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at 21 November 1996

WESTERN AUSTRALIA

PRISONS ACT 1981

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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

Short title

1. This Act may be cited as the *Prisons Act 1981*^{1, 1a, 1b}.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation¹.

Interpretation

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

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

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

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

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

“**Executive Director (Corrective Services)**” means the person appointed in accordance with section 6 (1);

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

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

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

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

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

“police officer” means a person appointed —

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

“prison” means —

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

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

“prison medical officer” means a medical practitioner who is registered under the *Medical Act 1894* and is appointed under and subject to Part 3 of the *Public Sector Management Act 1994* to be a prison medical officer;

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

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

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

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

“rules” means rules made under section 35;

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

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

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

[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.]

PART II — ESTABLISHMENT OF PRISONS

Existing prisons continued

4. Every prison, gaol, and penal outstation established or declared under the repealed Act before the coming into operation of this Act and specified in column 1 of Schedule 1 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.

Proclamation of prisons

5. (1) The Governor may by proclamation —
- (a) declare any building, enclosure or place to be a prison within the meaning and for the purposes of this Act;
 - (b) alter the boundaries of a prison declared under this subsection or under section 4; and
 - (c) declare that a prison shall with effect from a date specified in the proclamation cease to be a prison and direct the removal of prisoners confined in that prison to a prison named in the proclamation.
- (2) The Governor may amend or revoke a proclamation made under subsection (1).

PART III — OFFICERS

Appointment of chief executive officer and other officers

6. (1) There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* an officer of the Department who has immediate responsibility to the chief executive officer for the administration of this Act.

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

(3) There may be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* such officers, other than prison officers engaged under section 13, as are required for the purposes of this Act.

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

(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 Service Commissioner, determines.

[Section 6 amended by No. 66 of 1982 s.2; No. 47 of 1987 ss.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).]

Powers and duties of chief executive officer

7. (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 of all prisoners.

(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.

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

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

Delegation by chief executive officer

8. (1) The chief executive officer may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to the Executive Director (Corrective Services), his deputy or some other officer any of his powers or duties under this Act, other than this power of delegation and his powers and duties under sections 9, 35, 87, 88, 104, 105 and 106.

(1a) The chief executive officer may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to the Executive Director (Corrective Services) any of his powers and duties under sections 9, 87, 88, 104, 105 and 106.

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

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

(4) A delegation under this section may —

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

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

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

*[Section 8 amended by No. 47 of 1987 ss.6 and 11;
No. 113 of 1987 s.32; No. 31 of 1993 s.57.]*

Chief executive officer may set up inquiry

9. (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 has the authority of a commissioner for declarations.

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

(5) Where a person is required under this Act to give any information or answer any question, he shall not refuse to comply with that requirement on the ground that the information or answer may tend to incriminate him or render him liable to any

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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).

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

Failure to supply information to inquiry

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

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

commits an offence.

Penalty: \$300.

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

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

commits an aggravated prison offence.

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

[Section 10 amended by No. 47 of 1991 s.7.]

Application of *Financial Administration and Audit Act 1985*

11. (1) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial 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.]

Duties of officers

12. Every officer —

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

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- (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.]

Engagement of prison officers

13. (1) The Minister may engage prison officers as employees and, subject to any industrial award or agreement that is applicable in relation to a particular case or class of cases, persons so engaged shall be employed on such terms and conditions as the Minister, on the recommendation of the Public Service 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 Queen of Australia as a prison officer of Western Australia;
- (b) I will do my utmost in the performance of my duty as a prison officer to maintain the security of every prison in which I serve and the security of the prisoners and the officers employed at the prison;
- (c) I will uphold the *Prisons Act 1981*, as amended from time to time, and the regulations, rules and standing orders made under that Act from time to time;
- (d) I will deal with prisoners fairly and impartially; and
- (e) I will obey the lawful orders of an officer under whose control or supervision I am placed.

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

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

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

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

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

[Section 13 amended by No. 47 of 1987 ss.8 and 11; No. 113 of 1987 s.32; No. 47 of 1991 s.7.]

