:
 - (f) the number of appeals against orders made under this Act, and the outcome of each appeal:
 - (g) the number and nature of any serious incidents involving residents or staff members of residences, or both:
 - (h) the number and nature of any incidents involving the use of significant force or restraints on residents:
 - (i) the number of times seclusion was imposed on residents, and the duration of, and reasons for, each episode of seclusion:
 - (j) the number of times that residents were hospitalised:
 - (k) the number of residents who died:
 - (l) the number of emergencies in residences that required assistance from correction officers:
 - (m) any other matter that the chief executive considers should be included in the annual report.
- (2) The annual report referred to in subsection (1) must also include a report on the activities undertaken by inspectors during the year to which the annual report relates.

Review panel

122 Establishment and constitution of review panel

- (1) A review panel is established.
- (2) The review panel consists of 6 members appointed by the Minister of Justice by written notice.
- (3) The Minister of Justice must nominate 1 member of the review panel as its chairperson and another member of the review panel as its deputy chairperson, and a member so nominated must hold, or have held, office as a High Court Judge or as a District Court Judge.
- (4) Before the Minister of Justice appoints a person as a member, the Minister of Justice must be satisfied that the person has experience and expertise in assessing the potential for individuals to pose a high risk to public safety.
- (5) The review panel must include—
 - (a) at least 2 members who are health assessors; and
 - (b) at least 4 members who have experience in the operation of the New Zealand Parole Board.

123 Meetings of review panel

- (1) The quorum necessary for any meeting of the review panel is 3 members, who must include—
 - (a) the chairperson or deputy chairperson; and
 - (b) 1 health assessor; and
 - (c) 1 member who has experience in the operation of the New Zealand Parole Board and who is not a health assessor.
- (2) The decision of the majority of members in attendance at a meeting is the decision of the review panel.
- (3) At any meeting of the review panel, the review panel may receive and take into consideration whatever information it thinks fit, whether or not the information would be admissible as evidence in a court of law.
- (4) The review panel may regulate its own procedure.

124 Term of appointment, and reappointment

- (1) Every member of the review panel, including the chairperson, must be appointed for a term of 3 years or less.
- (2) A member continues in office despite the expiry of his or her term of office until—
 - (a) the member is reappointed; or
 - (b) the member's successor is appointed.

- (3) A member who participates in a review that is not complete on the date that he or she ceases to be in office may complete his or her participation in the review after that date and is, for that purpose, deemed to be in office until the review is complete.
- (4) Any member may be reappointed any number of times.
- (5) A member may at any time resign from office by written notice to the Minister of Justice.
- (6) The Minister of Justice may at any time remove a member from office for just cause, and the member is not entitled to compensation for removal.

Compare: 2002 No 10 ss 120, 121

125 Remuneration and expenses of members

- (1) The remuneration of any member of the review panel who is a District Court Judge or a Judge of the High Court must, so far as it relates to the Judge's membership of the review panel, be determined by the Remuneration Authority.
- (2) Every other member of the review panel must be paid fees and expenses in accordance with the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies.
- (3) A person is not employed in the service of the Crown, for the purposes of the Public Service Act 2020 or the Government Superannuation Fund Act 1956, merely as a result of being a member of the review panel.

Compare: 2002 No 10 s 122

Section 125(3): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

126 Immunity of members

No member of the review panel is personally liable for any act or omission done in pursuance, or intended pursuance, of the panel's functions, unless the act or omission was done in bad faith.

Compare: 2002 No 10 s 123

Appointment of inspectors

127 Inspectors

- (1) For the purposes of this Act, the chief executive may, by written notice, designate, on any terms and conditions specified in the notice, 1 or more lawyers to be independent inspectors.
- (2) The chief executive must ensure that the number of inspectors appointed under subsection (1) is at all times sufficient for the operation of this Act.
- (3) No lawyer appointed under this section may be otherwise employed or engaged by the department.

- (4) The Minister may from time to time, with the concurrence of the Minister of Finance, fix the remuneration of inspectors, either generally or in any particular case, and may, with that concurrence, vary the amount or nature of that remuneration.

Compare: 1992 No 46 s 94

Visits by specified office holders

128 Right of specified office holders to visit residences

- (1) A specified office holder may, whenever the office holder considers it appropriate, enter a residence and examine it and the condition of the residents, and may inform the residence manager of his or her observations.
- (2) The residence manager must ensure that any observations of a specified office holder are recorded and that a permanent record of those observations is kept at the residence.
- (3) A specified office holder is not entitled, under subsection (1), to communicate with any resident except in relation to—
- (a) his or her treatment in the residence; or
 - (b) a complaint that the resident makes about that treatment.
- (4) For the purposes of this section, each of the following is a **specified office holder**:
- (a) a member of Parliament;
 - (b) a Judge or an officer of the High Court or another court;
 - (c) an Ombudsman;
 - (d) the Privacy Commissioner;
 - (e) the Health and Disability Commissioner;
 - (f) a Human Rights Commissioner.

