

PRISONS ACT 1981.

(No. 115 of 1981.)

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PRISONS.

No. 115 of 1981.

AN ACT to make provision for the establishment, management, control, and security of prisons, the custody and welfare of prisoners and for related matters and to repeal the Prisons Act 1903-1980.

[Assented to 14 December 1981.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY.

1. This Act may be cited as the *Prisons Act 1981*. Short title.
2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

Interpreta-
tion.

3. In this Act, unless the contrary intention appears—

“Appeal Tribunal” means the Prison Officers Appeal Tribunal constituted under section 107;

“Director” means the Director referred to in section 6;

“District Court Judge” means a Judge or an acting Judge of The District Court of Western Australia;

“Family Court Judge” means a Judge or an acting Judge of the Family Court of Western Australia;

“Judge of the Supreme Court” includes an acting Judge of the Supreme Court;

“magistrate” means a stipendiary magistrate appointed under the Stipendiary Magistrates Act 1957;

“medical officer” means a medical practitioner who is registered under the Medical Act 1894 and is engaged to perform the duties of a medical officer under this Act, but does not include a prison medical officer;

“officer” means a person appointed or deemed to have been appointed for the purposes of this Act under section 6 or section 13;

“paragraph” means a paragraph of the section or subsection in which the term is used;

“Part” means Part of this Act;

“police officer” means a person appointed—

- (a) under Part I of the Police Act 1892 to be a member of the Police Force of Western Australia;

- (b) under Part III of the Police Act 1892 to be a special constable; or
- (c) under section 38A of the Police Act 1892 to be an aboriginal aide;

“prison” means—

- (a) the prisons, gaols, and penal outstation declared to be prisons by section 4; and
- (b) every building, enclosure or place declared to be a prison by proclamation under section 5;

“prisoner” means a person committed to prison for punishment, on remand, for trial, to be kept in strict custody, for contempt of court, for contempt of Parliament or otherwise ordered into strict security or safe custody, or otherwise ordered to be detained in a prison under a law of the State or the Commonwealth and also means a prisoner whose sentence has been commuted by an extension of the Royal Mercy and in each case a person continues to be a prisoner for so long as he remains in lawful custody;

“prison medical officer” means a medical practitioner who is registered under the Medical Act 1894 and is appointed under and subject to the Public Service Act 1978 to be a prison medical officer;

“prison offence” means a minor prison offence or an aggravated prison offence;

“prison officer” means a person engaged or deemed to have been engaged to be a prison officer under section 13 and a person appointed or deemed to have been appointed under section 6 to an office designated by rules for the purposes only of this definition;

“prison visitor” means a person who is appointed or deemed to have been appointed to be a prison visitor under section 54;

“repealed Act” means the Act repealed by section 116 and includes regulations made under that Act;

“rules” means rules made by the Director under section 35;

“section” means a section of this Act;

“standing orders” means standing orders issued by a superintendent under section 37;

“subsection” means a subsection of the section in which the term is used;

“superintendent” means the superintendent or other officer or prison officer who is at the relevant time in charge of a prison and does not include a police officer who is in charge of a police lock up;

“visiting justice” means a person who is appointed to be a visiting justice under section 54.

PART II—ESTABLISHMENT OF PRISONS.

Existing
prisons
continued.

4. Every prison, gaol, and penal outstation established or declared under the repealed Act before the coming into operation of this Act and specified in column 1 of Schedule 1 to this Act is declared to be a prison within the meaning and for the purposes of this Act and shall be known by the name specified in relation to that prison in column 2 of that Schedule.

Proclama-
tion of
prisons.

5. (1) The Governor may by proclamation—

(a) declare any building, enclosure or place to be a prison within the meaning and for the purposes of this Act;

(b) alter the boundaries of a prison declared under this subsection or under section 4; and

- (c) declare that a prison shall with effect from a date specified in the proclamation cease to be a prison and direct the removal of prisoners confined in that prison to a prison named in the proclamation.

(2) The Governor may amend or revoke a proclamation made under subsection (1).

PART III—OFFICERS.

6. (1) There shall be appointed under and subject to the Public Service Act 1978 a Permanent Head of the Prisons Department who shall be known as the Director of the Western Australia Prisons Department.

Appoint-
ment of
Director and
other
officers.

(2) In the event of the illness, suspension or other absence from duty of the Director or if his office is for any reason vacant, the Public Service Board shall after consultation with the Minister appoint a person to be Acting Director during such illness, suspension, other absence from duty or vacancy.

(3) There may be appointed under and subject to the Public Service Act 1978 such officers, other than prison officers engaged under section 13, as are required for the purposes of this Act.

(4) The Director may appoint such medical officers as are required for the purposes of this Act.

7. (1) Subject to this Act and to the control of the Minister, the Director is responsible for the management, control, and security of all prisons and the welfare of all prisoners.

Powers and
duties of
Director.

(2) The Director is responsible to the Minister for the proper operation of every prison and shall notify the Minister as soon as practicable of—

- (a) any escape by a prisoner from lawful custody; and

- (b) any accident, serious irregularity, or any other unusual event which affects the good order or security of a prison.

(3) The Director has all of the powers conferred by or under this Act on a superintendent and may review, vary or rescind an order or direction given by a superintendent.

(4) All courts and all persons having in Western Australia, by law or by consent of the parties, authority to hear, receive, and examine evidence shall take judicial notice of the signature of every person who is or was the Director and the fact that such person holds or held that office.

Delegation
by Director.

8. (1) The Director may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to his deputy or some other officer any of his powers or duties under this Act, other than this power of delegation and his powers and duties under sections 9, 35, 88, 104, 105 and 106.

(2) For the purposes of this Act, the exercise of a power or the performance of a duty by a delegate under this section shall be deemed to be the exercise of the power or the performance of the power by the Director.

(3) A delegation under this section may be made to a specified person or to the holder or holders of a specified office or class of offices.

(4) A delegation under this section may—

- (a) be made subject to such conditions, qualifications, and exceptions as are set out in the instrument of delegation;
- (b) be revoked or varied by instrument in writing signed by the Director.

(5) Where under this Act the exercise of a power or the performance of a duty by the Director is dependent upon his opinion, belief, or state of mind in relation to a matter and the power or duty has been delegated under this section, the power or duty may be exercised or performed by the delegate upon the opinion, belief, or state of mind of the delegate in relation to that matter.

(6) The Director may exercise a power or perform a duty notwithstanding that he has delegated its exercise or performance under this section.

9. (1) The Director may, and upon the request of the Minister shall, appoint by instrument in writing signed by him any superintendent or other suitably qualified person (in this section referred to as a reporting officer) to inquire into and report to him upon any matter, incident or occurrence concerning the security or good order of a prison, or concerning a prisoner or prisoners.

Director may
set up
inquiry.

(2) For the purposes of carrying out an inquiry under this section, a reporting officer may require any officer or prisoner—

(a) to give him such information as he requires;

(b) to answer any question put to him,

in relation to any matter, incident or occurrence that is the subject of the inquiry.

(3) A requirement made under subsection (2)—

(a) may be made orally or by notice in writing served on the person required to give information or answer a question as the case may be;

(b) may, by its terms, require that the information or answer required—

(i) be given orally or in writing;

(ii) be given on oath, affirmation, or by statutory declaration, for which purpose the reporting officer may

administer an oath or affirmation and has the authority of a commissioner for declarations.

(4) Where under subsection (2) a person is required to give any information or answer any question, the reporting officer shall inform that person that he is required under this Act to give the information or answer the question as the case may be.

(5) Where a person is required under this Act to give any information or answer any question, he shall not refuse to comply with that requirement on the ground that the information or answer may tend to incriminate him or render him liable to any penalty, but the information or answer given by him shall not be admissible in evidence in any proceedings against him (including proceedings under Part X) other than proceedings under section 10 (1) or 10 (2).

Failure to
supply
informa-
tion to
inquiry.

10. (1) Where under section 9 an officer is required by a reporting officer to give any information or answer any question, an officer who without reasonable excuse—

- (a) fails to give that information or answer that question; or
- (b) gives any information or answer that is false in any particular,

commits an offence.

Penalty: \$300.

(2) Where under section 9 a prisoner is required by a reporting officer to give any information or answer any question, a prisoner who without reasonable excuse—

- (a) fails to give that information or answer that question; or
- (b) gives any information or answer that is false in any particular,

commits an aggravated prison offence under section 70.

(3) It is a defence in any proceedings for an offence under subsection (1) or (2) to show that the reporting officer did not comply with section 9 (4).

11. (1) The Director shall, not later than 31 October in each year, prepare and deliver to the Minister in respect of the preceding year ending on 30 June a report on the state and conditions of all prisons in the State and their management and shall include in his report such observations and recommendations as he thinks fit.

Annual
report by
Director.

(2) The Minister shall cause a copy of the Director's report to be laid before both Houses of Parliament within 12 sitting days of each House after receipt of the report by the Minister.

12. Every officer—

Duties of
officers.

- (a) shall observe all rules and standing orders made under this Act;
- (b) has a responsibility to maintain the security of the prison where he is carrying out his duties and shall report to the superintendent every matter coming to his notice which may jeopardize the security of the prison or the welfare of prisoners;
- (c) shall make such returns and reports to the Director as the Director may from time to time direct; and
- (d) shall make any records relating to any prisoner available upon request of the Director to the Director or the superintendent.

13. (1) The Minister may engage prison officers as employees and, subject to any industrial award or agreement that is applicable in relation to a particular case or class of cases, persons so engaged

Engagement
of prison
officers.

shall be employed on such terms and conditions as the Minister, on the recommendation of the Public Service Board, determines.

(2) No person shall be engaged under subsection (1) to be a prison officer until he shall have subscribed in the presence of and attested by a justice or an officer not below the rank of superintendent, the following oath of engagement—

I, A.B. engage and promise that—

- (a) I will well and truly serve the Queen of Australia as a prison officer of the Western Australia Prisons Department;
- (b) I will do my utmost in the performance of my duty as a prison officer to maintain the security of every prison in which I serve and the security of the prisoners and the officers employed at the prison;
- (c) I will uphold the Prisons Act 1981, as amended from time to time, and the regulations, rules and standing orders made under that Act from time to time;
- (d) I will deal with prisoners fairly and impartially; and
- (e) I will obey the lawful orders of an officer under whose control or supervision I am placed.

(3) Where a prison officer to whom Part X applies is convicted of an offence other than under this Act but which relates to the performance of his duties or his fitness to hold office as a prison officer, the Director may, with the consent of the Minister, dismiss that prison officer.

(4) The Minister may, by instrument in writing signed by him, delegate to the Director his powers under this section, other than the power of consenting to a dismissal under subsection (3).

(5) The exercise of a delegated power by the Director under this section shall be deemed to be the exercise of the power by the Minister.

(6) A delegation under subsection (4) may—

- (a) be made subject to such conditions, qualifications, and exceptions as are set out in the instrument of delegation;
- (b) be revoked or varied by instrument in writing signed by the Minister.

14. Every prison officer—

- (a) has a responsibility to maintain the security of the prison where he is ordered to serve;
- (b) is liable to answer for the escape of a prisoner placed in his charge or for whom when on duty he has a responsibility;
- (c) shall obey all lawful orders given to him by the superintendent or other officer under whose control or supervision he is placed;
and
- (d) may issue to a prisoner such orders as are necessary for the purposes of this Act, including the security, good order, or management of a prison, and may use such force as he believes on reasonable grounds to be necessary to ensure that his or other lawful orders are complied with.

Powers and
duties of
prison
officers.

15. Subject to the directions of the Commissioner of Police, a police officer may, upon the request of the Director or a prison officer, assist in the exercise or performance of any power or duty conferred or imposed by this Act and when so acting a police officer, in addition to the powers and duties conferred and imposed on him by or under any other law, shall have the powers and be subject to the responsibilities and shall receive the protection from liability which in like circumstances would be conferred or imposed on a prison officer.

Assistance
by police
officers.

PART IV—CUSTODY, REMOVAL AND RELEASE
OF PRISONERS.

Prisoners
in custody
of Director.

