



Western Australia

## **Prisons Act 1981**

Compare between:

[27 Apr 2015, 07-h0-00] and [17 Jun 2015, 07-i0-00]



Western Australia

## **Prisons Act 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*.**

## **Part I — Preliminary**

**1. Short title**

This Act may be cited as the *Prisons Act 1981* <sup>1</sup>.

**2. Commencement**

This Act shall come into operation on a day to be fixed by proclamation <sup>1</sup>.

**3. Terms used**

- (1) In this Act, unless the contrary intention appears —

***absence permit*** has the meaning given to that term in section 83(2);

***Appeal Tribunal*** means the Prison Officers Appeal Tribunal constituted under section 107;

***chief executive officer*** means chief executive officer of the Department;

***contract*** means a contract entered into under section 15B;

***contractor*** means a person who has entered into a contract with the chief executive officer;

***Department*** means the department of the Government principally assisting the Minister with the administration of this Act;

***District Court judge*** means a judge, an acting judge or an auxiliary 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;

***high-level security work*** means —

- (a) work specified in section 15M as high-level security work; and
- (b) work declared as high-level security work under section 15N;

***independent prison visitor*** means a person who is appointed to be an independent prison visitor under section 39 of the *Inspector of Custodial Services Act 2003*;

***judge of the Supreme Court*** includes an acting judge or auxiliary judge of the Supreme Court;

***judicial body*** means a court, tribunal or other body or person that has judicial or quasi judicial functions or otherwise acts judicially, and includes —

- (a) a Royal Commission under the *Royal Commissions Act 1968*; and
- (b) the Corruption and Crime Commission established under the *Corruption and Crime Commission Act 2003*;

***lock-up*** includes a place prescribed as a lock-up for the purposes of the *Court Security and Custodial Services Act 1999*;

***medical officer*** means a person who is appointed or engaged as a medical officer referred to in section 6(3) or (4);

***medical practitioner*** means a person —

- (a) a person who is registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession; and
- (b) who has current entitlement to practise under that Act;

***officer*** means a person appointed or deemed to have been appointed for the purposes of this Act under, or as referred to in, section 6 or under section 13;

***permit*** means a permit issued under section 15P to do high-level security work;

***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 under section 5;

***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 services*** means the management, control and security of a prison and the welfare of the prisoners at the prison;

***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;

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

***rules*** means rules made under section 35;

***standing orders*** means standing orders issued by a superintendent under section 37;

***subcontractor*** means a subcontractor of a contractor and includes a person with whom a subcontractor contracts and a person with whom that person contracts;

***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 person who is in charge of a lock-up;

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

- (2) A reference in a provision of this Act set out in the Table to this subsection to a prison officer or to an officer includes a reference to a person who is authorised to exercise a power set

out in clause 2 of Schedule 2 to the *Court Security and Custodial Services Act 1999*.

**Table**

|          |             |
|----------|-------------|
| s. 18    | s. 84       |
| s. 26(1) | s. 86(2)(a) |

*[Section 3 amended by No. 47 of 1987 s. 4; No. 113 of 1987 s. 32; No. 129 of 1987 s. 26; No. 47 of 1991 s. 7; No. 31 of 1993 s. 55; No. 32 of 1994 s. 3(2); No. 78 of 1995 s. 110; No. 23 of 1997 s. 17; No. 43 of 1999 s. 4; No. 47 of 1999 s. 33; No. 75 of 2003 s. 56(1); No. 59 of 2004 s. 141; No. 59 of 2006 s. 73; No. 65 of 2006 s. 4; No. 8 of 2008 s. 16 and 23(6); No. 22 of 2008 Sch. 3 cl. 47(2); No. 35 of 2010 s. 136.]*

*[Section 3. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

## **Part II — Establishment of prisons**

### **4. Existing prisons continued**

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 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.

### **5. Orders for prisons**

- (1) The Minister may, by order —
  - (a) declare any building, enclosure or place to be a prison within the meaning and for the purposes of this Act; and
  - (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 order cease to be a prison and direct the removal of prisoners confined in that prison to a prison named in the order.
- (2) A building, enclosure or place that was a prison immediately before the coming into operation of section 5 of the *Prisons and Sentencing Legislation Amendment Act 2006*<sup>1</sup> continues as a prison as if the Minister had made an order under subsection (1) declaring it to be a prison.
- (3) The Minister may, by order, amend or revoke —
  - (a) an order under subsection (1); or
  - (b) a proclamation under subsection (1) as enacted before the coming into operation of section 5 of the *Prisons and Sentencing Legislation Amendment Act 2006*<sup>1</sup>.
- (4) An order under this section does not have effect until it is published in the *Gazette*, and may be expressed to have effect from a time that is after its publication in the *Gazette*.  
[Section 5 amended by No. 65 of 2006 s. 5.]



## **Part III — Officers**

### **6. Appointment of officers**

*[(1), (2) deleted]*

- (3) There may be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* such officers including medical practitioners as medical officers, other than prison officers engaged under section 13, as are required for the purposes of this Act.
- (4) Without limiting the appointment of medical officers referred to in subsection (3), the chief executive officer may —
  - (a) appoint under contracts of service; or
  - (b) engage under contract for services,medical practitioners as medical officers.
- (5) The Minister may for the purposes of this Act engage persons 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 shall be employed on such terms and conditions as the Minister, on the recommendation of the Public Sector Commissioner, determines.
- (6) In this section —  
***this Act*** does not include Part XA.

*[Section 6 amended by No. 66 of 1982 s. 2; No. 47 of 1987 s. 5 and 11; No. 113 of 1987 s. 32; No. 47 of 1991 s. 7; No. 31 of 1993 s. 56; No. 32 of 1994 s. 3(2); No. 43 of 1999 s. 5; No. 65 of 2006 s. 6; No. 39 of 2010 s. 89.]*

### **7. Powers and duties of chief executive officer**

- (1) Subject to this Act and to the control of the Minister, the chief executive officer is responsible for the management, control, and security of all prisons and the welfare and safe custody of all prisoners.

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- (2) The chief executive officer 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.
- (2a) The chief executive officer may —
  - (a) consult and collaborate with; and
  - (b) make use of the assistance of,any individual or organisation in any way that the chief executive officer considers expedient for the purpose of the performance of functions under this Act.
- (3) The chief executive officer has all of the powers conferred by or under this Act on a superintendent or other officer and may review, vary or rescind an order or direction given by a superintendent or other officer.
- (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 chief executive officer and the fact that such person holds or held that office.

*[Section 7 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 43 of 1999 s. 6; No. 65 of 2006 s. 7.]*

**8. Delegation by chief executive officer**

- (1) The chief executive officer may delegate to any person any power or duty of the chief executive officer under another provision of this Act other than section 9, 35, 104, 105 or 106.
- (2) The delegation must be in writing signed by the chief executive officer.

- (3) A person to whom a power or duty is delegated under this section cannot delegate the power or duty.
- (4) A person exercising or performing a power or duty that has been delegated under this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Unless the contrary is shown, it is to be presumed that a document purporting to have been signed by a person as a delegate of the chief executive officer was signed by a person in the performance of a function that at the time was delegated to the person by the chief executive officer.
- (6) Nothing in this section limits the ability of the chief executive officer to perform a function through an officer or agent.

*[Section 8 inserted by No. 65 of 2006 s. 8.]*

**9. Chief executive officer may set up inquiry**

- (1) The chief executive officer 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.
- (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 may witness a statutory declaration.
- (4) 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).
- (5) Before a reporting officer requests a person to give information or asks a person a question for the purposes of an inquiry the reporting officer must advise the person —
  - (a) that the person does not have to give the information or answer the question unless the reporting officer requires the person to do so; and
  - (b) that if the person gives the information or answers the question on the request of the reporting officer but without having been required by the reporting officer to do so, the information or answer may be admissible in evidence against the person in any proceedings; and
  - (c) of the effect of giving the information or answering the question in response to a requirement of the reporting officer to do so, as mentioned in subsection (4); and
  - (d) of the offences and the penalty as mentioned in section 10(1) or (2), as the case requires.
- (6) A requirement of a reporting officer to give information or answer a question for the purposes of an inquiry must be clearly

distinguishable from a request to give the information or answer the question.

*[Section 9 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 43 of 1999 s. 8; No. 74 of 2003 s. 94(2) and (3); No. 24 of 2005 s. 63.]*

**10. Failure to supply information to inquiry**

- (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.

- (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(5).

*[Section 10 amended by No. 47 of 1991 s. 7; No. 74 of 2003 s. 94(4).]*

**11. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

- (1) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial

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administration, audit and reporting of departments apply to and in respect of the Department and its operations.

- (2) The annual report of the Department shall include a report on the state and conditions of all prisons in the State.

*[Section 11 inserted by No. 98 of 1985 s. 3; amended by No. 47 of 1987 s. 7; No. 77 of 2006 Sch. 1 cl. 132.]*

**12. Duties of officers**

Every officer —

- (a) shall comply with —
  - (i) this Act and all regulations, rules and standing orders made under this Act; and
  - (ii) any other written law conferring functions on officers; and
  - (iii) the orders and directions of the chief executive officer;
- and
- (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 jeopardise the security of the prison or the welfare or safe custody of prisoners; and
- (c) shall make such returns and reports to the chief executive officer as the chief executive officer may from time to time direct; and
- (d) shall make any records relating to any prisoner available upon request of the chief executive officer to the chief executive officer or the superintendent.

*[Section 12 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 65 of 2006 s. 9.]*

**13. Engagement of prison officers**

- (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 shall be employed on such terms and conditions as the Minister, on the recommendation of the Public Sector Commissioner, 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 State as a prison officer of Western Australia; and
    - (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; and
    - (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; and
    - (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 chief executive officer may, with the consent of the Minister, dismiss that prison officer.

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- (4) The Minister may, by instrument in writing signed by him, delegate to the chief executive officer his powers under this section, other than the power of consenting to a dismissal under subsection (3).
- (5) The delegation may expressly authorise the chief executive officer to further delegate a power.
- (6) The chief executive officer, in exercising a power that has been delegated under subsection (4), is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (7) Unless the contrary is shown, it is to be presumed that a document purporting to have been signed by the chief executive officer as a delegate of the Minister was signed by the chief executive officer in the exercise of a power that at the time was delegated to the chief executive officer by the Minister.
- (8) Nothing in this section limits the ability of the Minister to perform a function through an officer or agent.

*[Section 13 amended by No. 47 of 1987 s. 8 and 11; No. 113 of 1987 s. 32; No. 47 of 1991 s. 7; No. 65 of 2006 s. 10; No. 39 of 2010 s. 89.]*

**14. Powers and duties of prison officers**

- (1) Every prison officer —
  - (a) has a responsibility to maintain the security of the prison where he is ordered to serve; and
  - (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; and
  - (c) shall obey all lawful orders given to him by the superintendent or other officer under whose control or supervision he is placed and the orders and directions of the chief executive officer; 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.
- (2) A person who is authorised to exercise a power set out in clauses 2 and 11(3) of Schedule 2 to the *Court Security and Custodial Services Act 1999* may issue to a prisoner such orders as are necessary for the purposes of the provisions of this Act set out in the Table to section 3(2).

*[Section 14 amended by No. 47 of 1999 s. 34; No. 65 of 2006 s. 11.]*

**15. Assistance by police officers**

Subject to the directions of the Commissioner of Police, a police officer may, upon the request of the chief executive officer 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.

*[Section 15 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

## **Part IIIA — Contracts for prison services**

*[Heading inserted by No. 43 of 1999 s. 7.]*

### **Division 1 — Preliminary**

*[Heading inserted by No. 43 of 1999 s. 7.]*

#### **15A. Terms used**

In this Part —

**administrator** means a person appointed or engaged under section 15Y or 15Z;

**contract worker** means a natural person who is —

- (a) a contractor or an employee or agent of a contractor; or
- (b) a subcontractor or an employee or agent of a subcontractor;

**function** includes power, duty, responsibility and authority;

**intervene**, in relation to a contract, means —

- (a) to give directions as to the manner in which a prison service that is a subject of the contract is to be provided; or
- (b) to provide a prison service that is a subject of the contract;

**other officer** means an officer, except a medical officer, referred to in section 6(3) or a person engaged under section 6(5);

**perform**, in relation to a function, includes the exercise of a power, responsibility or authority.

*[Section 15A inserted by No. 43 of 1999 s. 7.]*

**Division 2 — Matters relating to contracts generally**

*[Heading inserted by No. 43 of 1999 s. 7.]*

**15B. Contracts for prison services**

The chief executive officer may, for and on behalf of the State of Western Australia, enter into a contract with a person to provide prison services for the State.

*[Section 15B inserted by No. 43 of 1999 s. 7.]*

**15C. Minimum matters to be included in contracts**

A contract must provide for —

- (a) compliance by the contractor with this Act, any other written law and the rules; and
  - (b) objectives and performance standards in relation to the provision of prison services under the contract; and
  - (c) fees, costs and charges to be paid to and by the contractor; and
  - (d) compliance by the contractor with the minimum standards established under section 15D in relation to the provision of prison services under the contract; and
  - (e) the submission of reports in relation to the contractor's obligations under the contract; and
  - (f) notification by the contractor of any change in the control, management or ownership of —
    - (i) the contractor; or
    - (ii) a subcontractor, or a member of a class of subcontractors, specified for the purposes of this paragraph by the chief executive officer in the contract;
- and
- (g) the financial and other consequences of intervening in a contract under section 15W, terminating or suspending a

contract under section 15X and of requisitioning property under section 15ZC; and

- (h) codes of ethics and conduct, as approved by the chief executive officer, to apply to the contractor, any subcontractor and their employees and agents; and
- (i) reporting procedures to notify the chief executive officer of escapes, deaths of prisoners and other emergencies or serious irregularities; and
- (j) investigation procedures and dispute resolution mechanisms for complaints about the provision of prison services under the contract; and
- (k) an indemnity by the contractor in favour of the State of Western Australia; and
- (l) the office the holder of which is to be the principal officer of the contractor and the subcontractors under the relevant contract for the purposes of the [Children and Community Services Act 2004](#), the *Corruption and Crime Commission Act 2003*, the *Freedom of Information Act 1992* and the *Parliamentary Commissioner Act 1971*, respectively; and
- (m) any other matter prescribed by regulation.

*[Section 15C inserted by No. 43 of 1999 s. 7; amended by No. 48 of 2003 s. 62; No. 78 of 2003 s. ~~74~~74(2); No. 4 of 2015 s. 88(2).]*

**15D. Minimum standards**

- (1) The chief executive officer must establish minimum standards applicable to the provision of prison services under a contract and the chief executive officer may, from time to time, amend the minimum standards.
- (2) The Minister is to ensure that the minimum standards, as amended from time to time, are laid before each House of Parliament within 10 sitting days of such House next following the establishment or amendment of the minimum standards.

*[Section 15D inserted by No. 43 of 1999 s. 7.]*

**15DA. Penalty for breach**

- (1) A contract may provide for a party to the contract to be liable to pay an amount determined under the contract, by way of penalty, in respect of a breach of the contract.
- (2) The contract may provide for an increase in the amount of the penalty because of each day or part of a day during which a breach continues.
- (3) A penalty provided for in accordance with this section is recoverable even though no damage may have been suffered or the penalty may be unrelated to the extent of any damage suffered.