Powers and duties of prison officers

14. Every prison officer —

- (a) has a responsibility to maintain the security of the prison where he is ordered to serve;
- (b) is liable to answer for the escape of a prisoner placed in his charge or for whom when on duty he has a responsibility;

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

Assistance by police officers

15. 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 IV — CUSTODY, REMOVAL AND RELEASE
OF PRISONERS**

Prisoners in custody of chief executive officer

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

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

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

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

(8) Upon taking a prisoner into his custody in accordance with subsection (5) or (7), the police officer in charge of the lock up at that time shall notify the 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 police 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 police lock up for so long as is reasonably necessary to enable arrangements to be made for the conveyance of the prisoner to a prison.

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

Reckoning of sentence

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

Conveyance of prisoners for trial etc.

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

Warrants of commitment

19. (1) Notwithstanding any law or any rule of practice to the contrary, it shall not be necessary in a warrant or other

instrument under which a prisoner is committed to prison to specify a particular prison in which the prisoner is to be confined nor to address the warrant or other instrument to the superintendent of a particular prison; and a commitment to prison addressed to the 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.]

Proof of imprisonment

20. (1) The production in any judicial proceedings of a copy of the warrant or other instrument under which a person is or was held in custody in a prison which copy bears a certificate purporting to be signed by the 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

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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.]

Attendance for trial of prisoner

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

[Section 21 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32.]

Attendance at court of prisoner

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

[Section 22 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32.]

Attendance at court of appellant etc.

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

[Section 23 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32.]

Custody of prisoner attending court

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

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

prison or may be kept at any place in the charge of the prison officer or officer charged with the execution of the order or a police officer and may be brought up from time to time and day to day to the court or place where his attendance is required.

Prisoner attending court in lawful custody

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

[Section 25 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32.]

Removal of prisoner to another prison

26. (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 authorize a police officer or prison officer to execute his order.

(2) In the case of a prisoner who is in safe custody at the direction of the Governor or who is undergoing a sentence of strict security life imprisonment —

- (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.]

Removal of prisoner for medical treatment

27. (1) Where the superintendent of a prison is of the opinion that a prisoner who is confined in that prison requires medical treatment that cannot, by reason of impracticality or urgency, be administered within the prison, the superintendent shall order

(1a) In subsection (1) —

“medical treatment” includes psychiatric treatment as defined in section 3 of the *Mental Health Act 1996*.

charge of the hospital of the date when the prisoner is entitled to

be discharged from lawful custody, and, when the prisoner is fit to be discharged from hospital, the officer in charge of the hospital shall notify the superintendent accordingly and the superintendent shall order and arrange for the return of the prisoner to the prison from which he was removed.

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

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

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

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

(6) Where a prisoner who is —

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

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

[Section 27 amended by No. 52 of 1984 s.32; No. 47 of 1987 s.11; No. 113 of 1987 s.32; No. 47 of 1991 s.7.]

Removal of prisoner in interests of justice

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

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

Chief executive officer and superintendent's powers of early discharge

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

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

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

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

Prison offences by prisoners due for release

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

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

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

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

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

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

Provision of fare home on release

33. Upon the release of a prisoner from prison, the 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.]

Inquest on death of prisoner

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

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

[Section 34 amended by No. 52 of 1984 s.33; No. 47 of 1987 s.11; No. 113 of 1987 s.32.]

**PART V — MANAGEMENT, CONTROL AND
SECURITY OF PRISONS**

Chief executive officer may make rules

35. (1) The chief executive officer may, on the recommendation of the Executive Director (Corrective Services) and 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 ss.9 and 11; No. 113 of 1987 s.32; No. 31 of 1993 s.59.]

Superintendents of prisons

36. (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 authorize the use of such force as he believes, on reasonable grounds, to be necessary to ensure that his lawful orders relating to the maintenance of good government, good order, and security in the prison are carried out and it is lawful for an officer to use force as so authorized.

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

Superintendent may issue standing orders

37. (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.

(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.]

Medical care of prisoners

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

(2) Subject to subsection (3), a prisoner may be attended upon and examined by a medical practitioner other than the prison medical officer or medical officer only with the prior approval of the superintendent or the prison medical officer or medical officer and with the prior approval also of the chief

executive officer and for the purpose of providing to the prison medical officer or medical officer an opinion on the medical condition of and the treatment recommended for the prisoner.

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

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

[Section 38 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32.]