16. (1) Every prisoner is deemed for so long as he continues to be a prisoner to be in the custody of the Director.

(2) Except as otherwise provided by this Act and subject to subsection (3), a prisoner shall not be confined or kept in any place other than a prison.

(3) Subsection (2) is a directory provision only and a breach of that subsection does not affect any issue relating to the lawfulness of the custody of a person at any time.

(4) A prisoner on remand shall be treated in the same manner as other prisoners except in so far as regulations provide otherwise.

(5) The Director may, with the approval of the Commissioner of Police, allow a prisoner to serve all or part of his sentence of imprisonment in a police lock up.

(6) Subsection (5) does not apply in respect of a prisoner who is—

- (a) ordered to be detained or kept in strict custody until the Governor's pleasure is known;
- (b) in safe custody at the direction of the Governor; or
- (c) undergoing strict security life imprisonment.

(7) The Director may, with the approval of the Commissioner of Police, allow a person required to serve a period of imprisonment in default of payment of a fine or other monetary penalty to serve his imprisonment in a police lock up.

(8) Upon taking a prisoner into his custody in accordance with subsection (5) or (7), the police officer in charge of the lock up at that time shall notify the Director in writing accordingly and shall provide the Director with particulars of the prisoner.

(9) If a prisoner is confined in a police lock up under this section for a period of 3 months, the Director shall at the end of that period review the case and, if the occasion arises, shall again review the case at the end of any further period or periods of 3 months during which the prisoner is so confined.

(10) Subject to this Act, where a court has committed a person to prison, the prisoner may be detained in a police lock up for so long as is reasonably necessary to enable arrangements to be made for the conveyance of the prisoner to a prison.

17. Subject to this Act, a prisoner who is in prison or with lawful authority is in some other place shall be taken to be serving his sentence.

Reckoning of sentence.

18. A police officer or a prison officer may convey a prisoner to or from a prison under the order of a court having power to commit a prisoner to prison.

Conveyance of prisoners for trial etc.

19. (1) Notwithstanding any law or any rule of practice to the contrary, it shall not be necessary in a warrant or other instrument under which a prisoner is committed to prison to specify a particular prison in which the prisoner is to be confined nor to address the warrant or other instrument to the superintendent of a particular prison; and a commitment to prison addressed to the Director shall be sufficient.

Warrants of commitment.

(2) Where before or after the coming into operation of this Act a prisoner was or is committed to a particular prison or the warrant or other instrument was or is addressed to the superintendent of a particular prison, the warrant and instrument

shall be read, and shall be given effect to, as if it were a commitment to prison addressed to the Director.

(3) Subsection (2) shall not apply to any order made by the Governor.

(4) Any writ, warrant, or other instrument addressed to the superintendent of a particular prison describing the prison by its situation or some other description shall be valid notwithstanding whatever title such prison is usually known by or whatever be the accurate description of the prison.

Proof of
imprison-
ment.

20. (1) The production in any judicial proceedings of a copy of the warrant or other instrument under which a person is or was held in custody in a prison which copy bears a certificate purporting to be signed by the Director to the effect that the copy is a true copy of the warrant or instrument under which the person is or was held in custody shall be sufficient evidence of the warrant or instrument and the matters specified therein.

(2) An endorsement on a true copy of a warrant or other instrument certified as a true copy in accordance with subsection (1) which endorsement purports to be signed by the Director and relates to the prisoner serving or failing to serve the sentence of imprisonment referred to in the warrant shall be sufficient evidence of the facts stated in the endorsement.

Attendance
for trial of
prisoner.

21. Where a prisoner is charged with an offence, other than the offence in respect of which he is in custody, a court, 2 justices, the Director, or the superintendent of the prison in which that prisoner is confined may, by order in writing, direct that the prisoner be brought up before the court named in the order to be dealt with according to law.

22. Where the presence of a prisoner is required for the purposes of any judicial proceedings, inquest or Royal Commission, a Judge of the Supreme Court, a Commissioner of the Supreme Court, a District Court Judge, a Family Court Judge, or a judge of any other court of record, a magistrate, 2 justices, the Director or the superintendent of the prison in which that prisoner is confined may, by order in writing, direct that the prisoner be brought up for those purposes to the place named in the order.

Attendance
at court of
prisoner.

23. Where it is necessary to bring a convicted appellant or other prisoner to any place at which he is entitled to be present for the purposes of Chapter LXIX of The Criminal Code or to any place to which the Court of Criminal Appeal or a Judge of that Court may have ordered him to be taken for the purposes of any proceedings of that Court or made necessary by or in consequence of an order of that Court, the Director, the superintendent of the prison in which the prisoner is confined, a Registrar of the Supreme Court, a magistrate or 2 justices may, by order in writing, direct that the prisoner be brought up to the place named in the order to be dealt with according to law.

Attendance
at court
of appellant
etc.

24. Where an order is made under section 21, 22, or 23 directing that a prisoner be brought up before a court or to a place—

Custody of
prisoner
attending
court.

- (a) the superintendent of the prison in which the prisoner is confined may charge a prison officer or an officer with the execution of the order;
- (b) a prisoner who is brought up under the order shall, while absent from prison for the purpose specified in the order, be kept in the charge of a prison officer, an officer or police officer and shall, in due course and subject to any lawful order to the contrary, be returned to the custody from which he was brought up without prejudice to any cause or matter for which he was in that custody; and

- (c) if the proceeding which the prisoner is required to attend is adjourned, the prisoner during the adjournment may be taken to and confined in any prison or may be kept at any place in the charge of the prison officer or officer charged with the execution of the order or a police officer and may be brought up from time to time and day to day to the court or place where his attendance is required.

Prisoner attending court in lawful custody.

25. Every prisoner who is brought up or produced before a court or to a place under an order lawfully made under this Act or any other Act or any Act of the Commonwealth shall, while the prisoner is absent from prison for the purpose specified in the order, be deemed to remain in the custody of the Director and in due course, subject to any lawful order to the contrary, the officer in whose charge the prisoner is placed or a police officer shall return the prisoner to the custody from which he was taken.

Removal of prisoner to another prison.

26. (1) Subject to subsection (2), the Director may order that a prisoner who is confined in a prison shall be removed to and confined in another prison, and may by instrument in writing authorize a police officer or prison officer to execute his order.

(2) In the case of a prisoner who is in safe custody at the direction of the Governor or whose sentence of death has been commuted under section 679 of The Criminal Code to strict security life imprisonment, an order under subsection (1) may be made only—

- (a) by the Governor; or
- (b) if the Director is of the opinion that an emergency requires him to do so without delay, by the Director, but an order under this paragraph shall be expressed to be either temporary or to have effect pending the further consideration of the Governor.

27. (1) Where the superintendent of a prison is of the opinion that a prisoner who is confined in that prison requires medical treatment that cannot, by reason of impracticality or urgency, be administered within the prison, the superintendent shall order the removal of the prisoner from the prison for the purpose of receiving such treatment and the return of the prisoner to prison after treatment.

Removal of
prisoner for
medical
treatment.

(2) Where a prisoner is removed to a hospital under the authority of an order made by a superintendent under subsection (1), the superintendent shall inform the officer in charge of the hospital of the date when the prisoner is entitled to be discharged from lawful custody, and, when the prisoner is fit to be discharged from hospital, the officer in charge of the hospital shall notify the superintendent accordingly and the superintendent shall order and arrange for the return of the prisoner to the prison from which he was removed.

(3) The superintendent may appoint a prison officer to take charge of a prisoner who is absent from the prison under an order made under subsection (1) and shall do so—

- (a) if he considers that the security of the hospital or other place of treatment or the continued custody of the prisoner might otherwise be jeopardized; or
- (b) unless the Director, with the consent of the Minister, otherwise orders, in the case of a prisoner to whom subsection (6) applies.

(4) In this section, "hospital" includes an approved hospital under the Mental Health Act 1962.

(5) A prisoner who escapes or attempts to escape while he is absent from prison under an order made under subsection (1) is guilty of an aggravated prison offence under section 70 and shall be dealt with accordingly.

(6) Where a prisoner who is—

- (a) ordered to be detained or kept in strict custody until the Governor's pleasure is known;
- (b) in safe custody at the direction of the Governor; or
- (c) under sentence of death or whose sentence of death has been commuted under section 679 of The Criminal Code to strict security life imprisonment,

is removed from or returned to a prison under an order made under this section, the superintendent of the prison shall notify the Director accordingly.

Removal of
prisoner in
interests of
justice.

28. The Minister may, by warrant signed by him, authorize the temporary removal of a prisoner from a prison or other place of detention to any place for any purpose in aid of the administration of justice or other purpose which in the opinion of the Minister requires that such temporary removal should in the interests of justice be authorized.

Remission.

29. (1) Subject to this Act and to section 39 of the Offenders Probation and Parole Act 1963, a prisoner to whom this section applies is entitled to remission of one-third of the period of his sentence.

(2) The number of days' remission of a prisoner's sentence provided for by this section shall be calculated by reducing the term of the sentence to a number of days, dividing by 3 and disregarding any remainder.

(3) This section applies to a prisoner who—

- (a) is sentenced to a finite term of imprisonment of not less than 3 days; or
- (b) is committed to prison on default of payment of a fine or other monetary penalty imposed on him,

and does not apply to a prisoner in respect of a penalty of confinement imposed under Part VII.

30. A prisoner who escapes from lawful custody while undergoing a finite term of imprisonment is liable, unless the Governor otherwise directs, upon recapture to undergo imprisonment which he was undergoing at the time of his escape for a term equal to that during which he has been absent from prison after his escape and before the expiration of the term of his original sentence whether at the time of recapture the term of that sentence has or has not expired and such a prisoner is not entitled to remission under section 29 in respect of—

Computation of imprisonment of prisoner unlawfully at large.

- (a) the term of imprisonment required to be served by him in accordance with this section; and
- (b) any term of imprisonment imposed on him in respect of his escape from lawful custody.

31. (1) The Director may authorize the discharge from custody of a prisoner at any time during the period of 10 days immediately before the day when his sentence is due to expire.

Director's and superintendent's powers of early discharge.

(2) The superintendent may authorize the discharge from custody of a prisoner at any time during the period of 3 days immediately before the day when his sentence is due to expire.

(3) This section does not apply to a prisoner who is committed to prison on default of payment of a fine or monetary penalty imposed on him or on default of payment of any other sum of money (including costs) ordered to be paid by him.

32. (1) If a charge of a minor prison offence is laid against a prisoner who is due for release before the charge has been determined in accordance with Part VII—

Prison offences by prisoners due for release.

- (a) the prisoner may be detained in custody for not more than 24 hours to enable the charge to be determined; and

(b) if it appears that the charge cannot be determined within the period referred to in paragraph (a) in accordance with Part VII by reason that a visiting justice is not available for the purpose, the superintendent shall proceed to inquire into and determine the charge as if section 71 (1) (d) applied.

(2) If a charge of an aggravated prison offence is laid against a prisoner who is due for release before the charge has been dealt with in accordance with Part VII, the prisoner shall when due for release be delivered to the custody of a police officer to be dealt with, whether by release on bail or otherwise, according to law and the superintendent or a prison officer authorized by the superintendent shall lay a complaint of the offence accordingly.

(3) A prisoner who is sentenced to or undergoing punishment in respect of a prison offence under Part VII at the time when the sentence on which he is imprisoned expires or he is otherwise entitled to be released shall nevertheless undergo or complete such punishment, as the case may be.

(4) A prisoner who is in custody by reason of subsection (1) or (3) shall, until he is entitled to be released, be treated as a sentenced prisoner.

Provision of
fare home on
release.

33. Upon the release of a prisoner from prison, the Director may, out of any moneys available to him for the purpose, provide him with the means of returning to his home or his usual place of residence within the State or the place of his arrest within the State by causing his fare to be paid or by providing other means of transport.

Inquest on
death of
prisoner.

34. (1) The superintendent shall give notice to the Director of the death of a prisoner occurring while the prisoner is in the charge of the superintendent and the Director shall cause notice of such death to be given to a coroner.