*[Section 15DA inserted by No. 65 of 2006 s. 12.]*

**15E. Minister, chief executive officer etc. may have access to certain prisons, persons, vehicles and documents**

- (1) The Minister, the chief executive officer and any person authorised by the chief executive officer may, at any time, (with any assistants, prison dogs and equipment that the Minister, the chief executive officer or authorised person thinks are necessary) have free and unfettered access to a prison, person, vehicle or document referred to in subsection (2) for the purpose of —
  - (a) ensuring compliance with this Act, the rules or a contract; or
  - (b) ensuring that a prison service that is a subject of a contract is being properly provided.
- (2) A person referred to in subsection (1) may have access to —
  - (a) a prison at which prison services are provided under a contract or any part of such a prison; and
  - (b) a prisoner in such a prison; and

- (c) a contract worker whose work is concerned with such a prison; and
  - (d) a vehicle used by a contractor to provide prison services under a contract; and
  - (e) a prisoner in such a vehicle; and
  - (f) a contract worker whose work is concerned with such a vehicle; and
  - (g) all documents in the possession of the contractor or a subcontractor in relation to any prison service that is a subject of a contract.
- (3) The chief executive officer may authorise a person for the purposes of subsection (1).
- (4) An authorisation must be in writing and may be made subject to such conditions and limitations specified in the authorisation as the chief executive officer thinks fit.
- (5) A person must not hinder or resist a person referred to in subsection (1) when the person is exercising or attempting to exercise a power under that subsection.
- Penalty: \$20 000.
- (6) Nothing in this section limits any entitlement that a person, under a law, has to have access to a place, vehicle, person or document referred to in subsection (2).

*[Section 15E inserted by No. 43 of 1999 s. 7.]*

**15F. Administrators and reporting officers may have access to certain prisons, persons, vehicles and documents**

- (1) An administrator and a reporting officer appointed under section 9 may, at any time, (with any assistants, prison dogs and equipment that the administrator or reporting officer thinks are necessary) have free and unfettered access to a prison, vehicle, person or document referred to in section 15E(2) for the purpose of enabling the administrator or reporting officer to perform his or her functions.

- (2) A person must not hinder or resist an administrator or reporting officer when the administrator or reporting officer is exercising or attempting to exercise a power under subsection (1).

Penalty: \$20 000.

- (3) Nothing in this section limits any entitlement that a person, under a law, has to have access to a place, vehicle, person or document referred to in section 15E(2).

*[Section 15F inserted by No. 43 of 1999 s. 7.]*

**15G. Annual reports and tabling of contracts**

- (1) The chief executive officer is to prepare and deliver to the Minister by 30 September each year a report on each contractor who provided prison services under a contract in the preceding 12 months.
- (2) The report is to contain such information as is required to be included in the report by the Minister to enable an informed assessment to be made of —
- (a) the operations of each contractor; and
  - (b) the extent to which there has been compliance with the relevant contract.
- (3) The Minister is to ensure that the report is laid before each House of Parliament within 10 sitting days of such House next following the Minister's receipt of the report.
- (4) The Minister is to ensure that a contract, as amended from time to time, is laid before each House of Parliament within 30 days of such House next sitting following the execution of the contract or the amendment.
- (5) If neither House of Parliament is sitting on the day when the 30 day period referred to in subsection (4) expires —
- (a) immediately on the expiration of that period the Minister is to send a copy of the contract or the contract as amended, as is relevant to the case, to the Clerk of the

Legislative Assembly and the Clerk of the Legislative Council; and

- (b) the Clerks are to jointly ensure that the contract or the contract as amended is published as soon as practicable in a prescribed manner.

*[Section 15G inserted by No. 43 of 1999 s. 7.]*

**15H. No contracting out**

The provisions of this Part apply despite anything to the contrary in the contract.

*[Section 15H inserted by No. 43 of 1999 s. 7.]*

**Division 3 — Authorisation of contract workers to perform functions**

*[Heading inserted by No. 43 of 1999 s. 7.]*

**15I. Contract workers' functions**

- (1) The chief executive officer may authorise a contract worker who holds a permit, to perform any of the functions that —
  - (a) a superintendent; or
  - (b) a prison officer; or
  - (c) an other officer,has under this Act except a function referred to in section 15J.
- (2) An authorisation must be in writing and may be made subject to such conditions and limitations specified in the authorisation as the chief executive officer thinks fit.
- (3) A contract worker is not to decide whether a prisoner may be detained in custody under section 32(1)(a).

*[Section 15I inserted by No. 43 of 1999 s. 7.]*



**15J. Limitation on functions of contract workers**

- (1) A contract worker cannot be authorised to perform a function that cannot be delegated to a person under section 8(1).
- (2) A contract worker cannot be authorised to perform a superintendent's function of a kind referred to in a provision of this Act that is set out in the Table to this subsection.

**Table**

|  |                  |
|--|------------------|
| s. 31(2)   | s. 74(3)         |
| s. 32(1)(b)  | s. 75(1) and (2) |
| s. 47(1) and (2)                                   | s. 76(1) and (2) |
| s. 71(1) and (2)                                   | s. 77(1) and (2) |
| s. 73(a) (second reference to superintendent only) | s. 80(1) and (2) |

- (3) A contract worker cannot be authorised to perform a superintendent's function of a kind referred to in Part X.
- (4) A contract worker cannot be authorised to perform a prison officer's function referred to in section 47(1) or (2).

*[Section 15J inserted by No. 43 of 1999 s. 7.]*

**15K. Effect of authorisation**

- (1) Subject to subsections (2), (3), (4), (5) and (6), a contract worker who is authorised under section 15I to perform a function of —
  - (a) a superintendent; or
  - (b) a prison officer; or
  - (c) an other officer,

must, for the purposes of this Act and any other written law, be deemed to be a superintendent, prison officer or other officer, as the case requires, in relation to that function.

**Prisons Act 1981**

**Part IIIA** Contracts for prison services

**Division 4** Vetting and control of contract workers in relation to high-level security work

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- (2) A reference to a superintendent in Part X does not include a reference to a contract worker.
- (3) A reference to a prison officer or any other officer in a provision of this Act that is set out in the Table to this subsection does not include a reference to a contract worker.

**Table**

|                       |  |
|-----------------------|--|
| s. 13(1), (2) and (3) | s. 110(1)(b), (d), (e), (v), and (w)         |
| Part X                | s. 114(1), (3), (6), (8), (9), (11) and (12) |

- (4) If prison services in relation to a prison are being provided under a contract, a reference to the prison's superintendent in a provision that is set out in the Table to section 15J(2) in relation to that prison is to be regarded as a reference to a superintendent of a prison that is not managed under a contract.
- (5) If prison services in relation to a prison are being provided under a contract, a reference to a prison officer in section 47(1) or (2) in relation to that prison is to be regarded as a reference to a prison officer engaged under section 13.
- (6) A contract worker referred to in subsection (1) —
  - (a) does not hold the position of superintendent, prison officer or other officer, as the case requires; and
  - (b) is not subject to the *Public Sector Management Act 1994*.

*[Section 15K inserted by No. 43 of 1999 s. 7.]*

**Division 4 — Vetting and control of contract workers in relation to high-level security work**

*[Heading inserted by No. 43 of 1999 s. 7.]*

**15L. Term used: offence for which the contract worker is convicted**

In this Division a reference to an offence for which the contract worker is convicted includes —

- (a) an offence for which the person is convicted in any part of the world; and
- (b) the payment of the whole or a part of a penalty under an infringement notice as defined in the *Road Traffic (Administration) Act 2008* section 4 in respect of an alleged offence by the contract worker; and
- (c) the payment of the whole or a part of a penalty under an infringement notice under a law, in any other part of the world, corresponding to a road law as defined in the *Road Traffic (Administration) Act 2008* section 4, in respect of an alleged offence by the contract worker.

*[Section 15L inserted by No. 43 of 1999 s. 7; amended by No. 8 of 2012 s. 163.]*

**15M. High-level security work**

A prison service is high-level security work if —

- (a) it is of a kind that requires the person providing it to exercise a power of a superintendent, a prison officer or any other officer; and
- (b) it is provided by a contract worker.

*[Section 15M inserted by No. 43 of 1999 s. 7.]*

**15N. Chief executive officer may declare other kinds of work to be high-level security work**

- (1) The chief executive officer may, in writing, declare as high-level security work —
  - (a) a prison service of a kind that requires a contract worker to deal directly with prisoners except a prison service referred to in section 15M; or
  - (b) work that requires a contract worker to have access to information about prisoners; or
  - (c) any other work to be done by a contract worker that in the opinion of the chief executive officer should be declared to be high-level security work.
- (2) The chief executive officer may amend a declaration.
- (3) The chief executive officer is to ensure that notice of a declaration or an amendment of a declaration is published in the *Gazette* within 14 days after the day the declaration or amendment occurs.
- (4) The validity of a declaration or an amendment of a declaration is not affected by failure to publish the notice.

*[Section 15N inserted by No. 43 of 1999 s. 7.]*

**15O. Contract workers require permits to do high-level security work**

A contract worker must not do, or purport to do, any high-level security work unless he or she has a current permit to do the work and does the work in accordance with the permit.

Penalty: Imprisonment for 3 years.

*[Section 15O inserted by No. 43 of 1999 s. 7.]*

**15P. Issue of permits to do high-level security work**

- (1) On application by a contract worker in a manner approved by the chief executive officer, the chief executive officer may issue

the contract worker with a permit to do high-level security work.

- (2) To determine the suitability of a contract worker to do high-level security work the chief executive officer may —
  - (a) have regard to the information referred to in section 15Q(1) and (3) about the contract worker; and
  - (b) make appropriate enquiries about the contract worker; and
  - (c) enquire into the honesty and integrity of the contract worker's known associates.
- (3) A permit may be issued subject to such conditions and limitations specified in the permit as the chief executive officer thinks fit.
- (4) A permit is not transferable.

*[Section 15P inserted by No. 43 of 1999 s. 7.]*

**15Q. Information about applicants for permits**

- (1) The chief executive officer may, in writing, require a contract worker who applies for a permit or the relevant contractor to provide —
  - (a) information about any offence for which the contract worker is convicted; and
  - (b) information about any disciplinary proceedings conducted against the contract worker in the course of his or her employment; and
  - (c) information about any other matter that is relevant to the suitability of the contract worker to do high-level security work; and
  - (d) a photograph of the contract worker.
- (2) A person must not give information or a photograph that is false or misleading in a material particular in response to a requirement under subsection (1).

Penalty: Imprisonment for 3 years.

- (3) If a contract worker applies for a permit the contract worker is to authorise the Commissioner of Police to provide to the chief executive officer and the relevant contractor —
- (a) information about any offence for which the contract worker is convicted; and
  - (b) such other information as is required by the chief executive officer to determine the suitability of the contract worker to do high-level security work.
- (4) A person must not give information that is false or misleading in a material particular in an authority under subsection (3).

Penalty: Imprisonment for 3 years.

*[Section 15Q inserted by No. 43 of 1999 s. 7.]*

**15R. Taking of fingerprints and palmprints**

- (1) The chief executive officer may, in writing, require a contract worker who applies for, or holds, a permit to attend at a place and there have his or her fingerprints or palmprints taken by a member of the Police Force or an employee of the Police Service.
- (2) The Commissioner of Police is to cause fingerprints and palmprints taken under this section and any copy of them to be destroyed —
- (a) if the permit is not granted; or
  - (b) when the permit no longer has effect.

*[Section 15R inserted by No. 43 of 1999 s. 7.]*

**15S. Refusal to issue permit**

- (1) The chief executive officer may refuse to issue a contract worker with a permit to do high-level security work if, in the opinion of the chief executive officer —
- (a) the contract worker has not complied with a requirement under section 15Q(1); or

- (b) the contract worker has not given an authority under section 15Q(3); or
  - (c) the contract worker has not complied with a requirement under section 15R(1); or
  - (d) the contract worker has not completed training approved by the chief executive officer; or
  - (e) the contract worker has failed to satisfy the chief executive officer that the contract worker is a fit and proper person to do high-level security work; or
  - (f) the contract worker should not do high-level security work because of his or her criminal record or character or because of any other relevant reason; or
  - (g) the contract worker does not meet all the conditions specified in the relevant contract in relation to persons who are to do high-level security work; or
  - (h) it is not in the public interest to do so.
- (2) The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the issue of, or refusal to issue, a permit.

*[Section 15S inserted by No. 43 of 1999 s. 7.]*

**15T. Determining suitability of contract workers to keep holding permits**

- (1) To determine the suitability of a contract worker to continue to do high-level security work the chief executive officer may —
- (a) have regard to the information referred to in subsection (2) and (4) about the contract worker; and
  - (b) make appropriate enquiries about the contract worker; and
  - (c) enquire into the honesty and integrity of the contract worker's known associates.

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- (2) If a contract worker holds a permit the chief executive officer may, at any time, in writing require the contract worker or the relevant contractor to provide information about —
- (a) any offence for which the contract worker is convicted; and
  - (b) any disciplinary proceedings conducted against the contract worker in the course of his or her employment; and
  - (c) any other matter that is relevant to the suitability of the contract worker to continue to do high-level security work.
- (3) A person must not give information that is false or misleading in a material particular in response to a requirement under subsection (2).
- Penalty: Imprisonment for 3 years.
- (4) If a contract worker holds a permit the chief executive officer may, at any time, in writing require the contract worker to authorise the Commissioner of Police to provide to the chief executive officer and the relevant contractor —
- (a) information about any offence for which the contract worker is convicted; and
  - (b) such other information as is required by the chief executive officer to determine the suitability of the contract worker to continue to do high-level security work.
- (5) A person must not give information that is false or misleading in a material particular in an authority under subsection (4).

Penalty: Imprisonment for 3 years.

*[Section 15T inserted by No. 43 of 1999 s. 7.]*



**15U. Suspension or revocation of permits**

- (1) The chief executive officer may, at any time, suspend or revoke a permit issued to a contract worker if, in the opinion of the chief executive officer —
- (a) the permit ought not to have been issued to the contract worker, or ought not to continue in force in respect of the contract worker, having regard to the grounds referred to in section 15S(1)(d) to (h); or
  - (b) the contract worker has failed to comply with —
    - (i) this Act, the rules or standing orders; or
    - (ii) a direction given to the contract worker under this Act, the rules, a standing order or the relevant contract; or
    - (iii) an order, direction, warrant or other instrument under any law directed to the contract worker in relation to a prisoner; or
    - (iv) a code of ethics or conduct provided for under the relevant contract; or
    - (v) a requirement under section 15T(2) or (4).
- (2) The chief executive officer may suspend or revoke any permit issued to any contract worker if —
- (a) the chief executive officer intervenes in the relevant contract under section 15W or terminates or suspends the relevant contract under section 15X; or
  - (b) the relevant contract is terminated or suspended under the terms of the contract.
- (3) The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the suspension or revocation of a permit under subsection (2).

*[Section 15U inserted by No. 43 of 1999 s. 7.]*

**15V. Gazettal of permit details**

- (1) The chief executive officer is to ensure that notice of the issue, suspension, reinstatement or revocation of a permit is published in the *Gazette* within 14 days after the day the event occurs.
- (2) The validity of the issue, suspension, reinstatement or revocation of a permit is not affected by failure to publish the notice.

*[Section 15V inserted by No. 43 of 1999 s. 7.]*

**Division 5 — Intervention in, and termination of, contracts**

*[Heading inserted by No. 43 of 1999 s. 7.]*

**15W. Intervention in contracts**

- (1) The chief executive officer may intervene in a contract if —
  - (a) there are grounds for doing so under subsection (2); and
  - (b) the intervention is in the public interest or is necessary to ensure the proper provision of a prison service that is a subject of a contract.
- (2) The grounds for intervening in a contract are that —
  - (a) there is an emergency in a prison service that is a subject of the contract; or
  - (b) the contractor has failed to effectively provide a prison service that is a subject of the contract.

*[Section 15W inserted by No. 43 of 1999 s. 7.]*

**15X. Termination or suspension of contracts**

- (1) The chief executive officer, with the Minister's approval, may on behalf of the State terminate or suspend (wholly or partially) a contract if, in the opinion of the chief executive officer —
  - (a) there are grounds for doing so under subsection (2); and
  - (b) the termination or suspension of the contract is in the public interest.