Function of prison medical officer

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

- (a) attend at the prison at such times and on such occasions as the chief executive officer may direct;
- (b) examine every prisoner as soon as practicable after his admission to prison and ascertain and record the state of health of the prisoner and any other circumstance connected with the prisoner's health, as he considers necessary;

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- (c) maintain a record of the medical condition and the course of treatment prescribed in respect of any prisoner under his care;
- (d) make such returns and reports to the chief executive officer as the chief executive officer may from time to time direct;
- (e) make any records relating to a prisoner required to be kept under paragraphs (b) and (c) available, upon request, to the chief executive officer and, in the case of records required to be kept under those paragraphs by the medical officer for a prison, make those records available, upon request, to a prison medical officer;
- (f) give close medical supervision to every prisoner in separate confinement;
- (g) examine and treat every prisoner in the prison who requires medical care and treatment; and
- (h) examine such prisoner as the chief executive officer or the superintendent may require.

[Section 39 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32.]

Health inspection of prisons

40. The Executive Director, Public Health and Scientific Support Services of the department principally assisting the Minister charged with the administration of the Health Act shall cause the inspection from time to time of health and hygiene standards and conditions at every prison and following every such inspection shall report in writing to the chief executive officer any matter concerned with such standards or conditions which in his opinion requires attention.

[Section 40 amended by No. 28 of 1984 s.94; No. 47 of 1987 s.11; No. 113 of 1987 s.32.]

Search of prisoners etc.

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

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

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

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

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

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

Restraint

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

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

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

Separate confinement

43. (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.]

Separation of male and female prisoners

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

Power of medical examination and treatment

45. Where a prisoner refuses to undergo —

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

the prison medical officer or the medical officer and any person acting in good faith may, under the direction of such officer, make such a medical examination or administer such medical

treatment and use such force as is reasonably necessary for the purpose.

[Section 45 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32.]

Medical examination for evidentiary purposes

46. Where there are reasonable grounds for believing that a medical examination of a prisoner will afford evidence as to the commission of an offence, the prison medical officer, the medical officer, or a medical practitioner registered under the *Medical Act 1894* acting at the request of the 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.]

Use of firearms

47. (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;
- (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.]

Use of force on serious breach of security

48. (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

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- (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.]

Power to search and question persons entering prison

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

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

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

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

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

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

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

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

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

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

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

- (a) to state in writing his full name and residential address, and the full name and residential address of any child accompanying him; and

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- (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.]

Penalty in respect of unauthorized articles

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

- (a) with intent to breach the good order, security or good government of a prison; or

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

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

(2) A person who, without the permission of the superintendent or the 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.]

Superintendent may delegate powers under section 49

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

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

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

(4) A delegation under this section may —

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

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

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

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

Offences in respect of loitering, unauthorized entry and unauthorized communications

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

Practice of religion by prisoners

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

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

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

[Section 53 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32.]

**PART VI — PRISON VISITS AND COMMUNICATIONS
INVOLVING PRISONERS**

Appointment of prison visitors and visiting justices

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

- (a) visitors to be known as prison visitors; and
- (b) visitors to be known as visiting justices.

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

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

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

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

Duties of prison visitors

55. (1) A prison visitor shall —

- (a) visit and inspect the prison for which he is appointed upon his appointment and thereafter at intervals of not more than 3 months;
- (b) furnish a report in writing to the Minister after each visit and inspection made under paragraph (a);
- (c) make a record of any complaint made to him by a prisoner or officer and report that complaint to the chief executive officer or to the Minister; and

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

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

[Section 55 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32.]

Duties of visiting justice

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

- (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.

Right of entry of prison visitors, Judges, etc.

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

Co-operation with official visitors

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

Visits by friends and relations of prisoners

59. (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.]

Declaration of visitors

60. (1) On the occasion of the first visit under section 59 or 65 of a person to a prisoner who is confined in a prison prescribed by regulations for the purposes of this section, the person shall, before being permitted to make the visit to that

prisoner, be informed by the superintendent, or an officer appointed by him for the purposes of this section, of the provisions of this subsection and the consequences of breach of this section and shall be required by the superintendent or such officer to make and sign a declaration on the prescribed form with respect to his identity, his friendship or relationship with the prisoner concerned (if applicable), and the purpose of his visit.

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

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

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

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

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

- (6) The superintendent shall —
- (a) subject to any directions of the 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.]

Visits by certain officials

61. 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.

Visits by legal practitioner

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

(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.