Compare: 2004 No 50 s 161

129 Crimes of Torture Act 1989 not limited

Nothing in this Act limits the operation of Part 2 of the Crimes of Torture Act 1989.

Compare: 2004 No 50 s 162A

Residence management contracts

130 Management of residences 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 residence.

- (2) No residence may be managed by a person other than the Crown except under a residence management contract.
- (3) For the purposes of the Ombudsmen Act 1975 and the Official Information Act 1982, every contract residence is to be treated as part of the department.

Compare: 2004 No 50 s 198

131 Requirements of residence management contracts

- (1) Every residence management contract must provide for—
 - (a) objectives and performance standards for the contractor in relation to the management of the residence that are no lower than the standards applicable to residences managed by the department; and
 - (b) objectives and performance standards for the contractor in relation to the management and care of residents in the residence that are no lower than the standards applicable to residents in residences managed by the department; and
 - (c) the appointment or engagement by the contractor of—
 - (i) a suitable person as manager of the residence, 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 residence.
- (2) Every residence management contract must impose on the contractor, in relation to the management of the residence, a duty to comply with—
 - (a) the requirements of this Act, of any regulations made under this Act, and of any instructions or guidelines, in so far as those requirements are applicable to the contract residence; and
 - (b) the requirements of the New Zealand Bill of Rights Act 1990, as if the residence were a residence managed by the department; and
 - (c) the requirements of the Public Records Act 2005, as if records relating to the residence and to residents in the residence were records created or received by the department; and
 - (d) all relevant international obligations and standards; and
 - (e) the requirements of sections 73 and 74(2) of the Public Service Act 2020 (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 residence.

Compare: 2004 No 50 s 199

Section 131(2)(c): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

132 Delegation of powers and functions of contractor

Without limiting clauses 2 to 4 of Schedule 6 of the Public Service Act 2020, those sections of that Act apply in relation to a contract residence as if—

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

Compare: 2004 No 50 s 199A

Section 132: amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

133 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 residence management contract.

Compare: 2004 No 50 s 199B

134 Control of contract residence 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 residence an emergency affecting the safety or health of the residents or any class or group of residents, or the security of the residence; or
 - (ii) there is an imminent threat of such an emergency; and
 - (b) that the contractor responsible for the management of that residence 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 residence 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 residence, all of 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 residence 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 residence 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 residence 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 residence management contract or otherwise; or
 - (b) any liability of the contractor under the residence 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: 2004 No 50 s 199H

135 Residence management contracts to be presented to House of Representatives

- (1) Within 12 sitting days after a residence 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 residence 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: 2004 No 50 s 199I

136 Release of resident information to and by contract residences

- (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 func-

tions, 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 residence and that relates to that contract residence or to any resident.

- (2) For the purposes of enabling any staff member of a contract residence to exercise or perform any of his or her powers, duties, or functions, any staff member of a contract residence 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 resident.
- (3) If the department is authorised by any enactment to access or to disclose information relating to any resident,—
 - (a) a staff member of a contract residence is authorised to access or disclose that information as if the contract residence were a part of the department; and
 - (b) the chief executive may require the contractor to access or disclose that information.

Compare: 2004 No 50 s 199J

Subpart 3—Miscellaneous matters

137 Regulations

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
 - (a) ensuring the good management of residences:
 - (b) ensuring the safe custody of residents:
 - (c) providing for the management, care, treatment, well-being, and rehabilitation of residents or persons subject to prison detention orders, and for their reintegration into the community:
 - (d) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations under subsection (1) may regulate the exercise of coercive powers conferred by this Act, but may not confer any additional coercive powers.
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 137(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

138 Sentence of preventive detention not affected by this Act

This Act does not affect the imposition of any sentence of preventive detention under the Sentencing Act 2002, and, in considering whether to impose such a sentence, the court must not take into account the jurisdiction conferred by this Act to impose orders on offenders who have served determinate sentences.

139 Suspension of orders in certain cases

- (1) This subsection applies if, while a person is subject to a public protection order, a prison detention order, or a protective supervision order, the person is detained—
 - (a) in a hospital under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (b) in a facility under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or
 - (c) in a prison otherwise than under this Act.
- (2) If subsection (1) applies, the relevant order or orders specified in that subsection are suspended until the person is no longer detained in the hospital, facility, or prison.