(2) Where a coroner is informed under subsection (1) of the death of a prisoner the coroner shall inquire into the manner and cause of the death of the prisoner.

(3) Notwithstanding this section or section 6 of the Coroners Act 1920, an inquiry shall not be held under that Act into the death of a prisoner upon whom a sentence of death is executed.

PART V—MANAGEMENT, CONTROL AND
SECURITY OF PRISONS.

35. (1) The Director may, with the approval of the Minister, make rules for the management, control and security of prisons generally or a specified prison and for the management, control, and security of prisoners and the management of officers of the Western Australia Prisons Department.

Director may
make rules.

(2) It is the intention that rules made under subsection (1) shall complement regulations made by the Governor under section 110 and if there exists any inconsistency between a rule made by the Director and a regulation made by the Governor, the rule shall, to the extent of such inconsistency, be read and have effect subject to the regulation.

(3) Rules made under this section may confer a discretionary authority on any person or class of persons.

(4) Rules made under this section may specify and regulate the privileges which may be extended to prisoners and may provide for the withdrawal of such privileges.

(5) The Director shall publish rules made under this section in such manner as he considers necessary to bring relevant rules to the attention of officers, persons visiting prisons and prisoners.

(6) The Director shall take reasonable steps to have rules made under this section, so far as they are relevant to prisoners, made known—

- (a) to every prisoner who is illiterate; and
- (b) in a language that he understands, to every prisoner who does not understand English.

Super-
intendents
of prisons.

36. (1) The Director shall designate a superintendent for each prison and an officer so designated as superintendent of a prison shall have the charge and superintendence of the prison for which he is designated and shall be responsible to the Director for the good government, good order, and security of that prison.

(2) The superintendent of a prison is liable to answer for the escape of any prisoner in his charge.

(3) The superintendent of a prison may issue such orders to officers and to prisoners as are necessary for the good government, good order, and security of the prison of which he is superintendent.

(4) Without prejudice to any power otherwise conferred, the superintendent of a prison may authorize the use of such force as he believes, on reasonable grounds, to be necessary to ensure that his lawful orders relating to the maintenance of good government, good order, and security in the prison are carried out and it is lawful for an officer to use force as so authorized.

Super-
intendent
may issue
standing
orders.

37. (1) The superintendent of a prison may, with the approval of the Director, make and issue written standing orders with respect to the management and routine of that prison.

(2) If there exists any inconsistency between a standing order made by a superintendent and a rule made by the Director under section 35 or a regulation made by the Governor under section 110,

the standing order shall, to the extent of such inconsistency, be read and have effect subject to the rule or regulation.

(3) The superintendent of a prison shall take such steps as he considers necessary to bring relevant standing orders made by him under this section to the attention of officers, persons visiting the prison, and prisoners confined in the prison.

(4) The superintendent shall take reasonable steps to have standing orders made under this section, so far as they are relevant to prisoners, made known—

- (a) to every prisoner who is illiterate; and
- (b) in a language that he understands, to every prisoner who does not understand English.

38. (1) The Director shall nominate for each prison a prison medical officer or a medical officer who shall be responsible for the medical care and treatment of every prisoner in that prison.

Medical care
of prisoners.

(2) Subject to subsection (3), a prisoner may be attended upon and examined by a medical practitioner other than the prison medical officer or medical officer only with the prior approval of the superintendent or the prison medical officer or medical officer and with the prior approval also of the Director and for the purpose of providing to the prison medical officer or medical officer an opinion on the medical condition of and the treatment recommended for the prisoner.

(3) The superintendent may, after consultation with the prison medical officer or medical officer who is responsible under this section for the medical care and treatment of the prisoner concerned, permit the prisoner to be attended upon and examined by a medical practitioner—

- (a) for official purposes affecting that prisoner;

- (b) for the purposes of the proceedings or pending proceedings of any court, tribunal, board, or other body exercising a judicial or quasi-judicial function;
- (c) to facilitate the consideration or pursuance of any claim for compensation, damages, insurance, or other benefit by or in respect of the prisoner; or
- (d) for any other purpose or proceeding which the superintendent and the Director are satisfied is *bona fide* and necessary or desirable.

Function of
prison
medical
officer.

39. The prison medical officer or the medical officer for a prison shall—

- (a) attend at the prison at such times and on such occasions as the Director may direct;
- (b) examine every prisoner as soon as practicable after his admission to prison and ascertain and record the state of health of the prisoner and any other circumstance connected with the prisoner's health, as he considers necessary;
- (c) maintain a record of the medical condition and the course of treatment prescribed in respect of any prisoner under his care;
- (d) make such returns and reports to the Director as the Director may from time to time direct;
- (e) make any records relating to a prisoner required to be kept under paragraphs (b) and (c) available, upon request, to the Director and, in the case of records required to be kept under those paragraphs by the medical officer for a prison, make those records available, upon request, to a prison medical officer;
- (f) give close medical supervision to every prisoner in separate confinement;

- (g) examine and treat every prisoner in the prison who requires medical care and treatment; and
- (h) examine such prisoner as the Director or the superintendent may require.

40. The Permanent Head of the Public Health Department shall cause the inspection from time to time of health and hygiene standards and conditions at every prison and following every such inspection shall report in writing to the Director any matter concerned with such standards or conditions which in his opinion requires attention.

Health
inspection
of prisons.

41. (1) A prison officer may, if so ordered by the superintendent, search a prisoner and take from him any thing found on his person—

Search of
prisoners
etc.

- (a) which apparently was not issued to him with the approval of the superintendent;
- (b) which has been retained by him without the approval of the superintendent; or
- (c) which, although issued or retained with the approval of the superintendent, appears to the superintendent to constitute a threat to or breach of the security or good order of the prison.

(2) A prison officer may use such force as is reasonably necessary for the purpose of performing his duty under subsection (1).

(3) Any thing taken from a prisoner under subsection (1) may be—

- (a) retained by the superintendent and returned to the prisoner on his release;
- (b) returned to any person who claims to be, and appears to the superintendent to be, the owner of the thing; or
- (c) upon the order of the Director, destroyed or otherwise dealt with.

Restraint.

42. (1) Without prejudice to any power otherwise conferred, a superintendent may authorize and direct the restraint of a prisoner where in his opinion such restraint is necessary—

- (a) to prevent a prisoner injuring himself or any other person; or
- (b) upon considering advice from the prison medical officer or the medical officer or some other medical practitioner, on medical grounds; or
- (c) to prevent the escape of a prisoner during his movement to or from a prison.

(2) Restraint involving the use of medication shall be used only on medical grounds with the approval of the prison medical officer, or the medical officer or some other medical practitioner.

(3) If restraint is used in relation to a prisoner for a continuing period of more than 24 hours, the use and the circumstances shall be reported forthwith to the Director by the superintendent.

Separate confinement.

43. (1) For the purpose of maintaining good government, good order or security in a prison, the Director may order, in writing, the separate confinement in prison of a prisoner for such period not exceeding 30 days as is specified in the order.

(2) The Director shall inform the Minister forthwith of every order made by him under subsection (1).

(3) Every cell used for the separate confinement of a prisoner under this section shall be of such a size and so ventilated and lighted that a prisoner may be confined in that cell without injury to health and every prisoner in separate confinement shall have the means of taking air and exercise for not less than one hour each day at such times and for such other periods as the Director may direct.

44. In a prison containing prisoners of each sex, separate cells and sleeping quarters in different parts of the prison shall be allocated to male and female prisoners.

Separation of
male and
female
prisoners.

45. Where a prisoner refuses to undergo—

- (a) a medical examination upon admission to a prison; or
- (b) a medical examination required by the Director or the superintendent; or
- (c) a medical examination which the prison medical officer or the medical officer, as the case may be, considers necessary; or
- (d) medical treatment and the prison medical officer or the medical officer, as the case may be, is of the opinion that the life or health of the prisoner or any other person is likely to be endangered by that refusal,

Power of
medical
examination
and
treatment.

the prison medical officer or the medical officer and any person acting in good faith may, under the direction of such officer, make such a medical examination or administer such medical treatment and use such force as is reasonably necessary for the purpose.

46. Where there are reasonable grounds for believing that a medical examination of a prisoner will afford evidence as to the commission of an offence, the prison medical officer, the medical officer, or a medical practitioner registered under the Medical Act 1894 acting at the request of the Director or the superintendent, and any person acting in good faith under the direction of such officer or practitioner, may make such medical examination of the prisoner as is reasonably necessary to ascertain the facts which may afford such evidence and use such force as is reasonably necessary for the purpose.

Medical
examination
for
evidentiary
purposes.

Use of
firearms.

47. (1) A superintendent, prison officer, or a person lawfully charged by the Minister or Director with the charge of a prisoner, may use a firearm against a prisoner who—

- (a) is attempting to escape from lawful custody if it appears to the user of the firearm that the use of a firearm is necessary to prevent the escape of the prisoner; or
- (b) is assaulting or attempting to assault any person, if the assault or attempt appears to the user of the firearm to be of a character apparently dangerous to life or likely to cause serious injury.

(2) A superintendent, prison officer, or a person lawfully charged by the Minister or the Director with the charge of a prisoner, may use a firearm against—

- (a) a person who is rescuing or attempting to rescue a prisoner from lawful custody;
- (b) a person who is breaking into or otherwise entering, attempting to break into or otherwise enter, or who has broken into or otherwise entered a prison without lawful authority; or
- (c) property in the apparent possession or under the control of a person referred to in paragraph (a) or (b),

but a firearm may be used under this subsection only if it appears to the user that the use of a firearm is necessary to control the situation or prevent the rescue.

(3) Before the use of a firearm under this section, steps shall be taken, where it is practicable in the circumstances to do so, to order the prisoner or other person to desist from his apparent course of conduct and to give warning that a firearm is about to be used.

(4) Subsection (3) is a directory provision.

48. (1) Where the Director is of the opinion that—

Use of force on serious breach of security.

- (a) a serious breach of the good order or security of a prison has occurred or appears to the Director to be imminent; and
- (b) no other reasonable means of control are available at the prison,

the Director may order the use of force against a prisoner or prisoners, including force which may cause death or serious injury.

(2) Before force is used under this section, steps shall be taken, where it is practicable in the circumstances to do so, to issue the orders necessary to restore or ensure good order and security within the prison and to give warning of the consequences of failure to comply with those orders.

(3) Subsection (2) is a directory provision.

49. (1) The superintendent of a prison may require and direct—

Power to search and question persons entering prison.

- (a) a search of a person entering or seeking to enter a prison; and
- (b) the examination of any article in the possession or under the control of that person.

(2) A person who is permitted to enter a prison or having been permitted to enter has just left a prison shall, if required by the superintendent, permit a search to be made of his person and that of any child accompanying him and shall, if so required, permit the examination of any article in his possession or under his control or in the possession or under the control of such a child.

Penalty: \$500 or 6 months' imprisonment, or both.

(3) Notwithstanding any other provision of this Act, if a person refuses to permit a search or an examination under subsection (1) or (2), the superintendent may nevertheless require and direct that—

- (a) he be searched;
- (b) any article in the possession or under the control of that person be examined,

and the superintendent may refuse to admit that person to or may cause him to be removed from the prison.

(4) A search under this section of a female person or a child apparently under the age of 10 years shall be conducted expeditiously and—

- (a) by a female prison officer or some other female person authorized for the purpose by the superintendent; and
- (b) in the presence only of female persons and, in the case of the search of such a child, in the presence of the person accompanying the child unless that person refuses to be present.

(5) Where it appears to a superintendent that an article in the possession or under the control of a person who is searched under this section may jeopardize the good order or security of the prison, that article may be seized and, in accordance with the directions of the Director, shall be returned to the apparent owner or otherwise dealt with.

(6) The superintendent of a prison may require a person who enters or seeks to enter a prison or, having been permitted to enter, has just left a prison—

- (a) to state in writing his full name and residential address, and the full name and residential address of any child accompanying him; and
- (b) to state in writing his purpose in entering or seeking to enter the prison,

and a person so required by the superintendent who neglects or refuses to comply with the requirement or states a false name or residential address or who states a false purpose in entering or seeking to enter the prison or who otherwise provides false or misleading information commits an offence.