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Visits by police

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

Visits by public officers

64. Subject to any directions of the Minister, the 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.]

Other visitors to prisoners

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

Visitor may be refused entry or removed

66. (1) If the superintendent is of the opinion that a visitor or any other person is likely to interfere with the preservation of the good order or the security of a prison, he may, notwithstanding any other provision of this Act, refuse him entry

to the prison or, if such person has been admitted to the prison, he may remove him or cause him to be removed and may use such reasonable force as is necessary for the purpose.

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

[Section 66 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32.]

Letters etc. written by prisoners

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

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

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

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

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

- (a) may jeopardize the good order or the security of a prison;

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- (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), 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.]

Letters etc. addressed to prisoners

68. (1) A letter addressed to a prisoner and written by a person referred to in section 67 (1) shall be delivered to the prisoner as soon as practicable after it is received at a prison without being opened 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 authorized by the superintendent may open and read any letter addressed to a prisoner and received at the prison, other than a letter of the kind referred to in subsection (1), and may open and inspect any parcel addressed to a prisoner and received at the prison.

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

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

the superintendent may —

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

Minor prison offences

69. 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;
- (b) is idle, negligent or careless in his work;
- (c) behaves in a disorderly manner;
- (d) swears or uses indecent language;
- (e) uses insulting or threatening language or behaves in an insulting or threatening manner;
- (f) pretends illness or injury;
- (g) wilfully or maliciously breaks, damages or destroys any property;
- (h) prefers a false or frivolous complaint against an officer;
- (i) does any act or omission of insubordination or misconduct subversive of the order and good government of the prison; or
- (j) breaches a condition or restriction of any permit or grant of leave of absence from a prison,

is guilty of a minor prison offence.

Aggravated prison offences

70. Apart from an aggravated prison offence that may be committed under section 10 (2), 27 (5), 85 (2), 92 (2) or 94 (6), a prisoner commits an aggravated prison offence if he —

- (a) behaves in a riotous manner;
- (b) assaults a person;
- (c) escapes, or prepares or attempts to escape, from lawful custody or from a cell or place within a prison in which he is confined or from any place where he is obliged to remain by prison routine or any order;
- (d) uses, or is in possession of, drugs not lawfully issued to him;
- (e) uses drugs otherwise than as prescribed;
- (f) consumes, or is in possession of, alcohol not lawfully issued to him;
- (g) is, without the permission of the superintendent, in possession of glue containing toluene or another intoxicant;
- (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.]

Charges of prison offences

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

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

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

Visiting justice may determine minor prison offences

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

Visiting justice and aggravated prison offences

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

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

Hearing of charges

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

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

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

Procedure for hearing charges of minor prison offences

75. (1) Where a minor prison offence is alleged to have been committed by a prisoner and the prisoner does not admit the charge, the charge shall be determined by the superintendent or

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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.

Prisoner not to be legally represented

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

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

Imposition of penalties by superintendent

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

- (a) a caution;
- (b) a reprimand;
- (c) forfeiture of not more than 3 days' remission;

- (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.]

Imposition of penalties by visiting justice

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

- (a) separate confinement in a punishment cell for a period not exceeding 7 days;
- (b) confinement in the prisoner's sleeping quarters for a period not exceeding 7 days;
- (c) separate confinement in a punishment cell for specified hours during a weekend or during 2 weekends;
- (d) forfeiture of not more than 28 days' remission;
- (e) restitution in the manner specified by the visiting justice;

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- (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.]

Imposition of penalties by magistrate or 2 justices

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

impose on conviction of the prisoner one or more of the following penalties —

- (a) in the case of an offence under 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 sub-paragraph 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), 27 (5), 70 (c), 85 (2), 92 (2) or 94 (6), 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.

(2) Where in determining a charge of an offence referred to in subsection (1) (a), a magistrate or 2 justices, as the case may be, considers that in the circumstances it is inexpedient to impose a penalty under subsection (1) (a), he may impose a penalty as if the offence were a minor prison offence.

[Section 79 amended by No. 47 of 1991 s.7; No. 78 of 1995 s.110.]

Punishment book

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

(2) The superintendent shall send forthwith to the 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.]

Reports of punishments under section 79 to chief executive officer

81. (1) Where a prisoner is convicted of an aggravated prison offence by a magistrate or 2 justices under section 79 (1), the superintendent of the prison in which the prisoner is confined shall send forthwith to the 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 magistrate or 2 justices impose a penalty under section 79 (2) as if the offence were a minor prison offence, the superintendent shall maintain a record of the nature and date of the offence, the name of the prisoner, the punishment imposed and the date on which it was imposed and shall send forthwith to the chief executive officer particulars of every such case.