- (2) The grounds for terminating or suspending a contract are that —
- (a) the contractor becomes insolvent within the meaning of the contract; or
  - (b) the identity of the persons who control, manage or own the contractor or a subcontractor changes during the term of the contract without the consent of the chief executive officer; or
  - (c) the contractor has committed a material breach of the contract that is not capable of being remedied; or
  - (d) the contractor has failed to rectify a breach of the contract within the time specified in the contract after the issue of a default notice; or
  - (e) the chief executive officer gives the contractor written notice to the effect that the contract will be terminated or suspended 3 days after the day on which the contractor receives the notice or at such later time as is specified in the notice.

*[Section 15X inserted by No. 43 of 1999 s. 7.]*

**15Y. Administrator where intervention in contract**

- (1) If the chief executive officer intervenes in a contract under section 15W the chief executive officer may appoint or engage an administrator —
- (a) to give directions as to the manner in which a prison service that is subject of the contract is to be provided; or
  - (b) to provide a prison service that is a subject of the contract.
- (2) The directions given by an administrator and the provision by an administrator of a prison service that is a subject of a contract must be in accordance with the terms of the administrator's appointment or engagement.

- (3) An administrator cannot be appointed or engaged for a period exceeding one year but can be reappointed or re-engaged if, after review of the reason for intervention in a contract, the chief executive officer determines that the reason for the intervention still exists.

*[Section 15Y inserted by No. 43 of 1999 s. 7.]*

**15Z. Administrator where termination or suspension of contract**

- (1) If the chief executive officer terminates or suspends a contract under section 15X the chief executive officer may appoint or engage an administrator —
- (a) to provide any prison service that was a subject of the terminated contract; or
  - (b) to provide any prison service that is a subject of the suspended contract.
- (2) The provision by an administrator of a prison service that was or is a subject of a contract must be in accordance with the terms of the administrator's appointment or engagement.
- (3) An administrator cannot be appointed or engaged for a period exceeding one year but can be reappointed or re-engaged if the chief executive officer determines —
- (a) in the case of the termination of a contract, that matters arising from the terminated contract have not been properly resolved; or
  - (b) in the case of the suspension of a contract, that the reason for the suspension still exists.

*[Section 15Z inserted by No. 43 of 1999 s. 7.]*

**15ZA. Administrator's functions**

An administrator may, for the purposes of performing his or her functions —

- (a) perform —

- (i) any function that the contractor or an employee or agent of that contractor has under a contract or had under a terminated contract; and
- (ii) any function that a subcontractor or an employee or agent of that subcontractor has under a contract or had under a terminated contract;

and

- (b) exercise any power of a superintendent, a prison officer or any other officer.

*[Section 15ZA inserted by No. 43 of 1999 s. 7.]*

**15ZB. Compliance with administrator's directions**

- (1) If an administrator is appointed under section 15Y then for the period of the appointment or engagement —
  - (a) the contractor; and
  - (b) each subcontractor; and
  - (c) any person appointed or employed by the contractor or a subcontractor to manage a service that is a subject of a contract,

must comply with the administrator's directions in respect of the management or provision of the service, or the ceasing of the provision of the service.

Penalty: \$50 000.

- (2) If an administrator is appointed or engaged under section 15Y then for the period of the appointment or engagement any contract worker who has a function in respect of a prison service that is a subject of the relevant contract must comply with the administrator's directions as to the performance of the function.

Penalty: \$5 000.

*[Section 15ZB inserted by No. 43 of 1999 s. 7.]*

**15ZC. Requisitioning property on intervention in, or termination of, contract**

If the chief executive officer intervenes in a contract under section 15W or terminates or suspends a contract under section 15X, the chief executive officer or an administrator (with the chief executive officer's approval) may —

- (a) no later than 2 months after the intervention, termination or suspension, requisition any property used in relation to the provision of a prison service that is a subject of the contract or was a subject of the terminated contract; and
- (b) use the property for the ongoing provision of that prison service for no longer than 12 months after the requisition of the property.

*[Section 15ZC inserted by No. 43 of 1999 s. 7.]*

## **Part IV — Custody, removal and release of prisoners**

### **16. Prisoners in custody of chief executive officer**

- (1) Every prisoner is deemed for so long as he continues to be a prisoner to be in the custody of the chief executive officer.
- (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 chief executive officer may allow a prisoner to serve all or part of the prisoner's sentence of imprisonment in a lock-up if approval to do so has been given —
  - (a) in the case of a place prescribed as a lock-up for the purposes of the *Court Security and Custodial Services Act 1999*, by the CEO as defined in that Act; or
  - (b) in the case of any other lock-up, by the Commissioner of Police.
- (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; or
  - (b) in safe custody at the direction of the Governor; or
  - (c) undergoing strict security life imprisonment.
- (7) The chief executive officer may allow a person required to serve a period of imprisonment in default of a payment of a fine or other monetary penalty to serve that period of imprisonment in a lock-up if approval to do so has been given —
  - (a) in the case of a place prescribed as a lock-up for the purposes of the *Court Security and Custodial Services Act 1999*, by the CEO as defined in that Act; or

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- (b) in the case of any other lock-up, by the Commissioner of Police.
- (8) Upon taking a prisoner into his custody in accordance with subsection (5) or (7), the person in charge of the lock-up at that time shall notify the chief executive officer in writing accordingly and shall provide the chief executive officer with particulars of the prisoner.
- (9) If a prisoner is confined in a lock-up under this section for a period of 3 months, the chief executive officer 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 lock-up for so long as is reasonably necessary to enable arrangements to be made for the conveyance of the prisoner to a prison.

*[Section 16 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 47 of 1999 s. 35.]*

**17. Reckoning of sentence**

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.

**18. Conveyance of prisoners for trial etc.**

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.

**19. Warrants of commitment**

- (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 chief executive officer shall be sufficient.

- (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 chief executive officer.
- (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.

*[Section 19 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

## **20. Proof of imprisonment**

- (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 chief executive officer 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 chief executive officer 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.

*[Section 20 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

*[21, 22. Deleted by No. 65 of 2006 s. 13.]*

**23. Prisoner assigned to external facility in lawful custody**

- (1) In this section —

***external facility*** means a facility outside a prison that is used to confine prisoners to facilitate their being provided with opportunities for work or participation in programmes or activities.

- (2) A prisoner who is assigned to an external facility shall be deemed to be in lawful custody while confined in that external facility.

*[Section 23 inserted by No. 65 of 2006 s. 14.]*

**24. Prisoner absent under permit in lawful custody**

A prisoner who is absent from a prison or other facility under an absence permit shall be deemed to be in lawful custody while absent as authorised by the permit.

*[Section 24 inserted by No. 65 of 2006 s. 14.]*

**25. Prisoner attending legal or investigative proceedings in lawful custody**

A prisoner who is brought up or produced before a judicial body or to a place under an order lawfully made under this Act or any other Act or any Act of the Commonwealth shall be deemed to be in lawful custody while absent from prison for the purpose specified in the order.

*[Section 25 inserted by No. 65 of 2006 s. 14.]*

**26. Removal of prisoner to another prison**

- (1) Subject to subsection (2), the chief executive officer 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 authorise 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 who is undergoing a sentence of strict security life imprisonment or a sentence of life imprisonment in respect of which an order has been made under section 90(1)(b) of the *Sentencing Act 1995* —
- (a) the Governor may make an order of the kind mentioned in subsection (1); and
  - (b) the chief executive officer may make an order under subsection (1) if and only if —
    - (i) the chief executive officer is of the opinion that an emergency requires the order to be made without delay; or
    - (ii) in the case of a prisoner subject to an order made under section 653 or 693(4) of *The Criminal Code* — the parole order of the prisoner is suspended or cancelled and he or she is returned to custody under Part 6 of the *Sentence Administration Act 1995* and the chief executive officer is of the opinion that it would be impracticable or unsuitable for the prisoner to be detained at the place where the Governor ordered the prisoner to be confined.
- (3) An order made in accordance with subsection (2)(b) shall be expressed to be either temporary or to have effect pending the further consideration of the Governor.

*[Section 26 amended by No. 52 of 1984 s. 31; No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 129 of 1987 s. 27; No. 47 of 1991 s. 7; No. 31 of 1993 s. 58; No. 78 of 1995 s. 110; No. 29 of 2008 s. 36(3).]*

*[27, 28. Deleted by No. 65 of 2006 s. 15.]*

*[29, 30. Deleted by No. 78 of 1995 s. 110.]*

**31. Chief executive officer and superintendent's powers of early discharge**

- (1) The chief executive officer may authorise the discharge from custody of a prisoner at any time during the period of 30 days immediately before the day when his sentence is due to expire.
- (2) The superintendent may authorise 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.
- (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.

*[Section 31 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 24 of 2003 s. 4.]*

**32. Prison offences by prisoners due for release**

- (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 —
  - (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 authorised by the

superintendent shall commence a prosecution in a court of summary jurisdiction for 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.

*[Section 32 amended by No. 84 of 2004 s. 80.]*

**33. Provision of fare home on release**

Upon the release of a prisoner from prison, the chief executive officer may, out of the 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.

*[Section 33 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

*[Section 33. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

**[34.]** *Deleted by No. 2 of 1996 s. 61.]*

## **Part V — Management, control and security of prisons**

### **35. Chief executive officer may make rules**

- (1) The chief executive officer 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 Department.
- (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 chief executive officer 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 chief executive officer 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 chief executive officer 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.

*[Section 35 amended by No. 47 of 1987 s. 9 and 11; No. 113 of 1987 s. 32; No. 31 of 1993 s. 59; No. 65 of 2006 s. 16.]*

**36. Superintendents of prisons**

- (1) The chief executive officer 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 chief executive officer 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 authorise 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 authorised.

*[Section 36 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

**37. Superintendent may issue standing orders**

- (1) The superintendent of a prison may, with the approval of the chief executive officer, 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 chief executive officer 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.

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- (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.

*[Section 37 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

*[38-40. Deleted by No. 65 of 2006 s. 17.]*

**41. Search of prisoners etc.**

- (1) A prison officer may, if so ordered by the superintendent, search a prisoner and take from him any thing found on his person —
  - (a) which apparently was not issued to him with the approval of the superintendent; or
  - (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, subject to section 49B of this Act and to section 6(2) of the *Weapons Act 1999*, be —
  - (a) retained by the superintendent and returned to the prisoner on his release; or



- (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 chief executive officer, destroyed or otherwise dealt with.

*[Section 41 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 43 of 1999 s. 11.]*

#### **42. Restraint**

- (1) Without prejudice to any power otherwise conferred, a superintendent may authorise 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 a 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 or during his temporary absence from a prison.
- (2) Restraint involving the use of medication shall be used only on medical grounds with the approval of a 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 chief executive officer by the superintendent.

*[Section 42 amended by No. 66 of 1982 s. 3; No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 43 of 1999 s. 12.]*

#### **43. Separate confinement**

- (1) For the purpose of maintaining good government, good order or security in a prison, the chief executive officer 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 chief executive officer 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 chief executive officer may direct.

*[Section 43 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

**44. Separation of male and female prisoners**

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.

*[45. Deleted by No. 65 of 2006 s. 18.]*

**46. Medical examination for evidentiary purposes**

Where there are reasonable grounds for believing that a medical examination of a prisoner will afford evidence as to the commission of an offence, a medical officer or a person who is registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession acting at the request of the chief executive officer 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.

*[Section 46 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 43 of 1999 s. 14; No. 22 of 2008 Sch. 3 cl. 47(3); No. 35 of 2010 s. 137.]*

**47. Use of firearms**

- (1) A superintendent, prison officer or a person lawfully charged by the Minister or chief executive officer 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 chief executive officer 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; or
    - (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.
- [Section 47 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

**48. Use of force on serious breach of security**

- (1) Where the chief executive officer is of the opinion that —
- (a) a serious breach of the good order or security of a prison has occurred or appears to the chief executive officer to be imminent; and
  - (b) no other reasonable means of control are available at the prison,

the chief executive officer 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.

*[Section 48 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

**49. Power to search and question persons entering prison**

- (1) The superintendent of a prison may require and direct —
- (a) a search of —
    - (i) a person entering or seeking to enter a prison; or
    - (ii) a person outside but near a prison, where in the opinion of the superintendent that search is necessary for the purpose of the security or good order of the 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: \$1 000.

- (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 authorised 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 jeopardise the good order or security of the prison, that article may be seized and, subject to section 49B of this Act and to section 6(2) of the *Weapons Act 1999*, in accordance with the directions of the chief executive officer, shall be returned to the apparent owner or otherwise dealt with.

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- (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.

*[Section 49 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 19 of 1995 s. 4; No. 43 of 1999 s. 15; No. 50 of 2003 s. 86(2).]*

**49A. Use of dogs**

- (1) In this section —
- drugs search*** means —
- (a) a search of a prisoner; or

- (b) a search in a prison or in premises or a place near a prison; or
- (c) a search of a vehicle in or near a prison; or
- (d) a search under section 49,

where the purpose of the search is to detect whether drugs are or have been present;

**prison dog** means a dog approved in accordance with the regulations for use by a prison officer in carrying out drugs searches.

- (2) A prison officer may, in a manner authorised under the regulations, use a prison dog to assist the prison officer in carrying out a drugs search.
- (3) A person who —
  - (a) assaults; or
  - (b) hinders or obstructs,

a prison dog under the control of a prison officer carrying out a drugs search is to be deemed to have assaulted, or to have hindered or obstructed, the prison officer handling the dog.

- (4) A prison dog under the control of a prison officer may enter, and be in, any place that the prison officer may lawfully enter or be in while carrying out a drugs search, and no liability shall arise by reason only that the prison dog entered or was in that place, notwithstanding any other law.
- (5) Without limiting the generality of section 111, a prison officer is not personally liable for injury or damage caused by the use of a prison dog under the control of the prison officer in carrying out a drugs search, if that use was in accordance with this Act.
- (6) Subsection (5) does not apply if injury or damage occurs as a result of anything commanded or permitted by the prison officer maliciously and without reasonable and probable cause.

*[Section 49A inserted by No. 19 of 1995 s. 5.]*

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**49B. Possession of firearms, prohibited drugs etc. by prison officers**

- (1) A prison officer who comes into possession of property under section 41, 49 or 49A does not commit —
- (a) an offence under the *Firearms Act 1973* in relation to possession of a firearm, ammunition or a silencer or contrivance of a similar nature; or
  - (b) an offence under the *Misuse of Drugs Act 1981* in relation to the possession of a prohibited drug, prohibited plant or utensil,
- if the prison officer possesses the property for a reason set out in subsection (2).
- (2) A prison officer may possess the property —
- (a) so as to deliver it into the custody of a member of the Police Force or an employee of the Police Service; or
  - (b) in the case of a firearm, if the prison officer is authorised under this Act to be in possession of the firearm for the purposes of section 47.

*[Section 49B inserted by No. 43 of 1999 s. 16.]*

**50. Penalty in respect of unauthorised articles**

- (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 —
- (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 jeopardise 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 chief executive officer, 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 (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 chief executive officer in relation thereto.
- (8) A prison officer who is convicted of an offence under this section forfeits his office.

*[Section 50 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

**51. Superintendent may delegate powers under s. 49**

- (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.
- (2) A prison officer to whom a power is delegated under this section cannot delegate the power.
- (3) A prison officer exercising a power that has been delegated under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (4) Nothing in this section limits the ability of the superintendent to perform a function through a subordinate or agent.

*[Section 51 amended by No. 65 of 2006 s. 19.]*

**52. Offences in respect of loitering, unauthorised entry and unauthorised communications**

- (1) Subject to this Act, a person who without the permission of the superintendent or the chief executive officer —
  - (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 chief executive officer, 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.