Penalty: \$1 000 or 12 months' imprisonment, or both.

(7) The superintendent may refuse to admit to or may cause to be removed from a prison any person who—

- (a) refuses or neglects to provide information which he is required to state under subsection (6); or
- (b) provides information which the superintendent has reasonable cause to suspect is false in a material respect.

(8) For the purpose of exercising a power conferred by this section, a person carrying out a search or examination may use such force as is reasonably necessary for the purpose.

50. (1) A person commits an offence who conveys, brings or in any manner introduces any article into a prison or attempts to convey, bring or in any manner introduce any article into a prison—

Penalty in respect of unauthorised articles.

- (a) with intent to breach the good order, security or good government of a prison; or
- (b) where the article is of a kind likely to jeopardize the good order, security or good government of a prison.

Penalty: \$2 000 or 18 months' imprisonment or both.

(2) A person who, without the permission of the superintendent or the Director, conveys, brings or in any manner removes any article out of a prison that he did not have in his possession when he was admitted to the prison commits an offence.

Penalty: \$2 000 or 18 months' imprisonment, or both.

(3) A person who, for the purpose of obtaining permission to convey, bring or remove any article out of a prison, knowingly makes a false statement or representation or knowingly gives information that is false in a material particular commits an offence.

Penalty: \$1 000 or 12 months' imprisonment, or both.

(4) An officer who suffers any article to be dealt with in the manner prohibited by subsection (1) or (2) commits an offence.

Penalty: \$2 000 or 18 months' imprisonment, or both.

(5) A police officer or a prison officer may arrest without the necessity of a warrant a person whom he finds to be contravening subsection (1), (2) or (4) or who is reasonably suspected by him of contravening subsection (1), (2), or (4).

(6) A prison officer who arrests a person under subsection (5) shall deliver that person into the custody of a police officer and thereupon such police officer shall proceed according to law.

(7) Where it is proved in proceedings under subsection (2) or subsection (4) that a person has conveyed, brought or removed an article out of a prison, or attempted to do so, the onus shall be

on the person charged to prove the permission of the superintendent or the Director in relation thereto.

(8) A prison officer who is convicted of an offence under this section forfeits his office.

51. (1) The superintendent of a prison may delegate to a prison officer, by instrument in writing signed by him, all or any of the powers conferred by section 49. Superintendent may delegate powers under s. 49.

(2) For the purposes of this Act, the exercise of a power by a delegate under this section shall be deemed to be the exercise of the power by the superintendent.

(3) A delegation under this section may be made to a specified person or to the holder or holders of a specified office or class of offices.

(4) A delegation under this section may—

(a) be made subject to such conditions, qualifications, and exceptions as are set out in the instrument of delegation;

(b) be revoked or varied by instrument in writing signed by the superintendent.

(5) Where under this Act the exercise of a power by the superintendent is dependent upon his opinion, belief, or state of mind in relation to a matter and the power has been delegated under this section, the power may be exercised by the delegate upon the opinion, belief, or state of mind of the delegate in relation to that matter.

(6) The superintendent may exercise a power notwithstanding that he has delegated its exercise under this section.

Offences in respect of loitering, unauthorized entry and unauthorized communications.

52. (1) Subject to this Act, a person who without the permission of the superintendent or the Director—

- (a) enters or attempts to enter a prison; or
- (b) communicates or attempts to communicate with a prisoner,

commits an offence.

Penalty: \$1 500 or 18 months' imprisonment, or both.

(2) Where it is proved in proceedings under subsection (1) that a person has done or attempted to do an act which would contravene the subsection unless done with the permission of the superintendent or the Director, the onus shall be on the person charged to prove that he had that permission.

(3) A person who, for the purpose of obtaining permission to enter a prison, knowingly makes a false statement or representation or knowingly gives information that is false in a material particular commits an offence.

Penalty: \$1 000 or 12 months' imprisonment, or both.

(4) A person who—

- (a) loiters about or near a prison or in or near some other place where for the time being there are prisoners; or
- (b) conceals or leaves an article at any place with the intent that the article be found or received by a prisoner,

commits an offence.

Penalty: \$1 000 or 12 months' imprisonment, or both.

(5) For the purposes of this section, a person found about or near a prison or in or near some other place where for the time being there are prisoners who, upon being warned and requested

by a prison officer or police officer to depart therefrom, refuses or neglects to do so shall be deemed to be loitering.

(6) A police officer or a prison officer may arrest without the necessity of a warrant a person whom he finds to be contravening subsection (1) or (4) or who is reasonably suspected by him, of contravening subsection (1) or (4).

(7) A prison officer who arrests a person under subsection (6) shall deliver that person into the custody of a police officer who shall proceed according to law.

53. (1) Upon admission to a prison, a prisoner shall be given an opportunity to state his religion or religious denomination (if any) and the superintendent shall cause a record to be kept of every such statement.

Practice of religion by prisoners.

(2) Subject only to such restrictions as the Director may impose for the security, good order and management of the prison and the prisoners, a prisoner may—

- (a) practise the rites or attend services of his religion or religious denomination within the prison; and
- (b) receive religious guidance and visits for that purpose from a *bona fide* priest, chaplain, minister, religious adviser or other responsible member of that religion or religious denomination being in any case a person approved by the Director.

PART VI—PRISON VISITS AND COMMUNICATIONS INVOLVING PRISONERS.

54. (1) The Governor may appoint for every prison—

Appointment of prison visitors and visiting justices.

- (a) visitors to be known as prison visitors; and

(b) visitors to be known as visiting justices.

(2) A prison visitor shall not carry out the duties of a visiting justice.

(3) A visiting justice shall not carry out the duties of a prison visitor.

(4) Visiting justices shall be appointed from persons who are magistrates or justices of the peace.

(5) Appointments under this section shall be for a term of 2 years, but a prison visitor or a visiting justice may resign at any time by notice in writing delivered to the Governor.

Duties of
prison
visitors.

55. (1) A prison visitor shall—

(a) visit and inspect the prison for which he is appointed upon his appointment and thereafter at intervals of not more than 3 months;

(b) furnish a report in writing to the Minister after each visit and inspection made under paragraph (a);

(c) make a record of any complaint made to him by a prisoner or officer and report that complaint to the Director or to the Minister;

and

(d) communicate directly with the Director immediately after a visit made under paragraph (a) if he considers it desirable to make a personal report to the Director on his visit.

(2) A prison visitor shall not interfere with the management or discipline of the prison nor give or purport to give any instructions to an officer.

56. (1) A visiting justice shall attend the prison for which he is appointed as soon as practicable upon being notified by the superintendent that a charge of a prison offence has been laid and shall—

Duties of
visiting
justice.

- (a) in the case of a minor prison offence inquire into and dispose of the charge;
- (b) in the case of an aggravated prison offence, exercise the discretion conferred by section 73.

(2) A visiting justice shall use his best endeavours to complete the performance of his duties under this section within 14 days of being notified in a particular case that a charge of a prison offence has been laid.

(3) Where a charge of a prison offence is laid against a prisoner but before the hearing of that charge begins the prisoner is removed to another prison, a visiting justice for that other prison shall have the powers and duties in relation to that prisoner and that charge as if the charge had been laid at that other prison.

57. A prison visitor, a Judge of the Supreme Court or a District Court Judge may, upon providing satisfactory proof of his identity to the superintendent, enter and examine a prison at any time he thinks fit.

Right of
entry of
prison
visitors,
Judges, etc.

58. Every officer shall give full assistance to and co-operate fully with any person visiting a prison under section 55, 56 or 57.

Co-operation
with official
visitors.

59. (1) Subject to this Part, a prisoner shall be permitted to receive visits from his friends and relations in accordance with the regulations.

Visits by
friends and
relations of
prisoners.

(2) A prisoner may be permitted by the Director to receive visits under this Part from a friend or relation who is confined in another prison and the Director may order that a prisoner be temporarily

removed to and from a prison for the purposes of making such a visit, but the Director shall permit such a removal and visit only where he is satisfied that adequate security arrangements have been made so that the removal and visit would impose a minimum risk to the security of the public.

Declaration
by visitors.

60. (1) On the occasion of the first visit under section 59 or 65 of a person to a prisoner who is confined in a prison prescribed by regulations for the purposes of this section, the person shall, before being permitted to make the visit to that prisoner, be informed by the superintendent, or an officer appointed by him for the purposes of this section, of the provisions of this subsection and the consequences of breach of this section and shall be required by the superintendent or such officer to make and sign a declaration on the prescribed form with respect to his identity, his friendship or relationship with the prisoner concerned (if applicable), and the purpose of his visit.

(2) A person who has made a declaration under subsection (1) may be required by the superintendent or an officer appointed by him for the purposes of this section, should he desire to make further visits to the prisoner, to make and sign a further declaration or declarations on the prescribed form.

(3) On the occasion of a visit to or interview of a prisoner, other than a visit to which subsection (1) applies, the person may, before being permitted to make the visit or conduct the interview, or at any time while he remains within the prison, be informed by the superintendent, or an officer appointed by him for the purpose, of the provisions of this subsection and the consequences of breach of this section and may be required by the superintendent or other officer to make and sign a declaration on the prescribed form with respect to his identity, his friendship or relationship with the prisoner concerned (if applicable), and the purpose of his visit.

(4) A person who makes a declaration under this section which is false in a material particular commits an offence.

Penalty: \$1 500 or 18 months' imprisonment, or both.

(5) Before permitting a person who is required to make a declaration under this section to visit or interview a prisoner, the superintendent or other officer appointed for the purposes of this section shall satisfy himself, so far as is reasonably practicable, as to the matters stated in the declaration.

(6) The superintendent shall—

- (a) subject to any directions of the Director as to disposal, retain every declaration made under this section; and
- (b) cause a record to be made of the name of each visitor to a prisoner and the time and date of the visit.

61. A prisoner shall be permitted to receive during hours prescribed by rules a visit for an official purpose from—

Visits by
certain
officials.

- (a) the prisoner's parole officer;
- (b) the Parliamentary Commissioner for Administrative Investigations or one of his officers;
- (c) the Commonwealth Ombudsman, a Deputy Commonwealth Ombudsman or a member of the staff of the Commonwealth Ombudsman.

62. (1) A legal practitioner may for the purposes of pending court proceedings interview a prisoner who is his client at a reasonable hour, or as otherwise authorized by the superintendent, within the view but not the hearing of an officer.

Visits by
legal
practitioner.

(2) With the approval of the superintendent, a legal practitioner may at a reasonable hour interview, within the view but not the hearing of an officer, a prisoner for a *bona fide* purpose.

Visits by
police.

63. A police officer may at any time have access and speak to a prisoner for an official purpose.

Visits by
public
officers.

64. Subject to any directions of the Minister, the Director may permit a person who is, or purports to be, exercising a power conferred or a duty imposed on him by or under a law of the State or the Commonwealth to have access and speak to a prisoner for an official purpose.

Other
visitors to
prisoners.

65. (1) A person, other than a person who may be permitted to visit or interview a prisoner under section 59, 61, 62, 63, or 64 or otherwise under this Act, who desires to visit a prisoner for a *bona fide* purpose may be permitted to do so by the Director.

(2) Permission to visit a prisoner under this section may be given subject to such conditions as the Director thinks fit.

Visitor may
be refused
entry or
removed.

66. (1) If the superintendent is of the opinion that a visitor or any other person is likely to interfere with the preservation of the good order or the security of a prison, he may, notwithstanding any other provision of this Act, refuse him entry to the prison or, if such person has been admitted to the prison, he may remove him or cause him to be removed and may use such reasonable force as is necessary for the purpose.

(2) A superintendent shall forthwith notify the Director in writing of any action he takes under subsection (1).

67. (1) Any letter written by a prisoner and properly addressed to—

Letters etc.
written by
prisoners.

- (a) the Minister;
- (b) the Director;
- (c) the Parliamentary Commissioner for Administrative Investigations; or
- (d) the Commonwealth Ombudsman,

shall be dispatched by the superintendent to the addressee, without being opened or read.