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

Punishment by confinement

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

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

PART VIII — AUTHORIZED ABSENCES FROM PRISON

Grant of permit for absence

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

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

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

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

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

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

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

[Section 83 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32.]

Breach of condition of permit

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

Prisoner absent under permit deemed in custody

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

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

- (a) escapes or prepares or attempts to escape from the charge of an officer;
- (b) fails to return to prison on or before the expiry of the period of absence authorized by the permit; or
- (c) fails to comply with a condition or restriction set out in the permit,

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

[Section 85 amended by No. 47 of 1991 s.7.]

Restriction on grant of permits under section 83

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

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

Grant of leave of absence

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

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

- (a) for the purpose of seeking or engaging in gainful employment outside the prison in which he is confined; or
- (b) for the purpose of engaging gratuitously in work for a charitable or voluntary organisation, approved by the chief executive officer.

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

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

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

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

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

(6) The note referred to in subsection (5) shall include the name of the prisoner, a record of his convictions, details of his sentence (including the earliest date upon which he may be discharged), details of any previous breach of a community order (as defined in the *Sentencing Act 1995*) or probation or parole or of a home detention order or work release order, or leave of

absence, and details of the purpose and circumstances of the leave of absence granted to him.

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

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

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

[Section 87 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32; No. 78 of 1995 s.110.]

Duty of chief executive officer prior to grant of leave of absence

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

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

[Section 88 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32.]

Restriction on grant of leave of absence

89. The chief executive officer shall not grant leave of absence under section 87 —

- (a) except with the approval of the Governor, to a prisoner who is —
 - (i) undergoing strict security life imprisonment;
 - (ii) in strict custody;
 - (iii) in safe custody;
 - (iv) undergoing life imprisonment; or
 - (v) serving a term of imprisonment, or an aggregate of terms of imprisonment (without regard to remission) of more than 15 years;

or

- (b) to a prisoner other than a prisoner who has been rated by the chief executive officer under a rating system approved by the Minister as a prisoner whose absence from prison would impose a minimum risk to the security of the public.

[Section 89 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32.]

Supervision of prisoner on leave of absence

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

[Section 90 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32.]

Revocation or variation of leave of absence

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

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

[Section 91 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32.]

Consequences of revocation of leave of absence

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

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

- (a) escapes or prepares or attempts to escape from lawful custody during the currency of the grant of leave of absence;
- (b) fails to return to prison on or before the time he is required to do so by the grant; or
- (c) fails to comply with a condition or restriction set out in the instrument by which leave is granted,

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

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

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

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

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

- (a) on a previous occasion has been granted leave of absence under section 87 but that grant has been cancelled or revoked; or
- (b) has been released on parole under the *Sentence Administration Act 1995* but whose parole has been cancelled for any reason.

[Section 92 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32; No. 47 of 1991 s.7; No. 78 of 1995 s.110.]

Terms of employment of prisoner on leave of absence

93. Where a prisoner is in employment during leave of absence granted to him under section 87, the terms and conditions, including the amount payable, in respect of the employment shall

be the terms and conditions including the amount payable under any award or agreement in force under the *Industrial Relations Act 1979* or the *Industrial Relations Act 1988* of the Commonwealth that applies to the employment or, if there is no such award or agreement shall be such terms and conditions, including the amount payable, as are agreed upon by the employer and the chief executive officer.

[Section 93 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32; No. 47 of 1991 s.7.]

Approved absences under activity programmes

- 94.** (1) The Minister may approve a programme of —
- (a) community work;
 - (b) charitable or voluntary work;
 - (c) work associated with the operation of the prison;
 - (d) sport;
 - (e) religious observance; or
 - (f) any other activity, and

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

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

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

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

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

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

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

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

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

- (a) undergoing strict security life imprisonment;
- (b) in strict custody;
- (c) in safe custody;
- (d) undergoing life imprisonment; or

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- (e) serving a term of imprisonment, or an aggregate of terms of imprisonment (without regard to remission) of more than 15 years.

[Section 94 amended by No. 47 of 1987 s.11; No. 113 of 1987 s.32; No. 47 of 1991 s.7.]