*[Section 52 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

*[53. Deleted by No. 65 of 2006 s. 20.]*

## **Part VI — Prison visits and communications involving prisoners**

### **54. Appointment of visiting justices**

- (1) The Minister may, for every prison, appoint visitors to be known as visiting justices.
- (2) A visiting justice shall not carry out the duties of an independent prison visitor.
- (3) Visiting justices shall be appointed from persons who are magistrates or justices of the peace.
- (4) Appointments under this section shall be for a term of 2 years, but a visiting justice may resign at any time by notice in writing delivered to the Minister.

*[Section 54 inserted by No. 75 of 2003 s. 56(1).]*

*[55. Deleted by No. 75 of 2003 s. 56(1).]*

### **56. Duties of visiting justice**

- (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 —
  - (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. Right of entry of independent prison visitors, judges etc.**

An independent 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.

*[Section 57 amended by No. 75 of 2003 s. 56(1).]*

**58. Cooperation with official visitors**

Every officer shall give full assistance to and cooperate fully with any person visiting a prison under section 56 or 57 of this Act or for the purpose of performing a function under section 19(a), 21, 22(a) or 40 of the *Inspector of Custodial Services Act 2003*.

*[Section 58 amended by No. 75 of 2003 s. 56(1).]*

**59. Visits by friends and relations of prisoners**

- (1) Subject to this Part, a prisoner shall be permitted to receive visits from his friends and relations in accordance with the regulations.
- (2) A prisoner may be permitted by the chief executive officer to receive visits under this Part from a friend or relation who is confined in another prison and the chief executive officer may order that a prisoner be temporarily removed to and from a prison for the purposes of making such a visit, but the chief executive officer 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.

*[Section 59 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

**60. Declaration of visitors**

- (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, 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 chief executive officer 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.

*[Section 60 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 24 of 2003 s. 5.]*

**60A. Protection of proof of identity of visitor to prison**

- (1) In this section —
- proof of identity*** means a fingerprint, palm print, eye print, voiceprint or other physical or personal characteristic provided or used to prove the identity of a visitor to a prison.
- (2) A person must not give any proof of identity to any other person unless —
- (a) the proof of identity is given to a prison officer for the purpose of checking the identity of a visitor to a prison; or
  - (b) the person is required to do so by an order of a court.

Penalty: \$2 000 or imprisonment for 12 months.

*[Section 60A inserted by No. 24 of 2003 s. 6.]*

**61. Visits by certain officials**

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

- (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. Visits by legal practitioner**

- (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 authorised by the superintendent, within the view but not the hearing of an officer.
- (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.

**63. Visits by police**

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

**64. Visits by public officers**

Subject to section 28 of the *Inspector of Custodial Services Act 2003* and to any directions of the Minister, the chief executive officer 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.

*[Section 64 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 75 of 2003 s. 56(1).]*

*[Section 64. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

**65. Other visitors to prisoners**

- (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 chief executive officer.

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

*[Section 65 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

**66. Visitor may be refused entry or removed**

- (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 or any provision of another written law, 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 chief executive officer in writing of any action he takes under subsection (1).
- (3) Notwithstanding any other provision of this Act, the chief executive officer may in prescribed circumstances ban a person from visiting a specified prison for a specified period.
- (4) The chief executive officer may revoke a ban.
- (5) The maximum period that a person may be banned is to be prescribed and different maximum periods may be prescribed in relation to different prescribed circumstances.
- (6) If a person is banned, the chief executive officer must give the person written notice of that ban and, subject to subsection (7), the reasons for the ban.

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- (7) The chief executive officer is not required under subsection (6) to give a person a reason for a ban if —
  - (a) failure to give the reason is necessary to protect the good order and security of a prison; or
  - (b) the reason is a prescribed reason.
- (8) A person banned from visiting a prison may make a submission to the chief executive officer about —
  - (a) the chief executive officer's decision to ban the person from visiting a prison; and
  - (b) any reason given by the chief executive officer for the ban.
- (9) The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to a decision made under subsection (3) or (4).
- (10) A notice under subsection (6) must contain or be accompanied by a statement explaining the effect of subsection (8).

*[Section 66 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 24 of 2003 s. 7; No. 75 of 2003 s. 56(1).]*

**67. Letters etc. written by prisoners**

- (1) Any letter written by a prisoner and properly addressed to —
  - (a) the Minister; or
  - (b) the chief executive officer; or
  - (c) the Parliamentary Commissioner for Administrative Investigations; or
  - (ca) the Inspector of Custodial Services; 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 authorised 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 jeopardise the good order or the security of a prison; or
  - (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 chief executive officer, or destroyed or otherwise dealt with by order of the chief executive officer.

- (4) Subject to subsections (2) and (3), and section 67A, 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.

*[Section 67 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 75 of 2003 s. 56(1); No. 65 of 2006 s. 21.]*

**67A. Prisoner's mail not to be sent to certain persons**

- (1) A person, or an agent of a person, may give the chief executive officer written notification —
  - (a) advising that the person does not wish to receive mail from a prisoner named in the notification; and
  - (b) specifying the person's reasons for not wishing to receive that mail.
- (2) If the chief executive officer receives a notification under subsection (1) and is satisfied that the reasons put forward in it

are appropriate, the chief executive officer is to ensure that the superintendent of the prison at which the prisoner is detained from time to time is made aware of the notification.

- (3) If a letter or parcel from a prisoner is addressed to a person and the superintendent is aware that a notification has been received under subsection (1) advising that the person does not wish to receive mail from that prisoner, the superintendent is to —
- (a) return the letter or parcel to the prisoner; or
  - (b) otherwise deal with the letter or parcel in accordance with an order of the chief executive officer.

- (4) In this section —

**person** is not limited to a victim of the prisoner.

*[Section 67A inserted by No. 65 of 2006 s. 22.]*

**68. Letters etc. addressed to prisoners**

- (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 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 chief executive officer in writing of his reason for so acting and the result of his inspection.
- (3) The superintendent or an officer authorised 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 jeopardise the good order or the security of a prison; or
  - (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; or
  - (e) return the letter or parcel to the sender; or
  - (f) otherwise deal with the letter or parcel by order of the chief executive officer.
- (5) Subject to this section, a letter or parcel addressed to a prisoner and received at the prison shall be delivered to that prisoner.

*[Section 68 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

## **Part VII — Prison offences**

### **69. Minor prison offences**

A prisoner who —

- (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 or a person referred to in section 14(2); or
- (b) is idle, negligent or careless in his work; or
- (c) behaves in a disorderly manner; or
- (d) swears or uses indecent language; or
- (e) uses insulting or threatening language or behaves in an insulting or threatening manner; or
- (f) pretends illness or injury; or
- (g) wilfully or maliciously breaks, damages or destroys any property; or
- (h) prefers a false or frivolous complaint against an officer; or
- (i) does any act or omission of insubordination or misconduct subversive of the order and good government of the prison; or
- (j) fails to return to prison on or before the expiry of a period of absence authorised by an absence permit or fails to comply with a condition or restriction set out in an absence permit; or
- (k) fails to return to prison when no longer required for the purposes of the proceedings to which an order made under section 85 relates,

is guilty of a minor prison offence.

*[Section 69 amended by No. 47 of 1999 s. 36; No. 65 of 2006 s. 23.]*

*[Section 69. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

**70. Aggravated prison offences**

Apart from an aggravated prison offence that may be committed under section 10(2), a prisoner commits an aggravated prison offence if he —

- (a) behaves in a riotous manner; or
- (b) assaults a person; or
- (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; or
- (d) uses, or is in possession of, drugs not lawfully issued to him; or
- (e) uses drugs otherwise than as prescribed; or
- (f) consumes, or is in possession of, alcohol not lawfully issued to him; or
- (g) is, without the permission of the superintendent, in possession of glue containing toluene or another intoxicant; or
- (h) is in possession of a weapon or a facsimile of a weapon; or
- (i) does not submit himself for the purpose of having a body sample taken where he is required to do so under this Act.

*[Section 70 inserted by No. 47 of 1991 s. 4; amended by No. 65 of 2006 s. 24.]*

**71. Charges of prison offences**

- (1) A charge of a prison offence alleged to have been committed by a prisoner may be made by any prison officer or person who is authorised to exercise a power set out in clause 14 of Schedule 2 to the *Court Security and Custodial Services Act 1999* 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.

*[Section 71 amended by No. 47 of 1999 s. 37.]*

**72. Visiting justice may determine minor prison offences**

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

**73. Visiting justice and aggravated prison offences**

- (1) 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 —
- (a) direct the superintendent to commence a prosecution for an aggravated prison offence in a court of summary jurisdiction; or
  - (b) inquire into and determine the charge as a minor prison offence.



- (2) If a prosecution for an aggravated prison offence is commenced in a court of summary jurisdiction, the prosecution shall be heard and determined by the court as if the aggravated prison offence were a simple offence.

*[Section 73 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 78.]*

**74. Hearing of charges**

- (1) Subject to this Act, and in particular section 74A, 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.
- (2) A court of summary jurisdiction hearing a charge of an aggravated prison offence may direct that the hearing shall take place in open court.
- (3) A prison officer who has been authorised in writing by the superintendent for the purpose may appear before a court of summary jurisdiction on the hearing of a charge of an aggravated prison offence and conduct the prosecution.

*[Section 74 amended by No. 59 of 2004 s. 141; No. 65 of 2006 s. 25.]*

**74A. Charges may be heard and determined by video link**

- (1) In this section —  
**hearing officer** means a superintendent or a visiting justice;  
**video link** means facilities (including closed circuit television) that enable, at the same time, a superintendent or visiting justice at one place to see and hear a person at another place and vice versa.
- (2) The hearing officer inquiring into, hearing and determining a charge of a prison offence may, on the hearing officer's own initiative or on an application by the prosecutor or the prisoner,

direct that the prisoner and any witnesses appear by video link from a suitable place in this State.

- (3) A direction under subsection (2) is not to be made unless —
- (a) the video link is available or can reasonably be made available; and
  - (b) the prisoner and the witnesses (if any) are available or can reasonably be made available to appear by video link; and
  - (c) in the opinion of the hearing officer, it is appropriate for the matter to be dealt with using video link.
- (4) The hearing and determining of a prison offence by video link is to be conducted as if the prisoner and any witnesses were present before the hearing officer in a suitable place.
- (5) More than one video link may be operated under this section at any one time.

*[Section 74A inserted by No. 65 of 2006 s. 26.]*

**75. Procedure for hearing charges of minor prison offences**

- (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.
- (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.

**76. Prisoner not to be legally represented**

- (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.

**77. Imposition of penalties by superintendent**

- (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) deleted]*
  - (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.

*[Section 77 amended by No. 129 of 1987 s. 28; No. 47 of 1991 s. 7; No. 78 of 1995 s. 110; No. 50 of 2003 s. 29(3).]*

**78. Imposition of penalties by visiting justice**

- (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 —
  - (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) deleted]*
  - (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 subsection (1)(a) or (b) 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.

*[Section 78 amended by No. 129 of 1987 s. 29; No. 47 of 1991 s. 7; No. 78 of 1995 s. 110; No. 50 of 2003 s. 29(3).]*

**79. Imposition of penalties by court of summary jurisdiction**

- (1) A court of summary jurisdiction that convicts a prisoner of an aggravated prison offence may impose one or more of the following penalties —
- (a) in the case of an offence under section 70, other than paragraph (c) —
    - (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;
    - (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 section 10(2) or 70(c), 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.

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- (2) Where in determining a charge of an offence referred to in subsection (1)(a), a court of summary jurisdiction considers that in the circumstances it is inexpedient to impose a penalty under subsection (1)(a), it may impose a penalty as if the offence were a minor prison offence.

*[Section 79 amended by No. 47 of 1991 s. 7; No. 78 of 1995 s. 110; No. 59 of 2004 s. 141; No. 65 of 2006 s. 27.]*

**80. Punishment book**

- (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.
- (1a) If a punishment is imposed using a video link under section 74A and the punishment book is not available for immediate signing, the visiting justice shall sign and date a statement of the nature of the offence for which punishment has been imposed, the date of the offence, the name of the offender and the punishment imposed, and send it to the relevant superintendent for entry into the punishment book.
- (2) The superintendent shall send forthwith to the chief executive officer particulars of every entry made in the punishment book.

*[Section 80 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 65 of 2006 s. 28.]*

**81. Reports of punishments under s. 79 to chief executive officer**

- (1) Where a prisoner is convicted of an aggravated prison offence by a court of summary jurisdiction, the superintendent of the prison in which the prisoner is confined shall send forthwith to the chief executive officer 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.

- (2) Where in determining a charge of an aggravated prison offence a court of summary jurisdiction imposes 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 chief executive officer particulars of every such case.

*[Section 81 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 59 of 2004 s. 141.]*

**82. Punishment by confinement**

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 chief executive officer may direct.

*[Section 82 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

## **Part VIII — Authorised absences from prison**

### **83. Permits to be absent from prison**

- (1) The objectives of this section are —
  - (a) the rehabilitation of prisoners and the successful reintegration of prisoners into the community; and
  - (b) the compassionate or humane treatment of prisoners and their families; and
  - (c) the facilitation of the provision of medical or health services to prisoners; and
  - (d) the furthering of the interests of justice.
- (2) Subject to this section and the regulations, the chief executive officer may give written permission for a prisoner to be absent from a prison or other facility (an **absence permit**) —
  - (a) for a period specified in the absence permit; and
  - (b) for a reason described in the absence permit; and
  - (c) subject to any conditions or restrictions set out in the absence permit.
- (3) An absence permit may be given —
  - (a) for a purpose or in circumstances prescribed in the regulations; or
  - (b) to deal with circumstances that are, in the chief executive officer's opinion, exceptional,and not for any other reason.
- (4) One absence permit may be given in relation to —
  - (a) more than one prisoner;
  - (b) more than one period of absence.
- (5) The chief executive officer is not to give an absence permit unless the chief executive officer is satisfied that the absence will facilitate the achievement of one or more of the objectives of this section.



- (6) The chief executive officer is not to give an absence permit in relation to a prisoner for the purpose of the prisoner engaging in employment unless the chief executive officer is satisfied that suitable employment is available.
- (7) When considering —
- (a) whether to give an absence permit; and
  - (b) the conditions or restrictions to which an absence permit is to be subject; and
  - (c) whether and what arrangements are to be made for the supervision of a prisoner in relation to whom an absence permit is to be given,

the chief executive officer must take into account the safety and interests of the public.

*[Section 83 inserted by No. 65 of 2006 s. 29.]*

**83A. Effect of permit**

An absence permit has effect despite the sentence, order or direction under which a prisoner was confined in prison.

*[Section 83A inserted by No. 65 of 2006 s. 29.]*

**83B. Revocation or cancellation of permit**

The chief executive officer may at any time revoke, suspend or vary an absence permit whether or not a prisoner has failed to comply with a condition or restriction set out in the absence permit.

*[Section 83B inserted by No. 65 of 2006 s. 29.]*

**84. Breach of condition of permit**

Where an officer is of the opinion that a prisoner in relation to whom an absence permit has been given 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.

*[Section 84 amended by No. 65 of 2006 s. 30.]*

**85. Attendance of prisoner at legal or investigative proceedings**

- (1) If a prisoner is required or entitled to be present at proceedings of a judicial body —
- (a) the judicial body or a person constituting it for the proceedings; or
  - (b) an officer of the judicial body authorised in accordance with its procedures; or
  - (c) a person authorised under the regulations,
- may, by order, direct that the prisoner be brought up to the place named in the order.
- (2) If 2 or more people constitute the judicial body for the proceedings, subsection (1)(a) applies to each of them.
- (3) An absence permit is not required if an order has been made under this section.
- (4) In this section —

*proceedings* of a judicial body includes anything done in the performance of the functions of the judicial body.

*[Section 85 inserted by No. 65 of 2006 s. 31; amended by No. 20 of 2013 s. 103.]*

*[Section 85. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

**86. Consequence of escape or of failure to comply with absence permit or order**

- (1) A prisoner in relation to whom an absence permit has been given who —
- (a) being in the charge or under the supervision of an officer or other person, escapes or prepares or attempts to escape from that charge or supervision; or
  - (b) fails to return to prison on or before the expiry of a period of absence authorised by the absence permit; or

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

may be dealt with under Part VII.