140 Claims by persons subject to orders under this Act not affected by Prisoners' and Victims' Claims Act 2005

A person is not a person under control or supervision within the meaning of section 4 of the Prisoners' and Victims' Claims Act 2005 merely because the person is, or has at any time been, a resident, a person subject to a prison detention order, or a person under protective supervision.

Escaping from residence

141 Amendment to Crimes Act 1961

- (1) This section amends the Crimes Act 1961.
- (2) After section 120(1)(ba), insert:
 - (bb) being subject to a public protection order made under the Public Safety (Public Protection Orders) Act 2014, escapes from the residence in which he or she is required to stay under that Act; or

Legal aid

142 Amendment to Legal Services Act 2011

- (1) This section amends the Legal Services Act 2011.
- (2) In section 4(1), definition of **specified application**, after paragraph (c), insert:

- (ca) by a person who is a respondent to an application under the Public Safety (Public Protection Orders) Act 2014, or who is subject to an order under that Act, in respect of an application under that Act; or

Access to protection orders and restraining orders

143 Amendments to Privacy Act 1993

- (1) This section amends the Privacy Act 1993.
- (2) In Schedule 5, under the heading “*Police records*”, items relating to protection orders and restraining orders, paragraph (d), after “conditions”, insert “; or”.
- (3) In Schedule 5, under the heading “*Police records*”, items relating to protection orders and restraining orders, after paragraph (d), insert:
 - (e) a public protection order, a prison detention order, or a protective supervision order under the Public Safety (Public Protection Orders) Act 2014
- (4) In Schedule 5, under the heading “*Police records*”, items relating to protection orders and restraining orders, replace “offender’s sentence and any post-sentence conditions” with “offender’s sentence, any post-sentence conditions, or any order under the Public Safety (Public Protection Orders) Act 2014”.

144 Consequential amendments

The Acts specified in the Schedule are amended in the manner indicated in that schedule.

Schedule

Consequential amendments

s 144

Corrections Act 2004 (2004 No 50)

After section 25(1)(ad), insert:

- (ae) to supervise persons released subject to a protective supervision order under the Public Safety (Public Protection Orders) Act 2014 and to ensure that the requirements included in the order are complied with:

After section 65(2)(ab), insert:

- (ac) a prisoner is the subject of an application for a public protection order under the Public Safety (Public Protection Orders) Act 2014; or

Crimes of Torture Act 1989 (1989 No 106)

In section 16, definition of **place of detention**, after paragraph (f), insert:

- (fa) a residence established under section 114 of the Public Safety (Public Protection Orders) Act 2014:

Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46)

In section 45(1), definition of **institution**, paragraph (b), after “1966”, insert “; and”.

In section 45(1), definition of **institution**, after paragraph (b), insert:

- (c) a residence established under section 114 of the Public Safety (Public Protection Orders) Act 2014

In section 45(1), definition of **superintendent**, paragraph (b), after “that institution”, insert “; and”.

In section 45(1), definition of **superintendent**, after paragraph (b), insert:

- (c) in relation to a residence established under section 114 of the Public Safety (Public Protection Orders) Act 2014, means the residence manager within the meaning of that Act.

In section 46, after “detained in a prison”, insert: “or in a residence established under section 114 of the Public Safety (Public Protection Orders) Act 2014”.

In section 47(1), replace “prison” with “prison or, as the case requires, a residence established under section 114 of the Public Safety (Public Protection Orders) Act 2014”.

In section 47(2) and (4), after “prison”, insert “or, as the case requires, a residence established under section 114 of the Public Safety (Public Protection Orders) Act 2014”.

In section 47(3), after “prison”, insert “or, as the case requires, the residence established under section 114 of the Public Safety (Public Protection Orders) Act 2014”.

After section 48(1)(d)(iii), insert:

Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46)
—continued

- (iv) in the case of a person subject to a public protection order under the Public Safety (Public Protection Orders) Act 2014, the date on which that order is cancelled.

Notes

1 *General*

This is a consolidation of the Public Safety (Public Protection Orders) Act 2014 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Secondary Legislation Act 2021 (2021 No 7): section 3

Public Service Act 2020 (2020 No 40): section 135

Privacy Act 2020 (2020 No 31): section 217

Social Security Act 2018 (2018 No 32): section 459

Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 86)

Senior Courts Act 2016 (2016 No 48): section 183(c)

Returning Offenders (Management and Information) Act 2015 (2015 No 112): section 36