PART IX — WELFARE PROGRAMMES FOR PRISONERS

Preparation and implementation of activity programmes

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

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

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

[Section 95 amended by No. 47 of 1987 ss.10 and 11; No. 113 of 1987 s.32.]

PART X — DISCIPLINE OF PRISON OFFICERS

Definition of “prison officer” for disciplinary purposes

96. 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.

Regulations, rules, etc. to be strictly observed

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

Disciplinary offences

98. (1) A prison officer who —

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

- (d) commits any act of misconduct which relates to the performance of his duties or his fitness to hold office as a prison officer,

is guilty of a disciplinary offence.

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

Laying of charges against prison officers

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

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

(2) Subject to section 105, where a prison officer denies the truth of a charge of a disciplinary offence against him or fails to admit or deny the truth of the charge within the time specified, the superintendent of the prison or some other superintendent

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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.

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

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

whichever date is the earliest.

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

Procedure for inquiries into disciplinary charges

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

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

Legal representation not permitted

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

Imposition of penalties by superintendent

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

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

(2) The superintendent shall send forthwith to the 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.]

Appeal to chief executive officer

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

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

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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.

(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.]

Determination of appeal by chief executive officer

104. 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 authorized by section 102; or
- (b) reverse the finding of the superintendent and either, as the case may require, dismiss the charge or impose a penalty authorized by section 102.

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

Superintendent may refer charge to chief executive officer

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

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(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.]

Determination of charge by chief executive officer

106. (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;
- (b) a reprimand;

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

(3) Where a disciplinary charge is determined by a person appointed by the 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.]

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Constitution of Appeal Tribunal

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

- (a) a magistrate, to be appointed by the Governor, who shall be the chairman of the Appeal Tribunal;
- (b) one person to be appointed by the 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 Commissioner³, or some person acting under his authority.

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

(3) If a member of the Appeal Tribunal —

- (a) dies;
- (b) by notice in writing given to the 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.

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

Appeals to Appeal Tribunal

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

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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.]

Fines may be deducted from pay etc.

109. (1) A fine lawfully imposed under this Act on a prison officer may be deducted, by order of the 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 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 XI — GENERAL PROVISIONS

Regulations

110. (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;
- (b) prescribing the prerequisites to engagement and the conditions of engagement of prison officers under section 13;
- (c) providing for the duties and obligations of prison officers;
- (d) establishing the ranks of prison officers and providing for promotion of prison officers;
- (e) providing for the striking and awarding of medallions for bravery, good conduct and long service of officers;
- (f) regulating the custody, classification, separation, diet, instruction, health, employment, discipline, medical and other treatment of prisoners;
- (g) prescribing the specifications of cells and quarters for the confinement or punishment of prisoners and providing for certifying such cells and quarters as fit for the purpose;
- (h) making provision for the classification of labour performed by prisoners;

- (i) prescribing the gratuities that may be credited to prisoners and the conditions upon which gratuities may be so credited;
- (j) regulating the taking of photographs, finger prints, blood types, dental impressions, measurements or carrying out of other identifying processes and the recording of such and any other particulars of prisoners;
- (k) notwithstanding section 46, authorizing 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;
- (ka) notwithstanding section 46, authorizing 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;
- (kb) authorizing 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;
- (l) providing for the sale or disposal of uncollected, abandoned, or unclaimed property left at prisons and the disposal of the proceeds of any such sale;
- (m) regulating the property that may be kept at a prison on behalf of a prisoner;

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- (n) regulating the sale and disposal of products and produce made or produced by prisoners and the disposal of the proceeds;
- (o) providing for the powers and duties of a person appointed by the 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;
- (p) regulating the association of male and female prisoners;
- (q) regulating the visits to prisons of prison visitors and their powers and duties;
- (r) regulating visits to prisoners;
- (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;
- (s) regulating the manner and procedure for searching persons entering or admitted to prisons having regard to considerations of privacy, decorum and expedition;
- (t) regulating the grant of leave of absence to prisoners and the terms, conditions, and restrictions of grants of leave of absence to prisoners;
- (u) regulating the treatment of prisoners on remand;
- (v) regulating the furnishing of notices to prison officers charged with disciplinary offences;
- (w) regulating the termination under this Act of service of prison officers other than termination arising from or connected with disciplinary matters; and

- (x) regulating the procedure for appeals to the Appeal Tribunal.