- (2) A prisoner in relation to whom an order has been made under section 85 who —
  - (a) escapes or prepares or attempts to escape from the charge of an officer; or
  - (b) fails to return to prison when no longer required for the purposes of the proceedings to which the order relates,

may be dealt with under Part VII.

*[Section 86 inserted by No. 65 of 2006 s. 31.]*

*[Section 86. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

## **87. Regulations about absences from prison**

Without limiting section 110, the regulations may deal with absences from prison generally and, in particular, may —

- (a) provide for purposes for which or circumstances in which absence permits may be given and circumstances or cases in which absence permits are not to be given; and
- (b) impose restrictions on the giving of absence permits —
  - (i) for prescribed purposes or in prescribed circumstances; or
  - (ii) in relation to prisoners of prescribed classes; and
- (c) regulate the duration of the periods for which absence permits may be given; and
- (d) provide for circumstances in which and the extent to which financial contributions, payments or commitments

may be required to be made by or on behalf of a prisoner in relation to whom an absence permit is given; and

- (e) regulate the conduct, escorting, supervision, apprehension and return to custody of prisoners in relation to whom absence permits are given; and
- (f) deal with the consequences that being charged or convicted of a prison offence has for a prisoner in relation to whom an absence permit is given; and
- (g) provide for procedures to be implemented and precautions to be taken to ensure security in the case of prisoners released for medical treatment; and
- (h) provide for and authorise the execution of orders made under section 85 and regulate the conduct, conveyance, escorting, supervision, confinement, apprehension and return to custody of prisoners brought up under them.

*[Section 87 inserted by No. 65 of 2006 s. 31.]*

**88. Interstate arrangements**

Without limiting section 87 or 110, the regulations may —

- (a) declare a law of another State or a Territory to be a corresponding law for the purposes of the regulations; and
- (b) provide for circumstances in which an absence permit may be given permitting the prisoner to travel to and be in another State or a Territory in which a corresponding law is in force; and
- (c) regulate the conduct, escorting, supervision, apprehension and return to custody of persons subject to detention under the law of another State or a Territory who have been given leave or permission to be absent under a corresponding law and are in this State.

*[Section 88 inserted by No. 65 of 2006 s. 31.]*

*[89-94. Deleted by No. 65 of 2006 s. 31.]*

## **Part IX — Prisoner wellbeing and rehabilitation**

*[Heading inserted by No. 65 of 2006 s. 32.]*

### **95. Preparation and implementation of activity programmes**

- (1) Without limiting the responsibility of the chief executive officer for the welfare of prisoners conferred by section 7(1), the chief executive officer may arrange for the provision of services and programmes for the wellbeing and rehabilitation of prisoners.
- (2) In particular, services and programmes may be designed and instituted with the intention of —
  - (a) promoting the health and wellbeing of prisoners; and
  - (b) enabling prisoners to acquire knowledge and skills that will assist them to adopt law abiding lifestyles on release; and
  - (c) assisting prisoners to integrate within the community on release; and
  - (d) maintaining and strengthening supportive family, community and cultural relationships for prisoners; and
  - (e) providing counselling services and other assistance to prisoners and their families in relation to personal and social matters and problems; and
  - (f) providing 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
  - (g) providing opportunities for work, leisure activities, and recreation; and
  - (h) assisting prisoners to make reparation for the offences they have committed.
- (3) Subject to subsection (4) a prisoner cannot be compelled to use or participate in services or programmes provided under this section.

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- (4) As long as a prisoner is medically fit the prisoner may be required to work.
- (5) The chief executive officer is to ensure that, in the provision of services and programmes under this section, the needs of female prisoners and prisoners who are Aboriginal people or Torres Strait Islanders are addressed.
- (6) Services and programmes under this section may be provided inside or outside a prison.
- (7) A prisoner may be confined in a facility outside a prison to facilitate the prisoner being provided with opportunities for work or participation in services or programmes under this section.
- (8) This section does not authorise a prisoner to be absent from a prison, or facility referred to in subsection (7), without an absence permit.

*[Section 95 inserted by No. 65 of 2006 s. 32.]*

**95A. Medical care of prisoners**

- (1) The chief executive officer is to ensure that medical care and treatment is provided to the prisoners in each prison.
- (2) Subject to subsection (3), a prisoner may be attended upon and examined by a medical practitioner other than a medical officer only with the prior approval of the superintendent or a medical officer and with the prior approval also of the chief executive officer and for the purpose of providing to a medical officer an opinion on the medical condition of and the treatment recommended for the prisoner.
- (3) The superintendent may, after consultation with the medical officer who is responsible 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; or

- (b) for the purposes of the proceedings or pending proceedings of a judicial body; or
- (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 chief executive officer are satisfied is bona fide and necessary or desirable.

*[Section 95A inserted by No. 65 of 2006 s. 32.]*

**95B. Duties of medical officers**

A medical officer shall —

- (a) attend at a prison at such times and on such occasions as are specified in the terms of the medical officer's appointment or engagement; and
- (b) on the request of the chief executive officer, examine a prisoner as soon as practicable after the prisoner's admission to prison and ascertain and record the prisoner's state of health and any other circumstance connected with the prisoner's health, as the medical officer considers necessary; and
- (c) maintain a record of the medical condition and the course of treatment prescribed in respect of each prisoner under the medical officer's care; and
- (d) make such returns and reports to the chief executive officer as the chief executive officer may from time to time direct; and
- (e) make records referred to in paragraphs (b) and (c) relating to a prisoner available, upon request, to the chief executive officer; and
- (f) on the request of the chief executive officer, give close medical supervision to a prisoner in separate confinement; and

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- (g) on the request of the chief executive officer, examine and treat a prisoner who requires medical care and treatment; and
- (h) on the request of the chief executive officer or a superintendent, examine a prisoner.

*[Section 95B inserted by No. 65 of 2006 s. 32.]*

**95C. Health inspection of prisons**

- (1) In this section —

**ED, PH** means the Executive Director, Public Health of the department principally assisting the Minister administering the *Health Act 1911*.

- (2) The ED, PH is to cause the health and hygiene standards and conditions at every prison to be inspected from time to time.
- (3) Following the inspection of a prison under subsection (2) the ED, PH is to report in writing to the chief executive officer any matter concerned with health and hygiene standards and conditions at the prison which, in the opinion of the ED, PH, requires attention.

*[Section 95C inserted by No. 65 of 2006 s. 32.]*

**95D. Power of medical examination and treatment**

If a prisoner —

- (a) refuses to undergo a medical examination by a medical officer upon admission to a prison; or
- (b) refuses to undergo a medical examination by a medical officer required by the chief executive officer or the superintendent; or
- (c) refuses to undergo a medical examination which a medical officer considers necessary; or
- (d) refuses to undergo medical treatment and a medical officer is of the opinion that the life or health of the



prisoner or any other person is likely to be endangered  
by that refusal,

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

*[Section 95D inserted by No. 65 of 2006 s. 32.]*

**95E. Practice of religion or spiritual beliefs by prisoners**

Subject only to any restrictions that the chief executive officer  
imposes for the security, good order and management of the  
prison and the prisoners, a prisoner may —

- (a) engage in practices in observance of the prisoner's  
religious or spiritual beliefs; and
- (b) receive religious or spiritual guidance and visits for that  
purpose from a person approved by the chief executive  
officer being a recognised religious or spiritual adviser  
or other responsible person with similar religious or  
spiritual beliefs to those of the prisoner.

*[Section 95E inserted by No. 65 of 2006 s. 32.]*

## **Part X — Discipline of prison officers**

### **96. Term used: prison officer**

For the purposes of this Part —

***prison officer*** means —

- (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. Regulations, rules etc. to be strictly observed**

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.

### **98. Disciplinary offences**

(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; or
- (b) disobeys or disregards an order made or given to him by any officer having authority to make or give such an order; or
- (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; or
- (e) commits an act of victimisation within the meaning of section 15 of the *Public Interest Disclosure Act 2003*,

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.

*[Section 98 amended by No. 29 of 2003 s. 28.]*

**99. Laying of charges against prison officers**

- (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; and
  - (b) shall be in writing and contain particulars of the alleged offence; and
  - (c) shall require to be validated by a superintendent before a copy of the charge is furnished to the prison officer charged; and
  - (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 chief executive officer 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.

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- (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; or
  - (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.

*[Section 99 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

**100. Procedure for inquiries into disciplinary charges**

- (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.
- (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.

**101. Legal representation not permitted**

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.

**102. Imposition of penalties by superintendent**

- (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; or
  - (b) a reprimand; or
  - (c) a fine of an amount not exceeding \$50.
- (2) The superintendent shall send forthwith to the chief executive officer particulars of every disciplinary offence determined and penalty imposed by him under this section.

*[Section 102 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

**103. Appeal to chief executive officer**

- (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 chief executive officer 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 chief executive officer in accordance with this section against such finding or penalty.

- (3) An appeal to the chief executive officer 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 chief executive officer.

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- (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 chief executive officer 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.

*[Section 103 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

**104. Determination of appeal by chief executive officer**

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

- (a) confirm the finding of the superintendent and, where a penalty has been imposed, confirm or vary that penalty or substitute a penalty authorised 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 authorised by section 102.

*[Section 104 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

**105. Superintendent may refer charge to chief executive officer**

- (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 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 chief executive officer; and
  - (b) forward the charge, and the record of proceedings of the inquiry (if any) to the chief executive officer.
- (2) Upon receiving a report under subsection (1) that a prison officer has been suspended from duty, the chief executive officer 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.

*[Section 105 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

**106. Determination of charge by chief executive officer**

- (1) Where a charge of a disciplinary offence against a prison officer is received by the chief executive officer under section 105, the chief executive officer 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 chief executive officer) to hold an inquiry into the charge in accordance with section 100.
- (2) Where a disciplinary offence is determined by the chief executive officer under subsection (1) and either the prison

officer admits the charge or the chief executive officer finds the charge proved, the chief executive officer may impose one of the following penalties —

- (a) a caution; or
  - (b) a reprimand; or
  - (c) a fine of an amount not exceeding \$250; or
  - (d) suspension from duty without pay or other entitlements for a period not exceeding 10 working days; or
  - (e) reduction to a lower rank; or
  - (f) requirement to resign under threat of dismissal; or
  - (g) dismissal.
- (3) Where a disciplinary charge is determined by a person appointed by the chief executive officer 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 chief executive officer shall take effect only upon validation by the chief executive officer and the chief executive officer may, instead of validating that penalty, impose a different penalty of a kind referred to in subsection (2), but the chief executive officer 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 chief executive officer 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.

*[Section 106 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

**107. Constitution of Appeal Tribunal**

- (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 Minister, who shall be the chairman of the Appeal Tribunal; and
  - (b) one person to be appointed by the chief executive officer; 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 Electoral Commissioner, 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; or
  - (b) by notice in writing given to the chief executive officer 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.
- (4) The person who was the chairman of the Appeal Tribunal immediately before the coming into operation of section 33 of the *Prisons and Sentencing Legislation Amendment Act 2006*

continues in office as if the person had been appointed by the Minister.

*[Section 107 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 65 of 2006 s. 33.]*

**108. Appeals to Appeal Tribunal**

- (1) A prison officer who is aggrieved by —
- (a) the terms of his suspension, under section 105; or
  - (b) the finding of the chief executive officer after an inquiry that he is guilty of a disciplinary offence; or
  - (ba) the finding of a person appointed under section 106(1)(b) after an inquiry that he is guilty of a disciplinary offence; or
  - (c) a penalty imposed by a person appointed by the chief executive officer under section 106(1)(b) and validated by the chief executive officer under section 106(4); or
  - (d) a penalty imposed by the chief executive officer 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 chief executive officer 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 chief executive officer 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.

*[Section 108 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 47 of 1991 s. 5.]*

**109. Fines may be deducted from pay etc.**

- (1) A fine lawfully imposed under this Act on a prison officer may be deducted, by order of the chief executive officer, 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 chief executive officer 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

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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).

*[Section 109 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

*[Part XA deleted by No. 75 of 2003 s. 56(1).]*

## **Part XI — General provisions**

### **110. Regulations**

- (1) The Governor may make 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; and
  - (b) prescribing the prerequisites to engagement and the conditions of engagement of prison officers under section 13; and
  - (c) providing for the duties and obligations of prison officers; and
  - (d) establishing the ranks of prison officers and providing for promotion of prison officers; and
  - (e) providing for the striking and awarding of medallions for bravery, good conduct and long service of officers; and
  - (f) regulating the custody, classification, separation, diet, instruction, health, employment, discipline, medical and other treatment of prisoners; and
  - (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; and
  - (h) making provision for the classification of labour performed by prisoners; and
  - (i) prescribing the gratuities that may be credited to prisoners and the conditions upon which gratuities may be so credited; and
  - (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; and
- (k) notwithstanding section 46, authorising and regulating the taking of blood and other body samples from a prisoner by a prison officer where there is reasonable suspicion that the prisoner may have committed a prison offence, and regulating the treatment of samples taken; and
  - (ka) notwithstanding section 46, authorising the superintendent to direct an officer to take blood or other body samples from prisoners at random to detect whether an aggravated prison offence under section 70(d), (e) or (f) has been committed by any prisoner, and regulating the taking of such samples and the treatment of samples taken; and
  - (kb) authorising a prison officer to take a sample of any drug, alcohol or other intoxicating substance found in the possession of a prisoner and not lawfully issued to the prisoner, and regulating the treatment of samples taken; and
  - (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; and
  - (m) regulating the property that may be kept at a prison on behalf of a prisoner; and
  - (n) regulating the sale and disposal of products and produce made or produced by prisoners and the disposal of the proceeds; and
  - (o) providing for the powers and duties of a person appointed by the chief executive officer under section 9 to inquire into and report to him upon any matter, incident or occurrence concerning a prison or a prisoner; and
  - (p) regulating the association of male and female prisoners; and

- (q) regulating the visits to prisons of independent prison visitors, subject to Part 6 of the *Inspector of Custodial Services Act 2003*; and
  - (r) regulating visits to prisoners; and
  - (ra) prescribing security conditions to be complied with by all or any persons for entry to a prison, including the application of a stamp to the skin or other conditions that involve reasonable physical contact, or the use of any form of electronic system; and
  - (rb) requiring a visitor as a condition of entry to a prison to prove his or her identity in a specified manner, including by means of a fingerprint, palm print, eye print, voiceprint or other physical or personal characteristic; and
  - (s) regulating the manner and procedure for carrying out searches under this Act having regard to considerations of privacy, decorum and expedition; and
  - (sa) regulating the acquisition, training, assessment, approval and use of dogs to assist in carrying out searches under section 49A and the responsibilities of prison officers handling such dogs; and
  - [(t) deleted]*
  - (u) regulating the treatment of prisoners on remand; and
  - (v) regulating the furnishing of notices to prison officers charged with disciplinary offences; and
  - (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.
- (1a) Any security conditions prescribed under subsection (1)(ra) shall be complied with notwithstanding any provisions of this Act otherwise regulating the right of entry of any person to a prison.

- (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; and
    - (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;and
  - (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;and
  - (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.

*[Section 110 amended by No. 66 of 1982 s. 4; No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 47 of 1991 s. 6; No. 51 of 1992 s. 16(1); No. 19 of 1995 s. 6; No. 24 of 2003 s. 8; No. 75 of 2003 s. 56(1); No. 65 of 2006 s. 34.]*

**111.      Protection from liability**

No action or claim for damages shall lie against any person for or on account of anything done, or ordered or authorised 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 authorised to be done, maliciously and without reasonable and probable cause.