(2) The superintendent or an officer authorized by the superintendent may open and read any letter written by a prisoner, other than a letter of the kind specified in subsection (1), and may open and inspect any parcel which a prisoner desires to be dispatched or made available to any person.

(3) Where it appears to the superintendent that the contents of a letter or parcel of the kind referred to in subsection (2), or any part of the contents of such a letter or parcel—

- (a) may jeopardize the good order or the security of a prison;
- (b) contain a threat to a person or property; or
- (c) constitute or are expressed in a code,

the letter or parcel may be returned to the prisoner, or sent to and retained by the Director, or destroyed or otherwise dealt with by order of the Director.

(4) Subject to subsections (2) and (3), the superintendent shall cause to be dispatched to the addressee any letter written by a prisoner and any parcel which a prisoner desires to be dispatched to any person.

68. (1) A letter addressed to a prisoner and written by a person referred to in section 67 (1) shall be delivered to the prisoner as soon as practicable after it is received at a prison without being opened

Letters etc.
addressed to
prisoners.

or read, but if the superintendent has reason to believe that a letter apparently written by such a person did not in fact so originate he may open that letter and inspect it to the extent necessary to establish its origin.

(2) If a superintendent opens and inspects a letter under subsection (1), he shall forthwith notify the Director in writing of his reason for so acting and the result of his inspection.

(3) The superintendent or an officer authorized by the superintendent may open and read any letter addressed to a prisoner and received at the prison, other than a letter of the kind referred to in subsection (1), and may open and inspect any parcel addressed to a prisoner and received at the prison.

(4) Where it appears to the superintendent that the contents of a letter or parcel of the kind referred to in subsection (3) or any part of the contents of such a letter or parcel—

- (a) may jeopardize the good order or the security of a prison;
- (b) contains a threat to a person or property;
- or
- (c) constitute or are expressed in a code,

the superintendent may—

- (d) decline to accept delivery on behalf of the prisoner;
- (e) return the letter or parcel to the sender; or
- (f) otherwise deal with the letter or parcel by order of the Director.

(5) Subject to this section, a letter or parcel addressed to a prisoner and received at the prison shall be delivered to that prisoner.

PART VII—PRISON OFFENCES.

69. A prisoner who—

Minor prison offences.

- (a) disobeys a rule or standing order of the prison or a lawful order of a prison officer or officer having control or authority over him;
- (b) is idle, negligent or careless in his work;
- (c) behaves in a disorderly manner;
- (d) swears or uses indecent language;
- (e) uses insulting or threatening language or behaves in an insulting or threatening manner;
- (f) pretends illness or injury;
- (g) wilfully or maliciously breaks, damages or destroys any property;
- (h) prefers a false or frivolous complaint against an officer;
- (i) does any act or omission of insubordination or misconduct subversive of the order and good government of the prison; or
- (j) breaches a condition or restriction of any permit or grant of leave of absence from a prison,

is guilty of a minor prison offence.

70. A prisoner who—

Aggravated prison offences.

- (a) behaves in a riotous manner;
- (b) assaults a person;
- (c) escapes or prepares or attempts to escape from lawful custody or from a cell or place within a prison in which he is confined or from any place where he is obliged to remain by prison routine or any order;
- (d) is in possession of or under the influence of drugs not lawfully issued to him or not taken as prescribed;

- (e) is in possession of or under the influence of alcohol not lawfully issued to him;
- (f) is in possession of a weapon or a facsimile of a weapon; or
- (g) contravenes or fails to comply with section 10 (2), 27 (5), 85 (2), 92 (2), or 94 (6),

is guilty of an aggravated prison offence.

Charges of
prison
offences.

71. (1) A charge of a prison offence alleged to have been committed by a prisoner may be made by any prison officer and shall be brought forthwith to the attention of the superintendent who shall, as he thinks appropriate and having regard to the nature of the alleged prison offence and to the alleged circumstances,—

- (a) if the prisoner so agrees, suspend further action with respect to the charge on condition of the good behaviour of the prisoner for a stated period not exceeding 2 months and order the withdrawal of the charge at the end of that period if the condition has been observed; or
- (b) direct that the charge be withdrawn or that a further or different charge be laid; or
- (c) refer the charge to a visiting justice; or
- (d) if the prisoner so requests and the superintendent agrees to the request, inquire into and determine a charge of a minor prison offence in accordance with section 75.

(2) Where the superintendent proposes to refer a charge to a visiting justice under subsection 1 (c), he shall call upon the prisoner to admit or deny the charge and shall endorse the charge with a note of whether the prisoner admits or denies that charge.

Visiting
justice may
determine
minor prison
offences.

72. A visiting justice may inquire into and determine any charge of a minor prison offence.

73. Where a charge of an aggravated prison offence alleged to have been committed by a prisoner is referred to a visiting justice, the visiting justice may, as he thinks appropriate and having regard to the nature and particulars of the alleged prison offence and the extent of his powers under section 78—

Visiting
justice and
aggravated
prison
offences.

- (a) direct the superintendent that a complaint of an aggravated prison offence be laid either by himself or by a prosecuting prison officer authorized by the superintendent;
- or
- (b) inquire into and determine the charge as a minor prison offence.

74. (1) Subject to this Act, every charge of a prison offence shall be heard and determined in the presence of the prisoner charged and in either the prison where it is alleged the offence was committed or some other suitable place.

Hearing of
charges.

(2) In the case of a charge of an aggravated prison offence, the magistrate or 2 justices may direct that the hearing shall take place in open court.

(3) A prison officer who has been authorized in writing by the superintendent for the purpose may appear before a magistrate or justices on the hearing of a charge of an aggravated prison offence and conduct the prosecution.

75. (1) Where a minor prison offence is alleged to have been committed by a prisoner and the prisoner does not admit the charge, the charge shall be determined by the superintendent or the visiting justice, as the case may be, in accordance with the procedure prescribed by regulations.

Procedure for
hearing
charges of
minor prison
offences.

(2) The superintendent or visiting justice shall not be bound by the rules of evidence but may admit any evidence which in his opinion is relevant to the charge and may decline to admit repetitious material.

Prisoner not
to be legally
represented.

76. (1) A prisoner shall not be represented by a legal practitioner in proceedings under this Part before a superintendent or visiting justice.

(2) If the superintendent or a visiting justice is satisfied after making appropriate inquiries that a prisoner who is charged with a prison offence does not for any reason comprehend sufficiently the nature or circumstances of the alleged offence or the nature of the proceedings, the superintendent or visiting justice, as the case may be, may appoint a person nominated or agreed to by the prisoner, or in the absence of such nomination or agreement, some other person to assist the prisoner and represent him in the proceedings.

Imposition of
penalties by
super-
intendent.

77. (1) Where a minor prison offence is determined by a superintendent and either the prisoner admits the charge or the superintendent finds the charge proved, the superintendent may impose one or more of the following penalties—

- (a) a caution;
- (b) a reprimand;
- (c) forfeiture of not more than 3 days' remission of sentence to which the prisoner is or may become entitled under section 29 or not more than 3 days' reduction from a minimum term of sentence granted or able to be granted under the Offenders Probation and Parole Regulations 1964 to the prisoner;
- (d) cancellation of gratuities for a period not exceeding 14 days;
- (e) confinement in the prisoner's sleeping quarters for not more than 72 hours.

(2) The superintendent may order that the penalty or penalties imposed under subsection (1) shall be suspended on condition of the good behaviour of the prisoner for a period not exceeding 2 months and if the condition is observed during that period no penalty shall be imposed.

78. (1) Where a minor prison offence is determined by a visiting justice under section 72 and either the prisoner admits the charge or the visiting justice finds the charge proved, the visiting justice may impose one or more of the following penalties—

Imposition of penalties by visiting justice.

- (a) separate confinement in a punishment cell for a period not exceeding 7 days;
- (b) confinement in the prisoner's sleeping quarters for a period not exceeding 7 days;
- (c) separate confinement in a punishment cell for specified hours during a weekend or during 2 weekends;
- (d) forfeiture of not more than 28 days' remission of sentence to which the prisoner is or may become entitled under section 29 or not more than 28 days' reduction from a minimum term of sentence granted or able to be granted under the Offenders Probation and Parole Regulations 1964 to the prisoner;
- (e) restitution in the manner specified by the visiting justice;
- (f) confiscation of property associated with the offence and destruction or disposal otherwise of that property if the visiting justice thinks appropriate.

(2) Where a penalty is to be imposed on the same occasion for more than one minor prison offence, the visiting justice may impose a penalty under paragraph (a) or paragraph (b) of subsection (1) for each offence but in no case shall a penalty exceeding 21 days' separate confinement be imposed.

(3) A prisoner undergoing punishment of separate confinement in a punishment cell for a period exceeding 7 days under this section shall spend 48 hours out of the punishment cell after each period of 7 days in separate confinement and, unless the prisoner is in custody only for the purpose

of undergoing that punishment, any such period of 48 hours shall not be reckoned as time spent undergoing the punishment of separate confinement.

(4) Where a visiting justice considers that in the circumstances it is inexpedient to impose a penalty under subsection (1), he may impose one or more of the penalties specified in section 77.

Imposition of penalties by magistrate or 2 justices.

79. (1) Where a complaint is made before a magistrate or 2 justices against a prisoner charged with an aggravated prison offence, the magistrate or justices shall, in a summary way, inquire into and determine the matter of the complaint and where either the prisoner admits the charge or the magistrate or justices find the charge proved, such magistrate or justices may impose on conviction of the prisoner one or more of the following penalties—

(a) in the case of an offence under paragraph (a), (b), (d), (e) or (f) of section 70—

(i) imprisonment for a term not exceeding 6 months, the term to be cumulative upon any term or terms of imprisonment that the offender is undergoing or is liable to undergo and not subject to remission under section 29 or to any other law providing for the remission or reduction of sentences;

(ii) a fine of \$300;

(iii) separate confinement in a punishment cell for a period not exceeding 28 days, but a prisoner undergoing punishment under this subparagraph shall spend 48 hours out of the punishment cell after each period of 7 days in separate confinement and, unless the prisoner is in custody only for the purpose of undergoing that punishment, any such period of 48

hours shall not be reckoned as time spent undergoing the punishment of separate confinement;

and

- (b) in the case of an offence under paragraph (c) or (g) of section 70, imprisonment for a term not exceeding 12 months, the term to be cumulative upon any term or terms of imprisonment that the offender is undergoing or is liable to undergo and not subject to remission under section 29 or to any other law providing for the remission or reduction of sentences.

(2) Where in determining a charge under this section other than a charge under paragraph (c) or (g) of section 70 a magistrate or 2 justices, as the case may be, considers that in the circumstances it is inexpedient to impose a penalty under subsection (1) (a), he may impose a penalty as if the offence were a minor prison offence.

80. (1) Upon imposing punishment for a prison offence, a superintendent or visiting justice shall enter, in a book to be called the punishment book, a statement of the nature of the offence for which he has imposed punishment, the date of the offence, the name of the offender and the punishment imposed and shall sign and date the entry.

(2) The superintendent shall send forthwith to the Director particulars of every entry made in the punishment book.

81. (1) Where a prisoner is convicted of an aggravated prison offence by a magistrate or 2 justices under section 79 (1), the superintendent of the prison in which the prisoner is confined shall send forthwith to the Director a report of the nature and date of the offence, the name of the prisoner, the date of conviction, the penalty imposed and a copy of the warrant.

Punishment
book.

Reports of
punishments
under s. 79
to Director.

(2) Where in determining a charge of an aggravated prison offence a magistrate or 2 justices impose a penalty under section 79 (2) as if the offence were a minor prison offence, the superintendent shall maintain a record of the nature and date of the offence, the name of the prisoner, the punishment imposed and the date on which it was imposed and shall send forthwith to the Director particulars of every such case.

Punishment
by confine-
ment.

82. In every case where under this Part a penalty of confinement in the prisoner's sleeping quarters or separate confinement in a punishment cell is imposed on a prisoner the cell used for the confinement or separate confinement shall be of such a size and so ventilated and lighted that the prisoner may be confined in that cell without injury to health and every prisoner so confined shall have the means of taking air and exercise for not less than one hour each day at such times and for such other periods as the Director may direct.