(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;
- (ii) at all times or at a specified time or at specified times; and
- (iii) to or in respect of every prison or to or in respect of a specified prison or prisons or category of prisons;

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

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

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

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

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(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).]

Protection from liability

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

Committals under Debtors Act

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

[113. Repealed by No. 79 of 1995 s.66 (3).]

Failure to perform duties

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

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

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

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

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

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

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

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

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

(10) A direction under subsection (6) —

(a) shall be made in writing; and

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(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.

(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.]

Section 114 to prevail

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

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

Repeal

116. The *Prisons Act 1903* is repealed.

Transitional

117. Without affecting the operation of the *Interpretation Act 1918*⁴, the transitional provisions set out in Schedule 2 to this Act shall have effect for the purpose of the transition from the provisions of the repealed Act to the provisions of this Act.

SCHEDULE 1

[section 4]

DECLARATION OF PRISONS

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

SCHEDULE 2

[section 117]

TRANSITIONAL PROVISIONS

1. All prisoners in custody immediately before the coming into operation of this Act under the provisions of the repealed Act shall continue in custody under and subject to the provisions of this Act.

2. Where a direction or order that a person be detained or confined in a reformatory prison subsists immediately before the coming into operation of this Act, that direction or order shall be deemed, with effect from the coming into operation of this Act, to direct or order that the person be detained in a prison.

3. The person holding office as Director of the Department of Corrections immediately before the coming into operation of this Act shall continue in office and be deemed to have been appointed Permanent Head of the Western Australia Prisons Department under section 6 (1).

4. Each person appointed or engaged under the repealed Act and holding office immediately before the coming into operation of this Act shall continue to hold office and shall be deemed to have been appointed or engaged, subject to this Act and to the terms of his appointment or engagement, to a corresponding office under this Act.

5. A prison officer who is deemed to have been engaged as such by clause 4 of this schedule may be required by the 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.

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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* and —

- (a) regulations 98, 100, 101 and 102 of the *Prison Regulations 1974* shall continue to apply in relation to every such grant as though they were still in force; and
- (b) section 92 of this Act shall apply in the case of every such grant as if the prisoner had been granted leave of absence under section 87 of this Act.

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

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

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

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

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

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NOTES

¹ This reprint is a compilation as at 21 November 1996 of the *Prisons Act 1981* and includes the amendments effected by the other Acts referred to in the following Table^{1a, 1b, 1c}.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Prisons Act 1981</i>	115 of 1981	14 December 1981	1 August 1982 (see <i>Gazette</i> 23 July 1982 p.2841)	
<i>Prisons Amendment Act 1982</i>	66 of 1982	6 October 1982	6 October 1982	
<i>Health Legislation Amendment Act 1984, Part XXI</i>	28 of 1984	31 May 1984	1 July 1984 (see section 2)	
<i>Acts Amendment (Abolition of Capital Punishment) Act 1984, Part II</i>	52 of 1984	5 September 1984	3 October 1984	
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 December 1985	1 July 1986 (see section 2)	
<i>Acts Amendment (Corrective Services) Act 1987, Part II</i>	47 of 1987	3 October 1987	11 December 1987 (see <i>Gazette</i> 11 December 1987 p.4363)	
<i>Acts Amendment (Public Service) Act 1987, section 32</i>	113 of 1987	31 December 1987	16 March 1988 (see <i>Gazette</i> 16 March 1988 p.813)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Imprisonment and Parole) Act 1987, Part III</i>	129 of 1987	21 January 1988	15 June 1988 (see <i>Gazette</i> 20 May 1988 p.1664)	
<i>Prisons Amendment Act (No. 2) 1991</i>	47 of 1991	17 December 1991	Section 6: 1 April 1992 (see section 2 (2) and <i>Gazette</i> 27 March 1992 p.1341); balance: 17 December 1991	Section 5 (2) and (3): transitional ⁵
<i>Criminal Law Amendment Act (No. 2) 1992, section 16 (1)</i>	51 of 1992	9 December 1992	6 January 1993	
<i>Acts Amendment (Ministry of Justice) Act 1993, Part 15</i>	31 of 1993	15 December 1993	Deemed operative 1 July 1993 (see section 2)	Part 19: savings and transitional ⁶
<i>Acts Amendment (Public Sector Management) Act 1994, Part 2</i>	32 of 1994	29 June 1994	1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p.4948)	
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994, Part 18</i>	92 of 1994	23 December 1994	1 January 1995 (see section 2 and <i>Gazette</i> 30 December 1994 p.7211)	
<i>Sentencing (Consequential Provisions) Act 1995, Part 69</i>	78 of 1995	16 January 1995	4 November 1996 (see section 2 and <i>Gazette</i> 25 October 1996 p.5632)	Section 111: transitional ⁷
<i>Industrial Relations Legislation Amendment and Repeal Act 1995, section 66 (3)</i>	79 of 1995	16 January 1996	18 May 1996 (see section 3 (2) and <i>Gazette</i> 14 May 1996 p.2019)	