**112. Community safety information**

The chief executive officer may disclose to the public information about a person who is a prisoner or has escaped from lawful custody if the chief executive officer is of the opinion that it is necessary to do so for the safety of the community.

*[Section 112 inserted by No. 65 of 2006 s. 35.]*

**113. Exchange of information**

(1) In this section —

**contractor** ~~has the meaning given to that term in section 3 of~~ means —

(a) a contractor as defined in the Court Security and Custodial Services Act 1999 section 3; or

(b) a contractor as defined in the Declared Places (Mentally Impaired Accused) Act 2015 section 3;

**public authority** means —

- (a) a department of the Public Service; or
- (b) a State agency or instrumentality; or
- (c) a court or tribunal to the extent that it is an agency for the purposes of the *Freedom of Information Act 1992*; or
- (d) a body, whether corporate or unincorporate, or the holder of an office, post or position, established or continued for a public purpose under a written law;

**relevant information** means information that, in the opinion of the chief executive officer, is, or is likely to be, relevant to —

- (a) the management of a prisoner; or

- (b) the performance of a function under this Act or the *Bail Act 1982*;

**research** means research to promote the development of criminology or corrective services;

**service provider** means —

- (a) an individual or organisation mentioned in section 7(2a);  
or
  - (b) an individual or organisation involved in providing support services to a prisoner or the family of a prisoner.
- (2) The chief executive officer may disclose relevant information to a public authority, service provider or contractor.
  - (3) The chief executive officer may request a public authority, service provider or contractor that holds relevant information to disclose the information to the chief executive officer.
  - (4) A request under subsection (3) —
    - (a) may relate to particular information or information of a particular kind; and
    - (b) may relate to information that may be held from time to time.
  - (5) A public authority, service provider or contractor may disclose information in compliance with a request under subsection (3).
  - (6) The chief executive officer may disclose information regarding prisoners or persons who have been prisoners to a public authority or other body for use in research.
  - (7) A public authority, service provider, contractor or other body may disclose information regarding prisoners or persons who have been prisoners to the chief executive officer for use in research.
  - (8) The chief executive officer must establish procedures for the disclosure of information under subsection (2) or (6).
  - (9) The regulations may include provisions about —

- (a) the receipt and storage of information disclosed under this section; and
- (b) the restriction of access to such information.

*[Section 113 inserted by No. 65 of 2006 s. ~~35~~35; amended by No. 4 of 2015 s. 88(3).]*

**113A. Disclosure to external agencies**

- (1) The Minister may, from time to time, approve circumstances in which, or purposes for which, information relating to a prisoner or a person who has been a prisoner may be disclosed by the chief executive officer to a person or class of persons in another Commonwealth, State, Territory or overseas government department or agency.
- (2) The chief executive officer may disclose information as approved under subsection (1).

*[Section 113A inserted by No. 65 of 2006 s. 35.]*

**113B. Disclosure to victims**

- (1) In this section —  
**victim** of a prisoner means —
  - (a) a person who has suffered injury, loss or damage as a direct result of an offence for which the prisoner is in custody, whether or not that injury, loss or damage was reasonably foreseeable by the prisoner; or
  - (b) where an offence for which the prisoner is in custody resulted in a death, any member of the immediate family of the deceased.
- (2) The chief executive officer may disclose information of a prescribed kind regarding a prisoner to a victim of the prisoner or a person acting on a victim's behalf.

*[Section 113B inserted by No. 65 of 2006 s. 35.]*

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**113C. Disclosure authorised**

- (1) Information may be disclosed under section 112, 113, 113A or 113B despite any written law relating to confidentiality or secrecy.
- (2) If information is disclosed, in good faith, under section 112, 113, 113A or 113B —
  - (a) no civil or criminal liability is incurred in respect of the disclosure; and
  - (b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and
  - (c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

*[Section 113C inserted by No. 65 of 2006 s. 35.]*

**114. Failure to perform duties**

- (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 chief executive officer, or on any other person in relation to a prison officer.

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

**Commission** means The Western Australian Industrial Relations Commission continued and constituted under the *Industrial Relations Act 1979*;

**prison officer** means a prison officer to whom Part X applies; and

**salary** includes wages, remuneration, and allowances.

*[Section 114 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32; No. 47 of 1991 s. 7.]*

**115. Section 114 to prevail**

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; or
- (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.

**116. Repeal**

The *Prisons Act 1903* is repealed.

**117. Transitional**

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

## Schedule 1

[section 4]

### Declaration of prisons

| <i>Column 1</i>                                     | <i>Column 2</i>                    |
|---|------------------------------------|
| <b>Existing Name</b>                                | <b>Proposed Name</b>               |
| 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<br>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<sup>3</sup> of the Western Australia Prisons Department<sup>4</sup> 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 may be required by the chief executive officer 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, 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*<sup>5</sup> and —

- (a) regulations 98, 100, 101 and 102 of the *Prison Regulations 1974*<sup>5</sup> 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*<sup>5</sup> 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, a charge under regulation 35 of the *Prison Regulations 1974*<sup>5</sup> 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.

*[Schedule 2 amended by No. 47 of 1987 s. 11; No. 113 of 1987 s. 32.]*

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## Notes

- <sup>1</sup> This is a compilation of the *Prisons Act 1981* and includes the amendments made by the other written laws referred to in the following table <sup>1M, 1a</sup>. The table also contains information about any reprint.

### Compilation table

| Short title   | Number and year | Assent      | Commencement  |
|---|-----------------|-------------|---|
| <i>Prisons Act 1981</i>   | 115 of 1981     | 14 Dec 1981 | 1 Aug 1982 (see s. 2 and <i>Gazette</i> 23 Jul 1982 p. 2841)  |
| <i>Prisons Amendment Act 1982</i>   | 66 of 1982      | 6 Oct 1982  | 6 Oct 1982  |
| <i>Health Legislation Amendment Act 1984</i><br>Pt. XXI   | 28 of 1984      | 31 May 1984 | 1 Jul 1984 (see s. 2 and <i>Gazette</i> 15 Jun 1984 p. 1629)  |
| <i>Acts Amendment (Abolition of Capital Punishment) Act 1984</i><br>Pt. II  | 52 of 1984      | 5 Sep 1984  | 3 Oct 1984  |
| <i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3  | 98 of 1985      | 4 Dec 1985  | 1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)  |
| <i>Acts Amendment (Corrective Services) Act 1987</i> Pt. II   | 47 of 1987      | 3 Oct 1987  | 11 Dec 1987 (see s. 2 and <i>Gazette</i> 11 Dec 1987 p. 4363)   |
| <i>Acts Amendment (Public Service) Act 1987</i> s. 32   | 113 of 1987     | 31 Dec 1987 | 16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813)  |
| <i>Acts Amendment (Imprisonment and Parole) Act 1987</i> Pt. III  | 129 of 1987     | 21 Jan 1988 | 15 Jun 1988 (see s. 2 and <i>Gazette</i> 20 May 1988 p. 1664)   |
| <i>Prisons Amendment Act (No. 2) 1991</i>   | 47 of 1991      | 17 Dec 1991 | Act other than s. 6:<br>17 Dec 1991 (see s. 2(1));<br>s. 6: 1 Apr 1992 (see s. 2(2) and <i>Gazette</i> 27 Mar 1992 p. 1341) |
| <b>Reprint of the <i>Prisons Act 1981</i> as at 9 Jul 1982</b> (includes amendments listed above)<br>(correction in <i>Gazette</i> 18 May 1993 p. 2465) |                 |             |   |
| <i>Criminal Law Amendment Act (No. 2) 1992</i> s. 16(1)   | 51 of 1992      | 9 Dec 1992  | 6 Jan 1993  |

| Short title   | Number and year | Assent      | Commencement  |
|---|-----------------|-------------|---|
| <i>Acts Amendment (Ministry of Justice) Act 1993 Pt. 15</i> <sup>6</sup>  | 31 of 1993      | 15 Dec 1993 | 1 Jul 1993 (see s. 2)   |
| <i>Acts Amendment (Public Sector Management) Act 1994 s. 3(2)</i>   | 32 of 1994      | 29 Jun 1994 | 1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)  |
| <i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994 Pt. 18</i>   | 92 of 1994      | 23 Dec 1994 | 1 Jan 1995 (see s. 2(1) and <i>Gazette</i> 30 Dec 1994 p. 7211)   |
| <i>Prisons Amendment Act 1995</i>   | 19 of 1995      | 4 Jul 1995  | s. 1 and 2: 4 Jul 1995;<br>Act other than s. 1 and 2: 8 Oct 1997 (see s. 2 and <i>Gazette</i> 7 Oct 1997 p. 5607) |
| <i>Sentencing (Consequential Provisions) Act 1995 Pt. 69</i> <sup>7</sup>   | 78 of 1995      | 16 Jan 1996 | 4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)  |
| <i>Industrial Relations Legislation Amendment and Repeal Act 1995 s. 66(3)</i>  | 79 of 1995      | 16 Jan 1996 | 18 May 1996 (see s. 3(2) and <i>Gazette</i> 14 May 1996 p. 2019)  |
| <i>Coroners Act 1996 s. 61</i>  | 2 of 1996       | 24 May 1996 | 7 Apr 1997 (see s. 2 and <i>Gazette</i> 18 Mar 1997 p. 1529)  |
| <i>Mental Health (Consequential Provisions) Act 1996 Pt. 16</i>   | 69 of 1996      | 13 Nov 1996 | 13 Nov 1997 (see s. 2)  |
| <b>Reprint of the <i>Prisons Act 1981</i> as at 21 Nov 1996</b> (includes amendments listed above except those in the <i>Prisons Amendment Act 1995</i> , the <i>Coroners Act 1996</i> and the <i>Mental Health (Consequential Provisions) Act 1996</i> ) |                 |             |   |
| <i>Acts Amendment (Auxiliary Judges) Act 1997 Pt. 7</i>   | 23 of 1997      | 18 Sep 1997 | 18 Sep 1997 (see s. 2)  |

| Short title   | Number and year | Assent      | Commencement  |
|---|-----------------|-------------|---|
| <i>Prisons Amendment Act 1999</i> <sup>8</sup>  | 43 of 1999      | 8 Dec 1999  | s. 1 and 2: 8 Dec 1999; Act other than s. 1, 2, 4(5), 5(3), 18 and Sch. 1 cl. 1(2)-(4), 2, 4(2) and 5(2) and (5)-(7): 18 Dec 1999 (see s. 2(1) and <i>Gazette</i> 17 Dec 1999 p. 6175); s. 4(5), 5(3), 18 and Sch. 1 cl. 1(2)-(4), 2, 4(2) and 5(2) and (5)-(7): 18 Jun 2000 (see s. 2(3) and (4) and <i>Gazette</i> 16 Jun 2000 p. 2939) |
| <i>Court Security and Custodial Services (Consequential Provisions) Act 1999</i> Pt. 10     | 47 of 1999      | 8 Dec 1999  | 18 Dec 1999 (see s. 2 and <i>Gazette</i> 17 Dec 1999 p. 6175-6)   |
| <b>Reprint of the Prisons Act 1981 as at 22 Dec 2000</b> (includes amendments listed above) |                 |             |   |
| <i>Royal Commission (Police) Act 2002</i> Pt. 10  | 10 of 2002      | 28 Jun 2002 | 28 Jun 2002 (see s. 2)  |
| <i>Prisons Amendment Act 2003</i>   | 24 of 2003      | 24 Apr 2003 | s. 1 & 2: 24 Apr 2003; s. 3, 4 and 7: 12 Jun 2004 (see s. 2 and <i>Gazette</i> 11 Jun 2004 p. 1999); s. 5, 6 and 8: 4 Apr 2007 (see s. 2 and <i>Gazette</i> 3 Apr 2007 p. 1491)   |
| <i>Public Interest Disclosure Act 2003</i> s. 28  | 29 of 2003      | 22 May 2003 | 1 Jul 2003 (see s. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383)  |
| <i>Corruption and Crime Commission Act 2003</i> s. 62 <sup>9</sup>                          | 48 of 2003      | 3 Jul 2003  | 1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)  |
| <i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 29(3) and 86                 | 50 of 2003      | 9 Jul 2003  | s. 29(3): 31 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Aug 2003 p. 3833); s. 86: 15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)   |
| <i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 94                               | 74 of 2003      | 15 Dec 2003 | 15 Dec 2003 (see s. 2)  |

| Short title   | Number and year                                   | Assent      | Commencement   |
|---|---|-------------|--|
| <i>Inspector of Custodial Services Act 2003</i> s. 56(1) <sup>10</sup>  | 75 of 2003  | 15 Dec 2003 | 15 Dec 2003 (see s. 2)   |
| <i>Corruption and Crime Commission Amendment and Repeal Act 2003</i> s. 74(2) <sup>11</sup>   | 78 of 2003  | 22 Dec 2003 | 7 Jul 2004 (see s. 2 and <i>Gazette</i> 6 Jul 2004 p. 2697)  |
| <b>Reprint 4: The Prisons Act 1981 as at 20 Aug 2004</b> (includes amendments listed above except those in the <i>Prisons Amendment Act 2003</i> s. 5, 6 and 8) |   |             |  |
| <i>Sentencing Legislation Amendment Act 2004</i> s. 16  | 27 of 2004  | 14 Oct 2004 | 31 May 2006 (see s. 2 and <i>Gazette</i> 30 May 2006 p. 1965)  |
| <i>Acts Amendment (Court of Appeal) Act 2004</i> s. 37  | 45 of 2004  | 9 Nov 2004  | 1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)  |
| <i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141  | 59 of 2004  | 23 Nov 2004 | 1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)   |
| <i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 78 and 80 <sup>12</sup>  | 84 of 2004 (as amended by No. 2 of 2008 s. 78(4)) | 16 Dec 2004 | 2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53)) |
| <i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005</i> s. 63   | 24 of 2005  | 2 Dec 2005  | 1 Jan 2006 (see s. 2(1) and <i>Gazette</i> 23 Dec 2005 p. 6244)  |
| <b>Reprint 5: The Prisons Act 1981 as at 21 Jul 2006</b> (includes amendments listed above except those in the <i>Prisons Amendment Act 2003</i> s. 5, 6 and 8) |   |             |  |
| <i>Criminal Investigation (Consequential Provisions) Act 2006</i> s. 73   | 59 of 2006  | 16 Nov 2006 | 1 Jul 2007 (see s. 2 and <i>Gazette</i> 22 Jun 2007 p. 2838)   |
| <i>Prisons and Sentencing Legislation Amendment Act 2006</i> Pt. 2  | 65 of 2006  | 8 Dec 2006  | 4 Apr 2007 (see s. 2 and <i>Gazette</i> 3 Apr 2007 p. 1491)  |
| <i>Financial Legislation Amendment and Repeal Act 2006</i> Sch. 1 cl. 132   | 77 of 2006  | 21 Dec 2006 | 1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)   |

| Short title   | Number and year           | Assent                     | Commencement  |
|---|---------------------------|----------------------------|---|
| <b>Reprint 6: The Prisons Act 1981 as at 16 Nov 2007</b> (includes amendments listed above) |                           |                            |   |
| <i>Police Amendment Act 2008</i> s. 16 and 23(6)  | 8 of 2008                 | 31 Mar 2008                | s. 16: 1 Apr 2008 (see s. 2(1)); s. 23(6): 21 Jun 2008 (see s. 2(2) and <i>Gazette</i> 20 Jun 2008 p. 2706) |
| <i>Medical Practitioners Act 2008</i> Sch. 3 cl. 47   | 22 of 2008                | 27 May 2008                | 1 Dec 2008 (see s. 2 and <i>Gazette</i> 25 Nov 2008 p. 4989)  |
| <i>Criminal Law Amendment (Homicide) Act 2008</i> s. 36(1) and (3)                          | 29 of 2008                | 27 Jun 2008                | 1 Aug 2008 (see s. 2(d) and <i>Gazette</i> 22 Jul 2008 p. 3353)   |
| <i>Health Practitioner Regulation National Law (WA) Act 2010</i> Pt. 5 Div. 41              | 35 of 2010                | 30 Aug 2010                | 18 Oct 2010 (see s. 2(b) and <i>Gazette</i> 1 Oct 2010 p. 5075-6)   |
| <i>Public Sector Reform Act 2010</i> s. 89  | 39 of 2010                | 1 Oct 2010                 | 1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)  |
| <b>Reprint 7: The Prisons Act 1981 as at 21 Jan 2011</b> (includes amendments listed above) |                           |                            |   |
| <i>Road Traffic Legislation Amendment Act 2012</i> Pt. 4 Div. 42                            | 8 of 2012                 | 21 May 2012                | 27 Apr 2015 (see s. 2(d) and <i>Gazette</i> 17 Apr 2015 p. 1371)  |
| <i>Courts and Tribunals (Electronic Processes Facilitation) Act 2013</i> Pt. 3 Div. 15      | 20 of 2013                | 4 Nov 2013                 | 25 Nov 2013 (see s. 2(b) and <i>Gazette</i> 22 Nov 2013 p. 5391)  |
| <a href="#"><i>Declared Places (Mentally Impaired Accused) Act 2015</i> s. 88</a>           | <a href="#">4 of 2015</a> | <a href="#">3 Mar 2015</a> | <a href="#">17 Jun 2015 (see s. 2(b) and <i>Gazette</i> 16 Jun 2015 p. 2071)</a>                            |

<sup>1M</sup> Under the *Cross-border Justice Act 2008* section 14, in order to give effect to that Act, this Act must be applied with the modifications prescribed by the *Cross-border Justice Regulations 2009* Part 3 Division 16 as if this Act had been altered in that way. If a modification is to replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number. If a modification is to replace or insert a definition, the new definition is identified by the superscript 1M appearing after the defined term.

