

Act No. 107 of 1990

**PRISONS (CONTRACT MANAGEMENT) AMENDMENT BILL  
BILL 1990\***

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Prisons Act 1952 to enable the management of a prison and the transportation of prisoners between prisons to be undertaken on a contract basis.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be proclaimed.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments.

**SCHEDULE 1—AMENDMENTS**

**New Part 6A**

The object of the Bill is achieved mainly by the amendment contained in Schedule 1 (7), which inserts a new Part 6A (proposed sections 31A–31I), the provisions of which are summarised below under subject headings.

**What can be contracted**

Under the Principal Act as currently in force, the responsibilities of the Director-General of Corrective Services include responsibility for the management of prisons and for the transportation of prisoners between prisons. Proposed section 31A permits the engagement by the Director-General of contractors to assist in the discharge of these responsibilities. The engagement of contractors to manage a prison must accord with the subsequent provisions of the new Part.

**Contracts of management**

Proposed section 31B enables the Director-General to enter into a contract with a company under which the company undertakes the management of the prison. Essential matters for which provision must be made in the management contract are set out in

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\* Amended in committee—see table at end of volume.

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proposed section 31B (2). The contract may provide for other matters as well, but it must be consistent with the provisions of the Principal Act and the regulations. (This does not, however, prevent the contract from providing for standards which exceed the minimum standards of legislation in relation to health, diet, exercise or other matters affecting the welfare of prisoners.)

**Authorisation of prison staff**

Under proposed section 31C, persons cannot be employed, or stay employed, in certain positions in connection with the management or operation of a prison managed under contract unless they are authorised by the Director-General to be so employed. The positions concerned are authorised by the Director-General to be so employed. any other position identified by the regulations. Persons will not be authorised under the proposed section unless they have appropriate training and are unobjectionable in terms of their criminal record, personal characteristics and otherwise.

**Status of prison staff**

Under the law as currently in force, the person holding office as the governor of a prison (nowadays commonly called the superintendent) has certain powers and responsibilities. These include, for example the power to deal with prisoners for minor breaches of discipline (sections 24 and 25 of the Act) and the responsibility for preventing the escape of prisoners (section 40). Proposed section 31D provides that, at a prison that is managed under contract, the person designated in accordance with the contract as the governor of the prison has the same powers and responsibilities as the governor of any other prison in New South Wales.

Persons employed as custodians or prisoners, however, have the powers of prison officers only if the Principal Act (as amended in accordance with the Bill) or the regulations expressly so provide.

In the discharge of the duties of their employment, all persons employed at a prison that is managed under contract are subject to the provisions of the regulations.

**Monitoring**

Proposed section 31E requires the appointment of a representative of the Director-General whose function it will be to assess and review, in connection with a prison that is managed under contract, the performance of the management company under the contract. The person so appointed is to have access to all parts of the prison and to prison records, prisoners and person employed at the prison. In addition, the Minister may appoint an advisory council, consisting of local community representatives, to assist in monitoring the management of the prison.

**Prison Medical Service**

The Director, Prison Medical Service, is responsible for overseeing the operation of medical services in prisons. Proposed section 31F provides for access by the Director to all parts of any prison that is managed under contract and to all medical records and prisoners.

**Investigation of corruption and complaints**

Proposed sections 31G and 31H provide for the application of the Independent Commission Against Corruption Act 1988 and the Ombudsman Act 1974 in connection with prison that is managed under contract. Those Acts apply as if the management company were a government body and as if its employees were government employees. This will allow the Commission and the Ombudsman to investigate corruption and complaints.

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**Freedom of information**

Proposed section 31I provides for the application of the Freedom of Information Act 1989 in connection with a prison that is managed under contract. The Act applies as if the management company were a local government body.

**Consequential amendments**

Schedule 1 (1)–(6) and (8)–(11) make amendments consequential on the enactment of the new Part. The more important of these are:

- amendment of section 8A and Schedule 4A (relating to Official Visitors) to provide that an Official Visitor to a prison that is managed under contract must be independent not only of government but of the management company and to require a person considered for appointment as such an Official Visitor to submit a declaration of any interest that may be a conflicting interest (Schedule 1 (2) and (11)); and
  - amendment of section 38 of the Act (relating to offences such as unlawful entry of a prison, introduction of contraband etc.) so as to confer on a custodian of prisoners at a prison that is managed under contract the same powers of arrest as those of a prison officer (Schedule 1 (9)).
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