

**PRISONS (CONTRACT MANAGEMENT) AMENDMENT ACT
1990 No. 107**

NEW SOUTH WALES



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**PRISONS (CONTRACT MANAGEMENT) AMENDMENT ACT
1990 No. 107**

NEW SOUTH WALES



Act No. 107, 1990

An Act to amend the Prisons Act 1952 to enable the management of a prison and the transfer of prisoners between prisons to be undertaken on a contract basis. [Assented to 13 December 1990]

Prisons (Contract Management) Amendment 1990

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Prisons (Contract Management) Amendment Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Prisons Act 1952 No. 9

3. The Prisons Act 1952 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 4 (**Definitions**):

(a) In the definition of “governor of a prison” in section 4 (1), after “officer”, insert “or person”.

(b) Insert in alphabetical order:

“**management company**” has the meaning given by section 31B (1);

(2) Section 8A (**Official Visitors**):

Omit section 8A (3), insert instead:

(3) The following persons are not eligible to be Official Visitors:

(a) a person employed as an officer or temporary employee in the Department of Corrective Services; or

(b) a person who is to any extent responsible for the management of, or who is employed at or in connection with, a prison; or

(c) a person having any interest in a contract under Part 6A; or

(d) a person who has not made a declaration under clause 3A of Schedule 4A.

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SCHEDULE 1—AMENDMENTS—*continued*

(3) Section 12 (**Exercise**):

In section 12 (2), after “Director-General” where firstly occurring, insert “(or, in the case of a prison which is managed under an agreement in accordance with Part 6A, by the Director-General or the management company)”.

(4) Sections 13, 14:

Omit the sections, insert instead:

Clothing

13. (1) Every prisoner is to be clothed with sufficient clothing to maintain health and decency.

(2) Sufficient clothing as required by this section for:

(a) every convicted prisoner; and

(b) every prisoner who, although not a convicted prisoner, is not permitted by the governor of the prison in which the prisoner is detained to wear the prisoner’s own clothing,

is to be supplied (except to the extent that provision is otherwise made by an agreement in force under Part 6A) at the public expense.

Diet

14. (1) Every prisoner is to be supplied with sufficient food to maintain health.

(2) Sufficient food as required by this section is to be supplied (except to the extent that provision is otherwise made by an agreement in force under Part 6A) at the public expense.

(5) Section 16 (**Medical attention**):

(a) From section 16 (1), omit “at the public expense”.

(b) After section 16 (2), insert:

(3) Medical attention as required by this section is to be supplied (except to the extent that provision is otherwise made by an agreement in force under Part 6A) at the public expense.

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SCHEDULE 1—AMENDMENTS—*continued*

(6) Section 20 (**Work to be performed by prisoners**):

After section 20 (3), insert:

(4) While a prison is being managed under an agreement in accordance with Part 6A:

- (a) subsections (1) and (2) apply only to work of a kind which the Director-General has approved; and
- (b) payment may not be made by the management company to prisoners for work done unless the payment is approved, or is made in accordance with a scheme approved, by the Director-General.

(7) Part 6A:

After Part 6, insert:

PART 6A—ENGAGEMENT OF CONTRACTORS

Purpose for which contractors may be engaged

31A. (1) To assist the Director-General in the exercise of the functions of the Director-General under this Act with respect to the management of prisons and the transfer of prisoners between prisons, the Director-General may make use of the services of one or more contractors.

(2) The engagement of a contractor for the management of a prison, and its management by the contractor, may not be undertaken otherwise than in accordance with this Part.

Management of prison under agreement

31B. (1) The Director-General may enter into an agreement with a corporation (in this Part called “the management company”) providing for the management by the corporation of one or more prisons.

(2) The agreement must provide for:

- (a) compliance by the management company with the provisions of this Act and the regulations, and of any other Act or law, so far as they affect the prison and the welfare of its prisoners; and
- (b) objectives and performance standards for the contractor in relation to the management of the prison; and
- (c) employment by the management company of a person competent to exercise the functions of the governor of the prison and of sufficient and competent custodial

SCHEDULE 1—AMENDMENTS—*continued*

- and paramedical and other staff to enable it to discharge its obligations under the agreement; and
- (d) remuneration of the management company; and
 - (e) submission to the Director-General of periodic reports and audited accounts in relation to the management of the prison; and
 - (f) prohibition of subcontracting by the management company, except to the extent approved by the Director-General; and
 - (g) indemnity by the management company of the Crown and the Director-General for damage to the prison and any associated public property in the possession or under the control of the management company; and
 - (h) notification of any variation of the controlling interests in the management company or of its management structure; and
 - (i) such other matters as may be prescribed by the regulations.

(3) The agreement may make such other provision, not inconsistent with this Act or the regulations, as may be agreed for or with respect to the management of the prison by the management company.