PART VIII—AUTHORIZED ABSENCES FROM PRISON.

Grant of
permit for
absence.

83. (1) Subject to this section and to section 86, the Director may, with the approval of the Minister, grant to a prisoner, by instrument in writing, a permit authorizing the prisoner to be absent from the prison in which he is confined for such period not exceeding 72 hours as is specified in the instrument and for such purpose as is described in the permit.

(2) A permit may be granted under this section—

- (a) to visit a near relative who the Director has reason to believe is dangerously ill;
- (b) to attend the funeral of a near relative; or
- (c) for any other purpose which appears to the Minister to be sufficient.

(3) The Director may grant a permit under this section subject to conditions and restrictions which, if any, shall be set out in the permit.

(4) A permit under this section shall ordinarily provide for the prisoner to be in the charge of a prison officer during the period of his absence from prison under the permit, but if the Director is of the opinion, having regard to the safety and the interests of the public, that it is unnecessary to require a prisoner to be in the charge of a prison officer during such period, the Director may, with the approval of the Minister, grant a permit which does not so provide.

(5) The Director may at any time revoke a permit granted under this section and shall report to the Minister every such revocation.

(6) Except with the authority of the Director, a prison officer shall not at any time be given the charge of more than 2 prisoners under permits granted under this section.

84. Where an officer is of the opinion that a prisoner to whom a permit has been granted under section 83 has failed to comply, or appears likely to fail to comply, with any condition or restriction set out in the permit or that unforeseen or special circumstances otherwise so require, the officer may return the prisoner forthwith to prison.

Breach of
condition
of permit.

85. (1) A prisoner who is absent from prison under a permit granted to him under section 83 shall be deemed to be in lawful custody during the period of his absence from prison as authorized by the permit.

Prisoner
absent under
permit
deemed in
custody.

(2) A prisoner to whom a permit has been granted under section 83 who—

- (a) escapes or prepares or attempts to escape from the charge of an officer;
- (b) fails to return to prison on or before the expiry of the period of absence authorized by the permit; or

- (c) fails to comply with a condition or restriction set out in the permit,

may be arrested, without the necessity of a warrant, by an officer or a police officer and returned to prison and is guilty of an aggravated prison offence under section 70 and shall be dealt with accordingly.

Restriction
on grant of
permits
under s. 83.

86. Except with the approval of the Governor, a permit under section 83 shall not be granted to a prisoner who is—

- (a) undergoing strict security life imprisonment;
- (b) in strict custody;
- (c) in safe custody;
- (d) undergoing life imprisonment;
- (e) serving a term of imprisonment, or an aggregate of terms of imprisonment (without regard to remission) of more than 15 years.

Grant of
leave of
absence.

87. (1) Subject to section 89, the Director may, by instrument in writing, grant leave of absence from prison to a prisoner who has served not less than 12 months' imprisonment in the circumstances and in accordance with the provisions, conditions and stipulations set out in this section.

(2) Leave of absence under this section may be granted to a prisoner during the period of 3 months before the date when he is entitled to be discharged from prison or during the period of 3 months prior to the date when he is eligible to be considered for release on parole—

- (a) for the purpose of seeking or engaging in gainful employment outside the prison in which he is confined; or

- (b) for the purpose of engaging gratuitously in work for a charitable or voluntary organisation, approved by the Director.

(3) Leave of absence under and subject to this section may be granted to a prisoner during the period of 12 months before the date when he is entitled to be discharged from prison or during the period of 12 months prior to the date when he is eligible to be considered for release on parole for the purpose of visiting a friend or relation.

(4) Leave under subsection (3) may not be granted—

- (a) during any period before the period of 6 months prior to the date when the prisoner is entitled to be discharged from prison or he is eligible to be considered for release on parole, for more than 12 hours per month; and
- (b) during any period after the period described in paragraph (a), for more than 12 hours per fortnight,

but during the period of 3 months prior to the date when the prisoner is entitled to be discharged from prison or he is eligible to be considered for release on parole, leave under subsection (3) may be granted for a longer period or periods than 12 hours per fortnight in accordance with a policy approved by the Minister.

(5) With the approval of the Minister, the Director may grant leave of absence from prison for a purpose or in circumstances or for periods (not being a purpose or circumstances or periods of the kind referred to in subsections (2) or (3)) which appear to the Minister to be sufficient, but the Minister shall cause a note of the circumstances of every such case to be tabled in each House of Parliament within 12 sitting days of that House after the date of the grant of leave.

(6) The note referred to in subsection (5) shall include the name of the prisoner, a record of his convictions, details of his sentence (including the earliest date upon which he may be discharged), details of any previous breach of probation, parole, or leave of absence, and details of the purpose and circumstances of the leave of absence granted to him.

(7) The Director may grant leave of absence under this section subject to such conditions and restrictions as are set out in the instrument by which leave is granted and the prisoner to whom the grant relates shall sign on the instrument an acknowledgment that he is aware of those conditions and restrictions.

(8) Upon the grant of leave of absence to a prisoner under this section, a copy of the instrument by which such leave is granted shall be given to him.

(9) A reference in this section to a particular period prior to the date when a prisoner is eligible to be considered for release on parole shall be taken to include any period after that date during which the prisoner has not been released on parole.

Duty of
Director
prior to
grant of
leave of
absence.

88. Before granting leave of absence to a prisoner under section 87, the Director shall—

- (a) satisfy himself of the merits of the application for leave; and
- (b) in a case of leave for the purpose of engaging in employment or work, satisfy himself that the employment or work available is suitable.

Restriction
on grant of
leave of
absence.

89. The Director shall not grant leave of absence under section 87—

- (a) except with the approval of the Governor, to a prisoner who is—
 - (i) undergoing strict security life imprisonment;

- (ii) in strict custody;
 - (iii) in safe custody;
 - (iv) undergoing life imprisonment; or
 - (v) serving a term of imprisonment, or an aggregate of terms of imprisonment (without regard to remission) of more than 15 years; or
- (b) to a prisoner other than a prisoner who has been rated by the Director under a rating system approved by the Minister as a prisoner whose absence from prison would impose a minimum risk to the security of the public.

90. The Director may appoint a prison officer, an officer or some other person to supervise and report to him on the conduct of a prisoner who is absent from prison under a grant of leave of absence made under section 87.

Supervision
of prisoner
on leave
of absence.

91. (1) The Director may at any time revoke, suspend or vary a grant of leave of absence to a prisoner under section 87.

Revocation
or variation
of leave of
absence.

(2) The Director shall notify the Minister of every occasion on which he revokes, suspends or varies a grant of leave of absence to a prisoner approved by the Minister under section 87 (5).

92. (1) A prisoner who is absent from prison under a grant of leave of absence under section 87 shall be deemed to be in lawful custody during the period of his absence from prison as authorized by the grant.

Consequences
of revocation
of leave of
absence.

(2) A prisoner granted leave of absence under section 87 who—

- (a) escapes or prepares or attempts to escape from lawful custody during the currency of the grant of leave of absence;

- (b) fails to return to prison on or before the time he is required to do so by the grant; or
- (c) fails to comply with a condition or restriction set out in the instrument by which leave is granted,

may be arrested, without the necessity of a warrant, by a prison officer or a police officer and returned to prison and is guilty of an aggravated prison offence under section 70 and shall be dealt with accordingly.

(3) If a prisoner to whom a grant of leave of absence under section 87 is made is charged with any offence or any prison offence, the Director shall forthwith suspend the grant of leave of absence to him but, if the determination of the charge does not result in a conviction or a finding that the prisoner has committed a prison offence, the Director shall lift the suspension.

(4) If a prisoner to whom a grant of leave of absence under section 87 is made is convicted of an offence which he committed while absent from prison under the grant of leave of absence or is found to have committed an aggravated prison offence, the grant of leave of absence to him is by force of this subsection cancelled.

(5) If a prisoner to whom a grant of leave of absence under section 87 is made is found to have committed a minor prison offence, the Director may lift the suspension of his grant of leave of absence or may vary or cancel the grant.

(6) Except with the approval of the Minister, leave of absence shall not be granted under section 87 to a prisoner who—

- (a) on a previous occasion has been granted leave of absence under section 87 but that grant has been cancelled or revoked; or
- (b) has been released on parole under the Offenders Probation and Parole Act 1963 but his parole has been cancelled for any reason.

93. Where a prisoner is in employment during leave of absence granted to him under section 87, the terms and conditions, including the amount payable, in respect of the employment shall be the terms and conditions including the amount payable under any award or agreement in force under the Industrial Arbitration Act 1979 or the Conciliation and Arbitration Act 1904 of the Commonwealth that applies to the employment or, if there is no such award or agreement shall be such terms and conditions, including the amount payable, as are agreed upon by the employer and the Director.

Terms of employment of prisoner on leave of absence.

94. (1) The Minister may approve a programme of—

Approved absences under activity programmes.

- (a) community work;
- (b) charitable or voluntary work;
- (c) work associated with the operation of the prison;
- (d) sport;
- (e) religious observance; or
- (f) any other activity, and

subject to this section, a prisoner who has been rated by the Director under a rating system approved by the Minister as a prisoner whose absence from prison would impose a minimum risk to the security of the public may be permitted by the superintendent of the prison in which he is confined to leave and be absent from that prison for the purpose of participating in an approved programme.

(2) A programme approved by the Minister under subsection (1) shall specify in general terms the nature of the activity and the place or places at which the activity is to be performed.

(3) A programme shall be approved under subsection (1) for a period of 6 months and the approval may be renewed by the Minister from time to time for further periods of 6 months.

(4) The superintendent shall ensure that prisoners who are permitted to be absent from a prison for the purpose of participating in a programme approved under this section shall during absence from prison be placed in the charge of or under the supervision of a prison officer.

(5) A prisoner who is absent from prison in accordance with permission granted under this section shall be deemed to be in lawful custody during the period of his authorized absence from prison.

(6) A prisoner permitted to be absent from prison under this section who—

- (a) escapes or prepares or attempts to escape from the charge or supervision of a prison officer; or
- (b) fails to return to prison on or before the expiry of the authorized period of absence,

may be arrested, without the necessity of a warrant, by a prison officer or a police officer and returned to prison and is guilty of an aggravated prison offence under section 70 and shall be dealt with accordingly.

(7) Except with the approval of the Governor a prisoner shall not be permitted to leave and be absent from a prison under this section who is—

- (a) undergoing strict security life imprisonment;
- (b) in strict custody;
- (c) in safe custody;
- (d) undergoing life imprisonment; or
- (e) serving a term of imprisonment, or an aggregate of terms of imprisonment (without regard to remission) of more than 15 years.

PART IX—WELFARE PROGRAMMES FOR PRISONERS.

95. (1) Without prejudice to the generality of the Director's responsibility for the welfare of prisoners conferred on him by section 7 (1), the Director may provide services and programmes for the welfare of prisoners at every prison and, in particular, services and programmes may be designed and instituted with the intention of providing—

Preparation and implementation of activity programmes.

- (a) counselling services and other assistance to prisoners and their families in relation to personal and social matters and problems;
- (b) opportunities for prisoners to utilise their time in prison in a constructive and beneficial manner by means of educational and occupational training programmes and other means of self improvement; and
- (c) opportunities for work, leisure activities, and recreation.

(2) Participation in and use of services provided under this section shall be voluntary, except that, unless a prisoner is medically unfit, he may be required to work.

PART X—DISCIPLINE OF PRISON OFFICERS.

96. For the purposes of this Part—

“prison officer” means—

Definition of “prison officer” for disciplinary purposes.

- (a) a person engaged to be a prison officer under section 13; and
- (b) a person engaged as a prison officer prior to the coming into operation of section 13 and deemed to be a prison officer for the purposes of this Act by Schedule 2.

97. Every prison officer shall use his best endeavours to ensure that this Act, regulations made under this Act, rules, and standing orders are strictly observed.

Regulations, rules, etc. to be strictly observed.

Disciplinary
offences.