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

| Short title  | Number and year      | Assent                | Commencement                              |
|--|----------------------|-----------------------|---|
| <i>Criminal Law Amendment (Homicide) Act 2008</i><br>s. 36(2) <sup>13</sup>                      | 29 of 2008           | 27 Jun 2008           | To be proclaimed (see s. 2(d))            |
| <i>Custodial Legislation (Officers Discipline) Amendment Act 2014</i><br>Pt. 2 <sup>15</sup>     | 29 of 2014           | 3 Dec 2014            | To be proclaimed (see s. 2(b))            |
| <i>Corruption and Crime Commission Amendment (Misconduct) Act 2014</i><br>s. 39(2) <sup>16</sup> | 35 of 2014           | 9 Dec 2014            | To be proclaimed (see s. 2(b))            |
| <del><i>Declared Places (Mentally Impaired Accused) Act 2015</i> s. 88<sup>17</sup></del>        | <del>4 of 2015</del> | <del>3 Mar 2015</del> | <del>To be proclaimed (see s. 2(b))</del> |

<sup>2</sup> Repealed by the *Interpretation Act 1984*.

<sup>3</sup> Under the *Acts Amendment (Public Service) Act 1987* s. 31(1)(f), a reference in a written law to “Permanent Head” is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to the chief executive officer.

<sup>4</sup> Under the *Alteration of Statutory Designations Order (No. 3) 2001*, a reference to the Western Australian Prisons Department was, unless the contrary intention appears, to be read and construed as a reference to the Department of Justice.  
Under the *Public Sector Management Act 1994* departments can be established and named. The designation of the department known as the Department of Justice has been altered to the Department of the Attorney General and the Department of Corrective Services is established with effect from 5 Jan 2006.

<sup>5</sup> Repealed by the *Prisons Regulations 1982*.

<sup>6</sup> The *Acts Amendment (Ministry of Justice) Act 1993* Pt. 19 are savings and transitional provisions that are of no further effect.

<sup>7</sup> The *Sentencing (Consequential Provisions) Act 1995* s. 111(1), (2) and (3) are transitional provisions that are of no further effect.

<sup>8</sup> The *Prisons Amendment Act 1999* s. 19 reads as follows:

**19. Transitional**

- (1) A person who, immediately before the commencement of this Act, was a prison medical officer as defined in the *Prisons Act 1981* is, on and after the commencement of this Act, to be taken to be —



- (a) a medical officer referred to in section 6(3) of the *Prisons Act 1981* as amended by this Act; and
  - (b) appointed on the same terms and conditions, including as to remuneration, as those which applied to the person immediately before the commencement of this Act.
- (2) A person who, immediately before the commencement of this Act, was a medical officer as defined in the *Prisons Act 1981* is, on and after the commencement of this Act, to be taken to be —
  - (a) a medical officer referred to in section 6(4) of the *Prisons Act 1981* as amended by this Act; and
  - (b) appointed or engaged (as is relevant to the case) on the same terms and conditions, including as to remuneration, as those which applied to the person immediately before the commencement of this Act.

<sup>9</sup> The amendments in the *Corruption and Crime Commission Act 2003* Sch. 3 cl. 7(3)-(6) are not included because the sections they sought to amend have been deleted by the *Inspector of Custodial Services Act 2003* s. 56(1).

<sup>10</sup> The *Inspector of Custodial Services Act 2003* s. 56(1), which gives effect to Sch. 2, reads as follows:

**56. Consequential amendments to other Acts and regulations**

- (1) Schedule 2 has effect.

Schedule 2 cl. 6(5) reads as follows:

- (5) A person who, immediately before the commencement of this Act, was a person who had been appointed by the Governor, under the *Prisons Act 1981* section 54, to be a visiting justice is to be regarded, on and from the commencement, as a person who is appointed by the Minister, under the *Prisons Act 1981* section 54, as a visiting justice on the same terms and conditions as applied to the person's appointment by the Governor.

<sup>11</sup> The amendments in the *Corruption and Crime Commission Amendment and Repeal Act 2003* Sch. 2 cl. 11(3)-(6) are not included because the sections they sought to amend had been deleted by the *Inspector of Custodial Services Act 2003* s. 56(1) before the amendment purported to come into operation.

<sup>12</sup> The *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* Sch. 1 cl. 25 (amendment to s. 23) was deleted by the *Criminal Law and Evidence Amendment Act 2008* s. 78(4).

<sup>13</sup> On the date as at which this compilation was prepared, the *Criminal Law Amendment (Homicide) Act 2008* s. 36(2) had not come into operation. It reads as follows:

**36. Prisons Act 1981**

- (2) Section 16(6) is repealed and the following subsection is inserted instead —

“

- (6) Subsection (5) does not apply in respect of a prisoner —
- (a) who is serving a sentence that requires him or her to spend —
    - (i) 20 years or more in custody before being eligible for parole; or
    - (ii) his or her whole life in custody;
  - or
  - (b) whose release is to be determined by the Governor.

”.

<sup>14</sup> Footnote no longer applicable.

<sup>15</sup> On the date as at which this compilation was prepared, the *Custodial Legislation (Officers Discipline) Amendment Act 2014* Pt. 2 had not come into operation. It reads as follows:

**Part 2 — Prisons Act 1981 amended**

**3. Act amended**

This Part amends the *Prisons Act 1981*.

**4. Section 3 amended**

- (1) In section 3(1) delete the definition of *Appeal Tribunal*.
- (2) In section 3(1) insert in alphabetical order:

**remove**, in relation to a prison officer, means terminate the employment of the prison officer;

**5. Section 8 amended**

In section 8(1) delete “section 9, 35, 104, 105 or 106.” and insert:

section 9 or 35.

**6. Section 13 amended**

(1) Delete section 13(3) and insert:

(3) The Minister may, on the recommendation of the chief executive officer under section 101(1)(b), remove a prison officer engaged under subsection (1).

(2) In section 13(4) delete “consenting to a dismissal” and insert:

removal

**7. Part X replaced**

Delete Part X and insert:

**Part X — Discipline of prison officers**

**Division 1 — Preliminary**

**96. Term used: prison officer**

In this Part —

***prison officer*** means a person engaged to be a prison officer under section 13(1).

**Division 2 — General discipline**

**97. Regulations, rules to be strictly observed**

A prison officer must use his or her best endeavours to ensure that this Act, regulations made under this Act, rules and standing orders are strictly observed.

**98. Application of *Public Sector Management Act 1994* Part 5**

Prison officers are prescribed for the purposes of the *Public Sector Management Act 1994* section 76(1)(b).

**Division 3 — Removal of prison officers due to loss of confidence**

**Subdivision 1 — Preliminary**

**99. Terms used**

In this Division, unless the contrary intention appears —

***appeal*** means an appeal under section 106;

***appellant*** means a person who institutes an appeal;

***Chief Commissioner*** has the same meaning as in the *Industrial Relations Act 1979*;

***decision notice*** has the meaning given in section 102(3)(b);

***industrial commissioner*** means a commissioner as defined in the *Industrial Relations Act 1979* section 7(1);

***maintenance payment*** has the meaning given in section 103(1);

***maintenance period*** has the meaning given in section 103(1);

***new evidence***, on an appeal against the removal of a prison officer, means evidence other than evidence of any of the following —

- (a) a document or other material that was examined and taken into account by the chief executive officer in making the removal decision;
- (b) the notice given under section 102(1);
- (c) a written submission made to the chief executive officer by the prison officer under section 102(2);
- (d) a decision notice;
- (e) a notification of the removal;

***prison officer*** includes a superintendent, or other officer with custodial functions, appointed under section 6(3);

***removal action*** has the meaning given in section 101;

***removal decision*** means a decision of the chief executive officer to take removal action;

***suitability to continue as a prison officer*** means suitability to continue as a prison officer having regard to the officer's integrity, honesty, competence, performance or conduct;

***WAIRC*** means The Western Australian Industrial Relations Commission continued and constituted under the *Industrial Relations Act 1979*.

**Subdivision 2 — Removal of prison officers**

**100. Application of Subdivision**

- (1) This Subdivision applies if —

- (a) the chief executive officer does not have confidence in a prison officer's suitability to continue as a prison officer; and
  - (b) the chief executive officer —
    - (i) decides not to take, or continue to take, disciplinary proceedings under the *Public Sector Management Act 1994* Part 5 against a prison officer; and
    - (ii) decides instead to take removal action in relation to the prison officer;and
  - (c) in the case of a prison officer engaged under section 13(1), the Minister consents to the taking of removal action in relation to the prison officer.
- (2) This Subdivision applies despite the *Public Sector Management Act 1994* section 76(2).

**101. Removal action**

- (1) If the chief executive officer does not have confidence in a prison officer's suitability to continue as a prison officer, the chief executive officer may take the following action (**removal action**) —
- (a) in the case of a prison officer appointed under section 6(3) — remove the prison officer;
  - (b) in the case of a prison officer engaged under section 13(1) — recommend to the Minister that the prison officer be removed under section 13(3).
- (2) Subsection (1)(a) applies in addition to, and does not limit the operation of, the *Public Sector Management Act 1994*.
- (3) The chief executive officer may conduct any necessary investigation to determine a prison officer's suitability to continue as a prison officer.
- (4) For the purpose of the investigation the chief executive officer may require the prison officer to do all or any of the following —
- (a) provide the chief executive officer with any information or answer any question that the chief executive officer requires;
  - (b) produce to the chief executive officer any document in the custody or under the control of the prison officer.
- (5) The prison officer is not excused from giving information, answering any question or producing a document when required to

do so under subsection (4) on the ground that the information, answer or document might —

- (a) incriminate the prison officer; or
  - (b) render the prison officer liable to a disciplinary measure under Division 2 or removal under this Division.
- (6) The information, answer or document is not admissible in evidence against the prison officer in any criminal proceedings except in proceedings for an offence under subsection (7).
- (7) A prison officer must not, in response to a requirement under subsection (4) —
- (a) fail or refuse to provide the required information or answer or produce the required document; or
  - (b) give information or an answer that is false or misleading in a material particular; or
  - (c) produce a document that the prison officer knows is false or misleading in a material particular —
    - (i) without indicating that the document is false or misleading and, to the extent the prison officer can, how the document is false or misleading; and
    - (ii) if the prison officer has, or can reasonably obtain, the correct information — without providing the correct information.

Penalty: a fine of \$4 000 or 12 months' imprisonment, or both.

**102. Notice of loss of confidence**

- (1) The chief executive officer may give a prison officer a written notice setting out the grounds on which the chief executive officer does not have confidence in the prison officer's suitability to continue as a prison officer.
- (2) The prison officer may make written submissions to the chief executive officer in relation to the notice within the following period (the *submission period*) —
  - (a) 21 days after the day on which the notice is given; or
  - (b) any longer period after that day allowed by the chief executive officer.
- (3) After the submission period, the chief executive officer must —
  - (a) decide whether or not to take removal action against the prison officer; and
  - (b) give the prison officer written notice of the decision (the *decision notice*).

- (4) The chief executive officer must not decide to take removal action against the prison officer unless the chief executive officer —
  - (a) has taken into account any written submissions received from the prison officer during the submission period; and
  - (b) still does not have confidence in a prison officer's suitability to continue as a prison officer.
- (5) If the chief executive officer decides to take removal action against the prison officer, the decision notice must contain the reasons for the decision.
- (6) Except as provided in the regulations, the chief executive officer must, within 7 days after giving the decision notice —
  - (a) give to the prison officer a copy of any documents that were considered by the chief executive officer in making the decision; and
  - (b) make available to the prison officer for inspection any other materials that were considered by the chief executive officer in making the decision.
- (7) The removal action may be carried out when the notice is given or at any time after that.

**103. Maintenance payment**

- (1) If a prison officer is removed as a result of removal action, the prison officer is entitled to receive a payment (a ***maintenance payment***) for the period of 28 days after the day on which the prison officer is removed (the ***maintenance period***).
- (2) The Minister may, in exceptional circumstances, direct that a maintenance payment must be paid to the prison officer for a specified period after the maintenance period.
- (3) For the purpose of subsection (2), the specified period is a period not exceeding 6 months specified by the Minister but in any event ending on the day any appeal is determined by the WAIRC.
- (4) Any maintenance payment must be determined on the basis of the salary of the prison officer at the time of the removal.

**104. Withdrawal of removal action and revocation of removal**

- (1) If removal action does not result in the removal of a prison officer, the chief executive officer may, by notice in writing to the prison officer, withdraw the removal action.
- (2) If a prison officer is removed as a result of removal action, the chief executive officer may, by notice in writing to the prison officer, revoke the removal.

- (3) Subsection (2) applies even if an appeal has been instituted against the removal.
- (4) Despite any other enactment, if the removal is revoked under subsection (2), the removal is to be taken to be of no effect and to have never had any effect.
- (5) If the chief executive officer revokes the removal of a prison officer under subsection (2), the prison officer is not entitled to be paid his or her salary for any period the prison officer received a maintenance payment.

**105. Resignation of prison officer who has been removed**

- (1) Even if a prison officer is removed as a result of removal action, the prison officer may resign at any time before the end of the maintenance period.
- (2) Subsection (1) does not apply if an appeal has been instituted against the removal.
- (3) A resignation under subsection (1) takes effect at the end of the maintenance period.
- (4) Despite any other enactment, if a prison officer resigns under subsection (1), the removal of the prison officer is to be taken to be of no effect and to have never had any effect.

**Subdivision 3 — Appeal against removal of prison officer**

**106. Appeal right**

- (1) If a prison officer is removed as a result of removal action, the prison officer may appeal to the WAIRC against the removal decision on the ground that it was harsh, oppressive or unfair.
- (2) The prison officer may institute the appeal by a notice to the chief executive officer stating —
  - (a) the reasons for the removal decision being harsh, oppressive or unfair; and
  - (b) the nature of the relief sought.
- (3) The appeal cannot be instituted —
  - (a) after the maintenance period; or
  - (b) if the prison officer has resigned under section 105(1).
- (4) For the purposes of proceedings relating to the appeal, the WAIRC is to be constituted by not less than 3 industrial Commissioners, at least one of whom must be —
  - (a) the Chief Commissioner; or
  - (b) the Senior Commissioner within the meaning of that term in the *Industrial Relations Act 1979*.