(4) For the purposes of subsection (3), a provision of an agreement is not inconsistent with this Act or the regulations in so far as it prescribes a standard that exceeds the standard provided by this Act or the regulations in relation to the health, diet or exercise of prisoners or any other matter affecting their welfare.

Authorisation of prison staff

31C. (1) A person must not be or continue to be employed, at a prison managed under an agreement in accordance with this Part, to perform any of the duties of:

- (a) the governor of the prison; or
- (b) a custodian of prisoners; or
- (c) employment in any other capacity prescribed by the regulations,

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SCHEDULE 1—AMENDMENTS—*continued*

unless the person is the holder of an authority issued by the Director-General authorising the person to perform the duties concerned.

(2) The Director-General may refuse to issue an authority under this section to a person:

- (a) if the person has not undertaken an accredited course of training or instruction relevant to the employment concerned; or
- (b) if, because of a criminal record, insufficient education, aspects of character or other matters, the Director-General does not consider the person to be a fit and proper person to be so employed; or
for any other reason which the Director-General thinks is a sufficient reason, in the public interest, for refusal.

(3) An authority issued under this section to a person may be revoked by the Director-General:

- (a) if, in the opinion of the Director-General, having regard to the provisions of subsection (2), the authority ought not to have been issued; or
- (b) if the person has failed to comply with any of the provisions of this Act or the regulations or with any direction given to the person under this Act; or
- (c) for any other reason which the Director-General thinks is a sufficient reason, in the public interest, for revocation of the authority,

but no such authority is to be revoked without affording the person concerned a reasonable opportunity to be heard.

(4) The Director-General may from time to time accredit courses of training or instruction for the purposes of this Part.

Status of staff at prison managed under an agreement

31D. (1) A person who, in accordance with this Part and any agreement in force under this Part with respect to the management of a prison, is appointed by the management company under the agreement to exercise the functions of the governor of the prison is, for the purposes of this Act and for all other purposes, the governor of the prison.

SCHEDULE 1—AMENDMENTS—*continued*

(2) A person employed for the purposes of an agreement in accordance with this Part is, in the performance of the duties of his or her employment, subject to:

- (a) the provisions of the regulations; and
- (b) any directions, not inconsistent with the regulations, given by the Director-General either generally or in a particular case.

(3) Subsection (2) does not limit the operation of section 6 (3), or any power conferred on the Director-General, in relation to any prison.

(4) Despite any power or authority conferred by an agreement in accordance with this Part, or by the regulations, on any person employed by the management company in connection with the prison concerned, a person so employed is not, for the purposes of this Act, a prison officer, nor does the Public Sector Management Act 1988 apply to any such person on account of that employment.

Monitoring

31E. (1) A person (in this section referred to as the “monitor”) is to be appointed under the Public Sector Management Act 1988 for the purposes of this section in respect of each prison that is being managed under an agreement in accordance with this Part.

(2) The monitor is to be appointed for a term of not more than 2 years, but is eligible for re-appointment from time to time.

(3) The monitor is responsible to the Director-General for the assessment and review of the management by the management company of the prison concerned.

(4) A monitor must make an annual report in writing to the Director-General of his or her findings regarding the management of a prison and any activity undertaken in accordance with a contract under this Part that affects the prison (including any transportation of prisoners to or from the prison). That report is to form part of the annual report of the Department of Corrective Services prepared for the purposes of the Annual Reports (Departments) Act 1985.

SCHEDULE 1—AMENDMENTS—*continued*

(5) The monitor has such other functions as may be specified in the regulations and such additional functions as may be specified by the Director-General from time to time.

(6) The monitor is to have free and unfettered access at all times to every part of the prison, to all prison records and to all prisoners and persons employed at the prison.

(7) To assist in the monitoring of such a prison, and to encourage community involvement in the oversight of its management, the Minister is required to appoint a Community Advisory Council for the prison. The Council is to consist of persons the Minister considers to be suitably qualified to serve on the committee and to be suitably representative of the interests of the local community.

(8) The Community Advisory Council must make quarterly reports in writing to the Minister of its findings regarding the management of the prison.

Prison Medical Service

31F. (1) For the purpose of ensuring that the provisions of this Act and the regulations, in so far as they relate to medical treatment and the health of prisoners, are being complied with at a prison that is being managed under an agreement in accordance with this Part, the Director, Prison Medical Service is to have free and unfettered access at all times to every part of the prison, to all medical records and to all prisoners.

(2) Nothing in this section:

- (a) affects the operation of section 9 or 16 or any power conferred on the Director with respect to any prison; or
- (b) affects any duty of the management company or of a prison medical officer under this Act or the regulations or any agreement.