98. (1) A prison officer who—

- (a) commits a breach of any duty or responsibility imposed on him by this Act, the regulations made under this Act, the rules or standing orders;
- (b) disobeys or disregards an order made or given to him by any officer having authority to make or give such an order;
- (c) is negligent or careless in the performance of his duties; or
- (d) commits any act of misconduct which relates to the performance of his duties or his fitness to hold office as a prison officer,

is guilty of a disciplinary offence.

(2) It is the intention of this Part that a charge of a disciplinary offence shall be laid and dealt with expeditiously.

Laying of
charges
against
prison
officers.

99. (1) A charge of a disciplinary offence against a prison officer—

- (a) may be laid by any officer having authority or control over the prison officer;
- (b) shall be in writing and contain particulars of the alleged offence;
- (c) shall require to be validated by a superintendent before a copy of the charge is furnished to the prison officer charged;
- (d) shall require the prison officer charged to state in writing to the superintendent, within 48 hours or such longer period as is specified in the charge, whether he admits or denies the truth of the charge; and
- (e) subject to subsection (2), shall be dealt with at the place and time and on the day specified by the superintendent in a notice furnished to the prison officer charged.

(2) Subject to section 105, where a prison officer denies the truth of a charge of a disciplinary offence against him or fails to admit or deny the truth of the charge within the time specified, the superintendent of the prison or some other superintendent appointed by the Director shall proceed to hold an inquiry into the charge in accordance with section 100.

(3) Subject to section 105, where a prison officer admits the truth of a charge of a disciplinary offence against him, the superintendent shall proceed forthwith in accordance with section 102 or if he thinks fit shall direct that an inquiry be held into the charge in the manner provided by section 100.

(4) An inquiry into a disciplinary charge shall be held expeditiously but not earlier than 3 days after—

- (a) denial of the truth of the charge by the prison officer charged;
- (b) where the prison officer has failed to admit or deny the truth of the charge as required, the time allowed for admitting or denying the charge; or
- (c) a superintendent has directed under subsection (3) that an inquiry be held,

whichever date is the earliest.

100. (1) Where a charge of a disciplinary offence against a prison officer is the subject of an inquiry before a superintendent, the superintendent shall conduct the proceedings expeditiously without undue adjournment or delay and shall adopt the procedure prescribed by regulations.

Procedure for
inquiries
into
disciplinary
charges.

(2) In the conduct of proceedings under subsection (1), the superintendent shall not be bound by the rules of evidence but may admit any evidence which in his opinion is relevant to the charge and may decline to admit repetitious material.

Legal
representa-
tion not
permitted.

101. A prison officer or an officer may not be represented by a legal practitioner in disciplinary proceedings under this Part, but the prison officer charged may nominate another prison officer, or a member of a union to which that prison officer belongs, who may, if he agrees to do so, represent him.

Imposition of
penalties by
super-
intendent.

102. (1) Where a disciplinary offence is determined by a superintendent and either the prison officer admits the charge or the superintendent finds the charge proved, the superintendent may impose one of the following penalties—

- (a) a caution;
- (b) a reprimand; or
- (c) a fine of an amount not exceeding \$50.

(2) The superintendent shall send forthwith to the Director particulars of every disciplinary offence determined and penalty imposed by him under this section.

Appeal to
Director.

103. (1) A prison officer who is aggrieved by—

- (a) the finding of a superintendent after an inquiry that he is guilty of a disciplinary offence; or
- (b) the penalty imposed by a superintendent in respect of a disciplinary offence,

may appeal to the Director in accordance with this section against such finding or penalty, or both.

(2) An officer who laid a charge of a disciplinary offence against a prison officer who is aggrieved by—

- (a) the finding of a superintendent after an inquiry that the prison officer is not guilty of the disciplinary offence; or
- (b) the penalty imposed by a superintendent in respect of the disciplinary offence,

may appeal to the Director in accordance with this section against such finding or penalty.

(3) An appeal to the Director under this section shall be instituted by notice in writing handed to the superintendent within 10 days of the officer aggrieved being informed of the relevant finding or penalty and the superintendent shall forward the appeal forthwith to the Director.

(4) A notice of appeal under this section shall be signed by the appellant and shall contain a statement of the decision that is being appealed against and a concise statement of the grounds upon which the appeal is based.

(5) Upon receiving a notice of appeal, the Director shall inform the other party to the disciplinary proceedings of the grounds upon which the appeal is based and shall provide him with an opportunity to respond to those grounds.

104. Upon consideration of a notice of appeal and any response forwarded to him under subsections (3) and (5) of section 103 and upon consideration of any record of proceedings kept by the superintendent, the Director may, after any further proceedings he considers equitable or necessary—

Determina-
tion of
appeal by
Director.

- (a) confirm the finding of the superintendent and, where a penalty has been imposed, confirm or vary that penalty or substitute a penalty authorized by section 102; or
- (b) reverse the finding of the superintendent and either, as the case may require, dismiss the charge or impose a penalty authorized by section 102.

105. (1) Notwithstanding section 99, where it appears to the superintendent before whom a charge of a disciplinary offence is presented for validation or to a superintendent appointed to hold an inquiry

Super-
intendent
may refer
charge to
Director.

into the offence that having regard to the nature and particulars of the alleged offence or, if he has commenced an inquiry, to the evidence presented at the inquiry, that the charge cannot be adequately dealt with by him under section 102 (in the event of an admission or finding of guilt), the superintendent shall forthwith—

- (a) suspend the prison officer from duty, either on full, partial or without pay and other entitlements, and report the suspension to the Director; and
- (b) forward the charge, and the record of proceedings of the inquiry (if any) to the Director.

(2) Upon receiving a report under subsection (1) that a prison officer has been suspended from duty, the Director shall confirm the suspension unless special circumstances are established which in his opinion justify the lifting of the suspension by him, but he may in any event vary the terms of the suspension as they relate to pay and other entitlements.

(3) A prison officer who is suspended from duty under subsection (1) on partial pay or without pay and other entitlements shall be entitled to receive full pay and entitlements for the period of his suspension if, upon final determination, the charge against him is dismissed.

Determina-
tion of
charge by
Director.

106. (1) Where a charge of a disciplinary offence against a prison officer is received by the Director under section 105, the Director shall—

- (a) hold an inquiry into the charge in accordance with section 100; or
- (b) appoint some other person (including, if he so determines, the superintendent who forwarded the charge to the Director) to hold an inquiry into the charge in accordance with section 100.

(2) Where a disciplinary offence is determined by the Director under subsection (1) and either the prison officer admits the charge or the Director finds the charge proved, the Director may impose one of the following penalties—

- (a) a caution;
- (b) a reprimand;
- (c) a fine of an amount not exceeding \$250;
- (d) suspension from duty without pay or other entitlements for a period not exceeding 10 working days;
- (e) reduction to a lower rank;
- (f) requirement to resign under threat of dismissal; or
- (g) dismissal.

(3) Where a disciplinary charge is determined by a person appointed by the Director under subsection (1) and either the prison officer admits the charge or the person finds the charge proved, the person may, subject to subsection (4), impose on the prison officer one of the penalties referred to in subsection (2).

(4) A penalty imposed under subsection (3) by a person appointed by the Director shall take effect only upon validation by the Director and the Director may, instead of validating that penalty, impose a different penalty of a kind referred to in subsection (2), but the Director shall not impose a greater penalty than that imposed under subsection (3) unless he has provided the prison officer with an opportunity of making representations in relation to his intention to impose a greater penalty and has considered any representations made by the prison officer.

(5) Where a penalty is imposed under this section on a prison officer who is suspended from duty under section 105 on partial pay or without pay and other entitlements, the Director may, having regard to the nature and particulars of the disciplinary offence for

which the penalty is imposed and the nature of that penalty, direct that the prison officer shall be paid full or partial pay and other entitlements for the period of his suspension.

Constitution
of Appeal
Tribunal.

107. (1) For the purpose of hearing and determining appeals by prison officers made under section 108 there shall be a Tribunal to be known as the Prison Officers Appeal Tribunal which shall be constituted by—

- (a) a magistrate, to be appointed by the Governor, who shall be the chairman of the Appeal Tribunal;
- (b) one person to be appointed by the Director; and
- (c) one person to be elected by ballot from among their own members by the members of the union representing prison officers, the ballot to be conducted by the Chief Electoral Officer, or some person acting under his authority.

(2) Subject to subsection (3), the persons appointed or elected to the Appeal Tribunal shall hold office for 3 years.

(3) If a member of the Appeal Tribunal—

- (a) dies;
- (b) by notice in writing given to the Director resigns his office; or
- (c) being the elected member of the Board ceases to be a member of the union,

his office shall become vacant and a successor shall be appointed or elected, as the case may require.

Appeals to
Appeal
Tribunal.

108. (1) A prison officer who is aggrieved by—

- (a) the terms of his suspension, under section 105;

- (b) the finding of the Director after an inquiry that he is guilty of a disciplinary offence; or
- (c) a penalty imposed by a person appointed by the Director under section 106 (1) (b) and validated by the Director under section 106 (4); or
- (d) a penalty imposed by the Director under section 106,

may appeal in accordance with this section to the Appeal Tribunal against such suspension, finding, or penalty, or any or all of them.

(2) An appeal to the Appeal Tribunal under this section shall be instituted by notice in writing forwarded by the aggrieved prison officer to the Director within 14 days of being informed of the relevant suspension, finding or penalty.

(3) A notice of appeal under this section shall be signed by the appellant and shall contain a statement of the decision being appealed against and a concise statement of the grounds upon which the appeal is based.

(4) Upon receiving a notice of appeal under this section, the Director shall as soon as practicable forward to the Appeal Tribunal the notice of appeal and any record of proceedings and the Appeal Tribunal shall use its best endeavours to hear and determine the appeal within 30 days of receiving the notice of appeal, but an appeal under subsection (1) (a) shall not be heard and determined by the Appeal Tribunal until the charge to which the suspension relates is determined under section 106.

(5) The Appeal Tribunal may confirm, modify, or reverse any suspension, finding or penalty appealed against or may make such other order as the Tribunal thinks fit.

Fines may
be deducted
from pay etc.

109. (1) A fine lawfully imposed under this Act on a prison officer may be deducted, by order of the Director, from the pay due to the prison officer or any other moneys due to him in respect of his employment.

(2) A penalty lawfully imposed under this Part on a prison officer shall continue to have effect and be given effect to notwithstanding the institution of an appeal under section 108, but the Director shall ensure that any necessary financial adjustments or other appropriate action are made or taken upon the determination of the appeal.

(3) Notwithstanding subsection (2), a penalty of dismissal lawfully imposed under this Part on a prison officer shall not take effect—

- (a) in the case of a prison officer who appeals under section 108, until the penalty is confirmed upon determination of the appeal; or
- (b) in any other case, until 14 days after the prison officer is informed of the penalty of dismissal imposed on him,

and, in every case where a penalty of dismissal is imposed, the prison officer shall be deemed to have been suspended from duty without pay or other entitlements from the time of imposition of the penalty until the determination of his appeal or the expiration of the period of 14 days, as the case may require.

(4) A prison officer who is suspended from duty under subsection (3) shall be entitled to receive full pay and entitlements for the period of his suspension if, upon the determination of his appeal, the charge against him is dismissed.

(5) Where upon the determination of an appeal under section 108 the Appeal Tribunal modifies a penalty of dismissal imposed on a prison officer to a penalty other than dismissal, the Appeal Tribunal may direct that the prison officer shall be paid full or partial pay and other entitlements for the period of his suspension from duty under subsection (3).

PART XI—GENERAL PROVISIONS.