- (5) The only parties to the appeal are the prison officer and the chief executive officer.
- (6) The prison officer does not have any right of appeal against the removal decision other than under this section.

**107. Proceedings on appeal**

- (1) On the hearing of an appeal, the WAIRC must proceed in the following manner —
  - (a) first, it must consider the chief executive officer's reasons for the removal decision;
  - (b) second, it must consider the case presented by the appellant as to why the removal decision was harsh, oppressive or unfair;
  - (c) third, it must consider the case presented by the chief executive officer in answer to the appellant's case.
- (2) The appellant has at all times the burden of establishing that the removal decision was harsh, oppressive or unfair.
- (3) Subsection (2) has effect despite any law or practice to the contrary.
- (4) Without limiting the matters to which the WAIRC is otherwise required or permitted to have regard in determining the appeal, it must have regard to —
  - (a) the interests of the appellant; and
  - (b) the public interest, which is to be taken to include —
    - (i) the importance of maintaining public confidence in the integrity, honesty, conduct and standard of performance of prison officers; and
    - (ii) the special nature of the relationship between the chief executive officer and prison officers.

**108. Leave to tender new evidence on appeal**

- (1) New evidence cannot be tendered to the WAIRC during a hearing of an appeal unless the WAIRC grants leave under subsection (2) or (3).
- (2) The WAIRC may grant the chief executive officer leave to tender new evidence if —
  - (a) the appellant consents; or
  - (b) it is satisfied that it is in the interests of justice to do so.
- (3) The WAIRC may grant the appellant leave to tender new evidence if —
  - (a) the chief executive officer consents; or

- (b) the WAIRC is satisfied that —
  - (i) the appellant is likely to be able to use the new evidence to show that the chief executive officer has acted upon wrong or mistaken information; or
  - (ii) the new evidence might materially have affected the chief executive officer's removal decision; or
  - (iii) it is in the interests of justice to do so.
- (4) In the exercise of its discretion under subsection (3), the WAIRC must have regard to —
  - (a) whether or not the appellant was aware of the substance of the new evidence before the appellant's removal; and
  - (b) whether or not the substance of the new evidence was contained in a document to which the appellant had reasonable access before the appellant's removal.

**109. Opportunity to consider new evidence**

- (1) If the chief executive officer is given leave to tender new evidence under section 108(2) —
  - (a) the WAIRC must give the appellant a reasonable opportunity to consider the new evidence; and
  - (b) the appellant may, without the leave of the WAIRC, tender new evidence under this section in response to the new evidence tendered by the chief executive officer.
- (2) If the appellant is given leave to tender new evidence under section 108(3), the WAIRC must give the chief executive officer a reasonable opportunity to consider the new evidence.

**110A. Revocation of removal after consideration of new evidence**

- (1) If, having considered any new evidence, the chief executive officer revokes the removal under section 104(2) —
  - (a) the chief executive officer must give the WAIRC notice of the revocation; and
  - (b) the hearing of the appeal is discontinued when the WAIRC receives the notice.
- (2) If the chief executive officer does not give notice under subsection (1), the hearing of the appeal must continue but the chief executive officer may —
  - (a) reformulate his or her reasons for not having confidence in the appellant's suitability to continue as a prison officer; and

- (b) without the leave of the WAIRC, tender new evidence under this section in response to the new evidence tendered by the appellant.
- (3) Reasons reformulated under subsection (2)(a) may differ from, or be additional to, the reasons given to the appellant in the decision notice.
- (4) If the chief executive officer reformulates reasons under subsection (2)(a) —
  - (a) the chief executive officer must give the WAIRC and the appellant notice in writing of the reasons before the resumption of the hearing of the appeal; and
  - (b) the WAIRC must consider the reasons as if they had been reasons given to the appellant in the decision notice.

**110B. Application of *Industrial Relations Act 1979* to appeals**

The provisions of the *Industrial Relations Act 1979* listed in the Table apply to, and in relation to, an appeal and its determination, subject to —

- (a) any specific modifications set out in the Table; and
- (b) all other necessary modifications.

**Table**

|  |  |
|--|--|
| s. 26(1)(a) and (b)  |  |
| s. 26(3)   |  |
| s. 27(1)(b), (c), (d), (e), (f), (h), (ha), (hb), (l), (m), (n), (o) and (v) |  |
| s. 27(1a)  |  |
| s. 28  | The section applies only in relation to powers conferred by section 27 listed in this Table.   |
| s. 31(1)   | Paragraphs (b) and (c) do not apply but the subsection is to be read as if it contained the following paragraphs —<br>“ (b) with the leave of the Commission, by an agent; or<br>(c) by a legal practitioner. ”. |
| s. 31(3)   |  |

|          |  |
|----------|--|
| s. 31(5) |  |
| s. 32    | <p>Section 32(1) is to be read as if a reference to “Where an industrial matter has been referred to the Commission the Commission shall, unless it” were a reference to “Where the Commission is dealing with an appeal instituted under the <i>Prisons Act 1981</i> section 106, a member of the Commission may recommend that the parties to the appeal, unless he or she”.</p> <p>References to “the matter” and “an industrial matter” are to be read as if they were references to “the appeal”.</p> <p>For the purposes of subsections (2) and (3), <b>Commission</b> does not include an industrial commissioner constituting the WAIRC to hear the appeal.</p> <p>Subsections (4), (6), (7) and (8) do not apply.</p> |
| s. 33    | <p>A summons must not be issued under section 33(1)(a) to the Governor.</p> <p>A summons may be issued to the chief executive officer or the Minister but only at the direction of a commissioner appointed under the <i>Industrial Relations Act 1979</i> if that commissioner is satisfied that there are extraordinary grounds for doing so.</p> <p>A summons may not be issued to any other person except at the direction of a commissioner.</p>  |
| s. 34    | <p>A reference in subsection (1) to “an award, order, or declaration” is to be read as if it were a reference to “an order”.</p> <p>A reference in subsection (3) to “the President, the Full Bench, or the Commission” is to be read as if it were a reference to “the Commission”.</p> <p>A reference in subsection (4) to “no award, order, declaration, finding, or proceeding of the President, the Full Bench, or the Commission” is to be read as if it were a reference to “no decision, order, finding or proceeding of the Commission”.</p>  |

|       |  |
|-------|--|
| s. 35 |  |
| s. 36 |  |
| s. 86 | The section does not apply in relation to costs and expenses, other than expenses of witnesses.  |
| s. 90 | A reference in subsection (1) to “any decision of the President, the Full Bench, or the Commission in Court Session” is to be read as if it were a reference to “a decision of the Commission under the <i>Prisons Act 1981</i> section 110E”. |

**110C. Adjournment of appeal if appellant charged with offence**

- (1) The chief executive officer or an appellant may apply to the WAIRC for an adjournment of the hearing of an appeal if the appellant has been —
  - (a) charged with an offence relating to any matter, act or omission that was taken into account by the chief executive officer in deciding that he or she did not have confidence in the appellant’s suitability to continue as a prison officer; and
  - (b) the charge has not been finally determined by a court or otherwise disposed of.
- (2) If an adjournment application is made by the chief executive officer, the WAIRC may adjourn the hearing of the appeal if it considers that it is in the interests of justice to do so.
- (3) If an adjournment application is made by the appellant, the WAIRC must adjourn the hearing of the appeal for the period (not exceeding 12 months) requested by the appellant.
- (4) Before the end of the period of an adjournment under this section, the chief executive officer or the appellant may apply to the WAIRC for a further adjournment and, if it is in the interests of justice to do so, the WAIRC may grant a further adjournment for the period specified by it.
- (5) Subsections (2) and (4) do not affect any other power of the WAIRC to grant an adjournment.

**110D. Resumption of appeal before end of adjournment**

If the charge is finally determined by a court or otherwise disposed of before the end of an adjournment under section 110C, the chief executive officer or the appellant may apply to the WAIRC for the hearing of the appeal to be resumed on a date specified by the WAIRC.

**110E. Decision by WAIRC**

- (1) This section applies if the WAIRC decides on an appeal that the decision to take removal action relating to the appellant was harsh, oppressive or unfair.
- (2) The WAIRC may —
  - (a) order that the appellant's removal is, and is to be taken to have always been, of no effect; or
  - (b) if it is impracticable to make an order under paragraph (a), order the chief executive officer to pay the appellant an amount of compensation for loss or injury caused by the removal.
- (3) In considering whether or not it is impracticable to make an order under subsection (2)(a), it is relevant to consider —
  - (a) whether, at the time of the appellant's removal, the position occupied by the appellant is vacant; and
  - (b) whether there is another suitable vacant position in the Department.
- (4) If the WAIRC makes an order under subsection (2)(a), the appellant is not entitled to be paid his or her remuneration as a prison officer for any period the appellant received a maintenance payment.
- (5) An order under this section may require that it be complied with within a specified time.

**110F. Determining amount of compensation**

- (1) An amount of compensation ordered under section 110E(2)(b) must be determined in accordance with this section.
- (2) In determining the amount, the WAIRC must have regard to all of the following —
  - (a) the efforts, if any, of the chief executive officer and the appellant to mitigate the loss suffered by the appellant as a result of the removal;
  - (b) any maintenance payment received by the appellant;
  - (c) any redress the appellant has obtained under another enactment where the evidence necessary to establish that redress is also the evidence necessary to establish on the appeal that the removal was harsh, oppressive or unfair;
  - (d) any other matter that the WAIRC considers relevant.
- (3) In determining the amount, the WAIRC may have regard to the average rate of remuneration as a prison officer received by the appellant during any relevant period of service.

- (4) The amount must not exceed 12 months' remuneration as a prison officer.

**110G. Restriction on publication**

- (1) If the WAIRC is satisfied that it is in the public interest, it may direct that any evidence given before it, or the contents of any document produced to it, on an appeal —
- (a) must not be published; or
  - (b) must not be published except in a manner, and to persons, specified by the WAIRC.
- (2) A person must not contravene a direction given under this section.  
Penalty: a fine of \$4 000 or 12 months' imprisonment, or both.

**Subdivision 4 — General**

**110H. Effect of charge for, or conviction or acquittal of, offence**

The chief executive officer can take removal action in relation to a prison officer for a particular matter, act or omission even if the matter, act or omission is an element of an offence —

- (a) with which the prison officer has been charged; or
- (b) of which the prison officer has been convicted or acquitted.

**110I. Failure to comply with procedure**

An act or omission of the chief executive officer is not invalid, and cannot be called in question, if —

- (a) the act or omission comprises a failure to comply with procedure prescribed for the purposes of this Division; and
- (b) the failure is not substantive.

**110J. Transfer, standing down and leave of prison officer**

- (1) This Division does not derogate from the chief executive officer's power to —
- (a) transfer a prison officer; or
  - (b) stand a prison officer down from performing that prison officer's usual duties, with or without pay, until the prison officer is directed by the chief executive officer to return to those duties; or
  - (c) allocate duties to a prison officer other than the prison officer's usual duties.
- (2) If the chief executive officer stands down a prison officer in relation to whom removal action is being taken, the chief executive officer must review the decision to stand the prison

officer down every 60 days and advise the prison officer in writing of the result of the review.

- (3) The chief executive officer must not direct a prison officer in relation to whom removal action is being taken to take leave during the removal action unless the leave accrues during any period that the prison officer is stood down from performing the prison officer's usual duties.

**110K. Review of Division**

- (1) In this section —  
*commencement day* means the day on which the *Custodial Legislation (Officers Discipline) Amendment Act 2014* Part 2 comes into operation.
- (2) The Minister must carry out a review of the operation and effectiveness of this Division as soon as is practicable after the expiry of 24 months after the commencement day and in the course of that review the Minister must consider and have regard to —
  - (a) the effectiveness of this Division; and
  - (b) the need for the retention of the Division; and
  - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Division.
- (3) Without limiting subsection (2), in carrying out the review, the Minister must consult with and have regard to the views of the Chief Commissioner of the WAIRC, the chief executive officer and any union that has prison officers as some or all of its members.
- (4) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared (and in any event not more than 30 months after the commencement day), cause a copy of it to be laid before each House of Parliament.

**8. Section 110 amended**

In section 110(1):

- (a) in paragraph (w) delete “termination arising from or connected with disciplinary matters; and” and insert:

removal of prison officers under Part X.

- (b) delete paragraph (x).



9. **Part XII inserted**

After section 117 insert:

**Part XII — Savings and transitional provisions for  
Custodial Legislation (Officers Discipline) Amendment  
Act 2014**

**118. Purpose**

The purpose of this Part is to enact savings and transitional provisions in relation to the *Custodial Legislation (Officers Discipline) Amendment Act 2014* Part 2.

**119. Disciplinary offences before commencement day**

(1) In this section —

**commencement day** means the day on which the *Custodial Legislation (Officers Discipline) Amendment Act 2014* Part 2 comes into operation;

**former disciplinary provisions** means Part X as it was in force immediately before the commencement day;

**misconduct**, by a prison officer, means conduct by the prison officer that is or is reasonably suspected to be —

- (a) substandard performance or a breach of discipline, as those terms are defined in the *Public Sector Management Act 1994*; or
- (b) conduct that may result in the chief executive officer taking removal action, as defined in section 99, in relation to the prison officer;

**penalty**, under Part X, includes removal of a prison officer.

- (2) Proceedings for a disciplinary offence instituted under the former disciplinary provisions that are pending immediately before the commencement day are to be dealt with and determined under those provisions as if the *Custodial Legislation (Officers Discipline) Amendment Act 2014* Part 2 had not come into operation.
- (3) Part X applies to misconduct committed, or suspected of having been committed, by a prison officer before the commencement day but in relation to which proceedings for a disciplinary offence have not been instituted under the former disciplinary provisions.
- (4) However, if misconduct occurring before the commencement day would have constituted a disciplinary offence under the former disciplinary provisions, a penalty cannot be imposed under Part X

in relation to the misconduct unless that penalty would also have been able to be imposed for the disciplinary offence under the former disciplinary provisions.

- <sup>16</sup> On the date as at which this compilation was prepared, the *Corruption and Crime Commission Amendment (Misconduct) Act 2014* s. 39(2) had not come into operation. It reads as follows:

**39. References in other Acts to “*Corruption and Crime Commission Act 2003*” amended**

- (2) In the provisions listed in the Table:
- (a) delete “*Corruption and Crime Commission Act 2003*” (each occurrence) and insert:

*Corruption, Crime and Misconduct Act 2003*

- (b) delete “*Corruption and Crime Commission Act 2003*” (each occurrence) and insert:

*Corruption, Crime and Misconduct Act 2003*

- (c) delete “*Corruption and Crime Commission Act 2003*” and insert:

*Corruption, Crime and Misconduct Act 2003*

**Table**

|                         |   |
|-------------------------|---|
| <i>Prisons Act 1981</i> | s. 3(1) def. of <b><i>judicial body</i></b><br>par. (b), 15C(1) |
|-------------------------|---|

<sup>17</sup> ~~On the date as at which this compilation was prepared, the *Declared Places (Mentally Impaired Accused) Act 2015* s. 88 had not come into operation. It reads as follows:~~

~~88. *Prisons Act 1981* amended~~

~~(1) This section amends the *Prisons Act 1981*.~~

~~(2) In section 15C(1) after “purposes of” insert:~~

~~the *Children and Community Services Act 2004*,~~

~~(3) In section 113(1) delete the definition of *contractor* and insert:~~

~~*contractor* means~~

~~(a) a contractor as defined in the *Court Security and Custodial Services Act 1999* section 3; or~~

~~(b) a contractor as defined in the *Declared Places (Mentally Impaired Accused) Act 2015* section 3;~~