Investigation of corruption

31G. While a prison is being managed under an agreement in accordance with this Part, the Independent Commission Against Corruption Act 1988 and the regulations under that Act, with any necessary modifications:

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SCHEDULE 1—AMENDMENTS—*continued*

- (a) apply to and in respect of the management company as if, in so far as it has functions under this Act or the agreement, it were a public authority within the meaning of that Act; and
- (b) apply to and in respect of every director or other officer of the management company, and any employee of the management company who under this Part requires an authority from the Director-General in order to be such an employee, as if:
 - (i) the director, officer or employee were, by virtue of his or her office or employment, a public official within the meaning of that Act; and
 - (ii) any functions exercisable in the course of his or her office or employment were public official functions.

Administrative complaints

31H. While a prison is being managed under an agreement in accordance with this Part, the Ombudsman Act 1974 and the regulations under that Act, with any necessary modifications:

- (a) apply to and in respect of the management company and the governor of the prison as if, in so far as they have functions under this Act or the agreement, they were public authorities within the meaning of that Act; and
- (b) apply to and in respect of every director or other officer of the management company, and any employee of the management company who under this Part requires an authority from the Director-General in order to be such an employee, as if he or she were, by virtue of his or her office or employment, a statutory employee within the meaning of that Act.

Freedom of information

31I. While a prison is being managed under an agreement in accordance with this Part, the Freedom of Information Act 1989 and the regulations under that Act apply, with any necessary modifications, to and in respect of the management company and its members and employees:

SCHEDULE 1—AMENDMENTS—*continued*

- (a) as if the management company, in *so* far as it has functions under this Act or the agreement, were a local authority within the meaning of that Act; and
- (b) as if the managing director of the management company were its principal officer within the meaning of that Act; and
- (c) as if the Minister were its responsible Minister within the meaning of that Act.

Minimum standards

31J. (1) The Director-General must cause to be prepared a written statement setting out minimum standards in relation to the exercise of any functions by a management company in accordance with this Part.

(2) The Minister is required to cause the statement to be laid before each House of Parliament within 10 sitting days of that House after the execution of an agreement providing for the exercise of those functions by a management company.

(3) The Director-General may amend such a statement from time to time.

(4) The Minister is required to cause the amended statement to be laid before each House of Parliament within 10 sitting days of that House after the statement is amended.

(5) Nothing in this section requires a statement (including an amended statement) to be laid before a House of Parliament if such a statement in substantially the same terms has already been laid before that House.

(8) Section 35 (**Permitting escape**):

At the end of the section, insert:

(2) While a prison is being managed under an agreement in accordance with Part 6A, a person employed by the management company as a custodian of prisoners at, or travelling to or from, the prison is, for the purposes of this section, an officer of the prison.

SCHEDULE 1—AMENDMENT—*continued*(9) Section 38 (**Miscellaneous offences**):

Omit section 38 (2), insert instead:

(2) In respect of any offence referred to in subsection (1), the powers of arrest of a police officer may be exercised:

(a) by a prison officer; or

(b) in connection with a prison which is managed under an agreement in accordance with Part 6A—by a person employed by the management company as a custodian of prisoners.

(10) Section 45A (**Use of dogs in maintaining good order and security**):

After section 45A (4), insert:

(5) While a prison is being managed under an agreement in accordance with Part 6A, this section applies to a person employed by the management company as a custodian of prisoners in the same way as it applies to a prison officer.

(11) Schedule 4A (**Provisions Relating to Official Visitors**):

(a) After clause 3, insert:

Declaration of interest

3A. (1) Before being appointed as an Official Visitor or as an acting Official Visitor to a prison that is being managed under an agreement in accordance with Part 6A, a person is required to make a declaration of his or her interest (if any) in the agreement or in the management company.

(2) For the purposes of a declaration under this clause, a reference in subclause (1) to an interest in the management company includes a reference to:

(a) shareholding in the management company or in any related corporation within the meaning of the Companies (New South Wales) Code; and

(b) any interest in business dealings that are taking place or that have taken place with the management company or any director or officer of the management company.

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SCHEDULE 1—AMENDMENTS—*continued*

(3) A person is not to be appointed as an Official Visitor or acting Official Visitor if, in the opinion of the Minister, the person has such an interest in the management agreement or the management company that the person should not be *so* appointed.

(b) Omit clause 4 (3), insert instead:

(3) Without affecting the generality of subclause (2), the Minister may remove from office an Official Visitor who contravenes section 8B or who, in the case of a prison that is managed under an agreement in accordance with Part 6A, is found:

- (a) to have such an interest in the agreement or the management company that the person ought not, in the opinion of the Minister, to continue to be an Official Visitor to the prison; or
- (b) to have made a declaration under clause 3A that was false or misleading in a material particular.

*[Minister's second reading speech made in—
Legislative Assembly on 20 November 1990
Legislative Council on 30 November 1990]*