110. (1) The Governor may make regulations ^{Regulations.} prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act and, in particular—

- (a) making provision with respect to the good government, good order and security of prisons;
- (b) prescribing the prerequisites to engagement and the conditions of engagement of prison officers under section 13;
- (c) providing for the duties and obligations of prison officers;
- (d) establishing the ranks of prison officers and providing for promotion of prison officers;
- (e) providing for the striking and awarding of medallions for bravery, good conduct and long service of prison officers;
- (f) regulating the custody, classification, separation, diet, instruction, health, employment, discipline, medical and other treatment of prisoners;
- (g) prescribing the specifications of cells and quarters for the confinement or punishment of prisoners and providing for certifying such cells and quarters as fit for the purpose;
- (h) making provision for the classification of labour performed by prisoners and prescribing the nature of hard labour;
- (i) prescribing the gratuities that may be credited to prisoners and the conditions upon which gratuities may be so credited;
- (j) regulating the taking of photographs, finger prints, blood types, dental impressions, measurements or carrying out of other identifying processes and the recording of such and any other particulars of prisoners;

- (k) authorizing and regulating the taking of blood and other bodily samples from a prisoner for the purpose of proceedings under Part VII where there is reasonable suspicion that the prisoner may have committed a prison offence;
- (l) providing for the sale or disposal of uncollected, abandoned, or unclaimed property left at prisons and the disposal of the proceeds of any such sale;
- (m) regulating the property that may be kept at a prison on behalf of a prisoner;
- (n) regulating the sale and disposal of products and produce made or produced by prisoners and the disposal of the proceeds;
- (o) providing for the powers and duties of a person appointed by the Director under section 9 to inquire into and report to him upon any matter, incident or occurrence concerning a prison or a prisoner;
- (p) regulating the association of male and female prisoners;
- (q) regulating the visits to prisons of prison visitors and their powers and duties;
- (r) regulating visits to prisoners;
- (s) regulating the manner and procedure for searching persons entering or admitted to prisons having regard to considerations of privacy, decorum and expedition;
- (t) regulating the grant of leave of absence to prisoners and the terms, conditions, and restrictions of grants of leave of absence to prisoners;
- (u) regulating the treatment of prisoners on remand;
- (v) regulating the furnishing of notices to prison officers charged with disciplinary offences;

- (w) regulating the termination under this Act of service of prison officers other than termination arising from or connected with disciplinary matters; and
- (x) regulating the procedure for appeals to the Appeal Tribunal.

(2) Regulations may be made under this section—

(a) so as to apply—

- (i) generally or in a particular class of case or in classes of cases or to particular categories or classes of prisoner;
- (ii) at all times or at a specified time or at specified times; and
- (iii) to or in respect of every prison or to or in respect of a specified prison or prisons or category of prisons;

(b) so as to require a matter affected by them to be—

- (i) in accordance with a specified standard or specified requirement; or
- (ii) as approved by, or to the satisfaction of, a specified officer or other person or body;

(c) so as to confer a discretionary authority on a specified officer or other person or body; and

(d) so as to provide that, in specified cases or specified classes of cases, whether on specified conditions or unconditionally, persons or things of a class or classes of persons or things may be exempted from the provisions of the regulations to such extent as is specified.

(3) In subsection (2), “specified” means specified in the regulations.

Protection
from
liability.

111. No action or claim for damages shall lie against any person for or on account of anything done, or ordered or authorized to be done, by him which purports to be done for the purpose of carrying out the provisions of this Act, unless it is proved that the act was done, or ordered or authorized to be done, maliciously and without reasonable and probable cause.

Committals
under
Debtors
Act.

112. Committals under the Debtors Act 1871 may be made to any prison.

Construction
of s. 5
Truck Act.

113. Nothing in section 5 of the Truck Act 1899 shall be construed so as to make unlawful any deduction from or non-payment of wages, salary, allowances, and other remuneration payable to prison officers where that deduction or non-payment would otherwise be lawful.

Failure to
perform
duties.

114. (1) Where there is or has been any refusal or failure by a prison officer or prison officers to carry out or perform any or all of his or their duties under this Act or any relevant award (in this section referred to as "relevant action"), the Minister may apply to the Commission for a declaration under subsection (3).

(2) The Commission shall act expeditiously to determine every application made by the Minister under subsection (1).

(3) Where upon an application under subsection (1) the Commission is satisfied that a prison officer or prison officers are taking or have taken relevant action, the Commission shall make a declaration to that effect (in this section referred to as "a refusal declaration").

(4) A refusal declaration shall include a statement of the time and date when, in the opinion of the Commission, the relevant action commenced.

(5) Upon being satisfied that relevant action has ceased, the Commission shall make a further declaration to that effect stating the time and date when, in the opinion of the Commission, the relevant action ceased (in this section referred to as "a cessation declaration").

(6) Where the Commission has made a refusal declaration, the Minister may direct that salary is not to be paid to a prison officer who is or has been engaged in the relevant action in respect of the period commencing at the time and date stated in the refusal declaration.

(7) A direction under subsection (6) may be varied or revoked by the Minister at any time and in any event shall cease to have effect at the time and date stated in the cessation declaration.

(8) A prison officer is not entitled to be paid salary in respect of any period referred to in a direction of the Minister under subsection (6) which relates to him.

(9) A direction of the Minister under subsection (6) that salary is not to be paid to a prison officer shall continue to have effect and be given effect to notwithstanding the institution of any appeal against a declaration of the Commission, but the Minister shall ensure that any necessary adjustments to salary are made upon the determination of the appeal.

(10) A direction under subsection (6)—

- (a) shall be made in writing; and
- (b) shall be signed by the Minister.

(11) The powers conferred on the Minister by this section are in addition to and not in substitution for any other powers conferred by or under this Act or otherwise on the Minister, the Director, or on any other person in relation to a prison officer.

(12) In this section, unless the contrary intention appears—

“Commission” means The Western Australian Industrial Commission constituted under the Industrial Arbitration Act 1979;

“prison officer” means a prison officer to whom Part X applies; and

“salary” includes wages, remuneration, and allowances.

Section 114
to prevail.

115. Section 114 has full force and effect, and applications, declarations and directions in force under that section have full force and effect according to their tenor, notwithstanding any inconsistency—

- (a) with any other provision of this Act;
- (b) with any other law of the State enacted before the coming into operation of this Act; or
- (c) with any award made before or after the coming into operation of this Act.

Repeal.

116. The Prisons Act 1903-1980 is repealed.

117. Without affecting the operation of the Interpretation Act 1918, the transitional provisions set out in Schedule 2 to this Act shall have effect for the purpose of the transition from the provisions of the repealed Act to the provisions of this Act.

Transitional.

SCHEDULE 1. (Section 4)

DECLARATION OF PRISONS.

<i>Column 1.</i>	<i>Column 2.</i>
Existing Name	Proposed Name
Albany Regional Gaol	Albany Regional Prison
Broome Regional Prison	Broome Regional Prison
Brunswick Junction Prison	Brunswick Junction Prison
Bunbury Rehabilitation Centre	Bunbury Regional Prison
Canning Vale Prison	Canning Vale Prison
The C. W. Campbell Remand Centre	The C. W. Campbell Remand Centre
Eastern Goldfields Regional Prison	Eastern Goldfields Regional Prison
Fremantle Gaol	Fremantle Prison
Geraldton Gaol	Geraldton Regional Prison
Highgate Annexe—West Perth Work Release Hostel	Highgate Work Release Hostel
Kalgoorlie Regional Gaol	Kalgoorlie Prison
Bandyup Training Centre	Bandyup Women's Prison
Pardelup Penal Outstation	Pardelup Prison Farm
Barton's Mill Gaol	Barton's Mill Prison
Roebourne Regional Prison	Roebourne Regional Prison
Karnet Rehabilitation Centre	Karnet Prison Farm
West Perth Work Release Hostel	West Perth Work Release Hostel
Wooroloo Training Centre	Wooroloo Prison Farm
Wyndham Regional Prison	Wyndham Regional Prison

SCHEDULE 2. (Section 117)

TRANSITIONAL PROVISIONS.

1. All prisoners in custody immediately before the coming into operation of this Act under the provisions of the repealed Act shall continue in custody under and subject to the provisions of this Act.
2. Where a direction or order that a person be detained or confined in a reformatory prison subsists immediately before the coming into operation of this Act, that direction or order shall be deemed, with effect from the coming into operation of this Act, to direct or order that the person be detained in a prison.
3. The person holding office as Director of the Department of Corrections immediately before the coming into operation of this Act shall continue in office and be deemed to have been appointed Permanent Head of the Western Australia Prisons Department under section 6 (1).
4. Each person appointed or engaged under the repealed Act and holding office immediately before the coming into operation of this Act shall continue to hold office and shall be deemed to have been appointed or engaged, subject to this Act and to the terms of his appointment or engagement, to a corresponding office under this Act.
5. A prison officer who is deemed to have been engaged as such by clause 4 of this schedule may be required by the Director at any time after the coming into operation of this Act to subscribe, in the presence of and attested by a justice or an officer not below the rank of superintendent, an oath of engagement in the terms set out in section 13 (2).
6. A person appointed to be a visitor under section 17 of the repealed Act and holding office as such immediately before the coming into operation of this Act shall—
 - (a) if he is a justice, be deemed to have been appointed under this Act as a visiting justice; and
 - (b) if he is not a justice, be deemed to have been appointed under this Act as a prison visitor, and

every person deemed to have been appointed a visiting justice or a prison visitor by this provision shall be deemed, notwithstanding the terms of his appointment under the repealed Act, to have been appointed for a term expiring 6 months after the coming into operation of this Act.

7. Where a complaint of a prison offence has been made against a prisoner before the coming into operation of this Act but that complaint has not been finally determined when this Act comes into operation, the complaint shall continue to be dealt with and determined in all respects as if this Act had not been enacted.

8. Subject to clause 7 of this schedule, a charge of a prison offence alleged to have been committed under the repealed Act by a prisoner before the coming into operation of this Act may be made under this Act and shall be dealt with and determined in all respects under and in accordance with this Act, except that a penalty shall not be imposed in respect of such an offence greater than, or otherwise different from, a penalty which might have been imposed under the repealed Act.

9. A penalty imposed under the repealed Act in respect of a minor prison offence prior to the coming into operation of this Act shall not be affected in any way by the repeal of the repealed Act and shall continue to take effect.

10. In the case of a prisoner who is serving a finite sentence of imprisonment at the time when this Act comes into operation, remission of sentence shall be calculated in accordance with the repealed Act for so much of his sentence as he has served at that time, and shall be calculated for any period after that time in accordance with this Act.

11. Notwithstanding the repeal of section 68 of the repealed Act by this Act, that section shall continue to apply and section 30 of this Act shall not apply to the computation of imprisonment of a prisoner who while undergoing a finite term of imprisonment escapes from lawful custody before the coming into operation of this Act.

12. The repeal by this Act of the repealed Act shall not affect the validity of a grant of leave of absence made to a prisoner before the coming into operation of this Act under regulation 98 of the Prison Regulations 1974 and—

(a) regulations 98, 100, 101 and 102 of the Prison Regulations 1974 shall continue to apply in relation to every such grant as though they were still in force; and

(b) section 92 of this Act shall apply in the case of every such grant as if the prisoner had been granted leave of absence under section 87 of this Act.

13. The repeal of the repealed Act shall not affect the validity of any order or warrant made in respect of a prisoner under section 52, 53, 54, 55, 72, or 72A of the repealed Act before the coming into operation of this Act and those sections and sections 56A and 73 shall continue to apply in relation to every such order or warrant and to every prisoner to whom such a warrant or order relates as though they were still in force.

14. A reference in any Act or regulation to "gaol" or "jail" shall, unless the context otherwise requires, be read and construed as a reference to "prison" as that term is defined by section 3 and on a reprint of the Act or regulation pursuant to statutory authority the reference may be altered accordingly.

15. Where a charge has been made against an officer under regulation 35 of the Prison Regulations 1974 before the coming into operation of this Act but that charge has not been finally determined when this Act comes into operation, the charge shall continue to be dealt with and determined in all respects as if this Act had not been enacted.

16. Subject to clause 15 of this schedule, a charge under regulation 35 of the Prison Regulations 1974 in respect of an offence alleged to have been committed by an officer before the coming into operation of this Act may be made under Part X of this Act and shall be dealt with and determined in all respects under and in accordance with this Act, except that a penalty shall not be imposed in respect of such an offence greater than, or otherwise different from, a penalty which might have been imposed under the repealed Act.