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^{1a} As at the date of this reprint the *Prisons Amendment Act 1995* (Act No. 19 of 1995) was not in operation.

^{1b} As at the date of this reprint section 61 of the *Coroners Act 1996* (Act No. 2 of 1996) was not in operation. That section (in item 12 of Schedule 1) amends the *Prisons Act 1981* by repealing section 34.

^{1c} As at the date of this reprint Part 16 of the *Mental Health (Consequential Provisions) Act 1996* (Act No. 69 of 1996) was not in operation. That Part reads as follows —

“ **PART 16 — PRISONS ACT 1981**

Section 27 amended

76. (2) After section 27 (1) of the *Prisons Act 1981* the following subsection is inserted —

“ (1a) In subsection (1) —

“**medical treatment**” includes
psychiatric treatment as defined
in section 3 of the *Mental Health
Act 1996*. ”

(2) Section 27 (4) of the *Prisons Act 1981* is repealed. ”

² Short title (as changed by section 18 of the *Community Corrections Legislation Amendment Act 1990*) substituted under section 7 (3) (h) of the *Reprints Act 1984*.

³ Title substituted under section 7 (3) (h) of *Reprints Act 1984* to give effect to section 19 (2) of the *Acts Amendment (Electoral Reform) Act 1987*.

⁴ Now see *Interpretation Act 1984*.

⁵ Section 5 (2) and (3) of the *Prisons Amendment Act (No. 2) 1991* (Act No. 47 of 1991) reads as follows —

“ (2) An appeal against the finding of a person appointed under section 106 (1) (b) of the principal Act that was instituted before the coming into operation of this Act but that was not determined by the Prison Officers Appeal Tribunal for want of jurisdiction may be continued and determined as if it had been validly instituted.

(3) An appeal against the finding of a person appointed under section 106 (1) (b) of the principal Act purporting to have been instituted and determined under section 108 of the principal Act before the coming into operation of this Act shall be deemed to have been validly instituted and determined. ”

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⁶ Part 19 of the *Acts Amendment (Ministry of Justice) Act 1993* (Act No. 31) of 1993 reads as follows —

PART 19 — SAVINGS AND TRANSITIONAL

“ Savings

68. If this Act is not passed until after 1 July 1993, anything done after that day but before this Act is passed that would have been in accordance with law if this Act had not come into operation but as a result of the coming into operation of this Act is contrary to law, is deemed to be in accordance with law.

Transitional

69. Unless the contrary intention appears, a reference, however expressed, in any law or document to the former Department of Corrective Services or Crown Law Department, the chief executive officer of either of those departments, or an office or organizational unit within either of those departments, is to be read as a reference to the Ministry of Justice, the chief executive officer of the Ministry of Justice, or the corresponding office or unit within the Ministry of Justice, as is appropriate. ”.

⁷ Section 111 (1), (2) and (3) of the *Sentencing (Consequential Provisions) Act 1995* (Act No. 78 of 1995) reads as follows —

“ Transitional provisions

111. (1) In this section —

“**commencement**” means the commencement of the *Sentencing Act 1995*.

(2) For the purposes of this section a person is in custody even if at the relevant time he or she is at large or if under Part VIII of the *Prisons Act 1981* he or she is absent from a prison.

(3) If immediately before commencement a person is in custody and subject to a sentence of imprisonment in respect of which he or she is not entitled to remission under section 29 of the *Prisons Act 1981* by virtue of section 29 or section 30 of that Act (as those sections were immediately before commencement) then on and after commencement, for the purposes of Part 13 of the *Sentencing Act 1995*, the term of imprisonment is to be treated as if it were a prescribed term under that Part. ”.

