

House of Assembly—No 50A

As reported with an amendment, report agreed to and passed remaining stages,
22 July 2020

South Australia

Correctional Services (Accountability and Other Measures) Amendment Bill 2020

A BILL FOR

An Act to amend the *Correctional Services Act 1982* and to make a related amendment to the *Public Sector Act 2009*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Correctional Services (Accountability and Other Measures) Amendment Act 2020*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Correctional Services Act 1982*

4—Amendment of long title

Long title—after "care;" insert:

to provide for certain powers relating to the management of correctional services officers and employees;

5—Insertion of section 3

Before section 4 insert:

3—Objects and guiding principles

- (1) The primary object of this Act is the promotion of community safety.
- (2) The other objects of this Act are—
 - (a) to provide mechanisms for the establishment and proper administration of correctional institutions, probation and parole hostels and other facilities and services relating to persons who offend against the criminal law; and
 - (b) to provide for the safe and secure management of prisoners held in correctional institutions in the State; and
 - (c) to promote the rehabilitation of prisoners, probationers and parolees—
 - (i) by providing the necessary correction, guidance and management to assist in their reintegration into the community; and
 - (ii) by providing for effective, planned and individualised management plans for prisoners, probationers and parolees, including by providing for the assessment of the risks they pose to the community, their needs and the development, implementation and review of management plans based on such assessments; and
 - (d) to have regard to the rights of victims of crime; and
 - (e) to have regard to the particular needs and circumstances relevant to the cultural identity and linguistic background of prisoners, probationers and parolees; and
 - (f) to recognise the importance of family and community involvement and participation in the rehabilitation of prisoners, probationers and parolees; and

- 5 (g) to recognise the particular importance of Aboriginal and Torres Strait Islander community involvement in the rehabilitation of prisoners, parolees and probationers who are Aboriginal and Torres Strait Islander persons, by ensuring so far as is reasonably practicable that—
- 10 (i) Aboriginal and Torres Strait Islander persons are placed in a correctional institution as close as possible to their usual place of residence; and
- 15 (ii) an Aboriginal or Torres Strait Islander person is entitled to seek a review of a decision to transfer the person from 1 correctional institution to another in relation to regional transfers where the person will be 200km or further from the correctional institution they are being transferred from; and
- 20 (iii) Aboriginal and Torres Strait Islander communities are adequately consulted in relation to any community service projects that are regarded as having particular value to the relevant Aboriginal or Torres Strait Islander community; and
- 25 (h) to support the reintegration of prisoners, probationers and parolees with the community as part of their rehabilitation; and
- 30 (i) to facilitate, for the purpose of promoting the safety of the community, the sharing of information related to the administration or enforcement of this Act in accordance with the requirements of this Act; and
- 35 (j) to make provision in relation to the management of officers and employees.
- 40 (3) The Minister, the CE, the Department and other persons and bodies involved in the administration of this Act are to be guided by the following principles in the exercise of their functions:
- 45 (a) in exercising powers under this Act, the paramount consideration must be the safety of the community;
- (b) prisoners, probationers and parolees should be made aware of their obligations under the law, of the consequences of any breach of the law and of the importance of individual responsibility;
- (c) the management of prisoners, probationers and parolees should be designed to assist in their rehabilitation and reintegration into the community;
- (d) facilities and programs developed for the care, rehabilitation, imprisonment, training, therapeutic treatment or other treatment of prisoners, probationers and parolees should—
- (i) be evidence based; and

- (ii) be individually designed as much as reasonably practicable—
- (A) to take account of the prisoner, probationer or parolee's age, gender, gender identity, sexuality or sexual identity, cultural identity, developmental and cognitive capacity, ability or disability, and any special needs; and
 - (B) to address offending behaviours; and
 - (C) to address the physical and mental health of the prisoner, probationer or parolee; and
 - (D) to address the educational and vocational training needs of the prisoner, probationer or parolee; and
- (iii) be governed by a comprehensive assessment and case plan developed in a multidisciplinary framework; and
- (iv) support—
- (A) a focus on connecting and reintegrating with the community; and
 - (B) recognition of the impact of offending on victims; and
- (v) take into consideration the different traditions, cultural values and religious beliefs of ethnic or racial groups within the prisoner, probationer or parolee's community.

6—Amendment of section 4—Interpretation

- (1) Section 4(1)—before the definition of *alcotest* insert:

Aboriginal or Torres Strait Islander person means a person who—

- (a) is descended from an Aboriginal or Torres Strait Islander; and
- (b) regards themselves as an Aboriginal or Torres Strait Islander; and
- (c) is accepted as an Aboriginal or Torres Strait Islander by an Aboriginal or Torres Strait Islander community;

- (2) Section 4(1), definition of *Department*—delete ", under the Minister, responsible for" and substitute:

responsible for assisting a Minister in

- (3) Section 4(1), definition of *immediate family*—delete "of a victim"

7—Amendment of section 6—Criminal intelligence

- (1) Section 6(1)—after "section 85A(1)(b)" insert:

, or in connection with providing information under section 85CB,

(2) Section 6—after subsection (2) insert:

(2a) If the CE decides to take action in relation to a relevant person (within the meaning of section 85CB) after receiving information provided by the Commissioner of Police in accordance with that section and the decision to do so is made because of information that is classified by the Commissioner of Police as criminal intelligence, the CE is not required to provide any grounds or reasons for the decision other than that it was made in the public interest or that it would be contrary to the public interest if the action were not to be taken.

(3) Section 6—after subsection (3) insert:

(3a) In any proceedings relating to a decision of the CE to take action in relation to a relevant person (within the meaning of section 85CB) after receiving information provided by the Commissioner of Police in accordance with that section, the CE and the court before which the proceedings are being heard—

- (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
- (b) may take evidence consisting of or relating to information so classified by the Commissioner of Police by way of affidavit of a police officer of or above the rank of superintendent.

8—Amendment of section 7—Power of Minister and CE to delegate

(1) Section 7(2) and (2a)—delete ", with the approval of the Minister," wherever occurring

(2) Section 7(2) and (4)—before "employee" wherever occurring insert in each case:
officer or

9—Substitution of Part 3 Division 2

Part 3 Division 2—delete Division 2 and substitute:

Division 2—Official visitors

20—Official visitors

(1) The Governor may appoint for each correctional institution such number of official visitors as the Governor thinks necessary or desirable.

(2) The Governor must, in making appointments under this section, ensure that—

- (a) at least 1 official visitor for each correctional institution is an Aboriginal or Torres Strait Islander person; and

(b) at least 1 official visitor for each correctional institution is a legal practitioner; and

(c) at least 1 official visitor for each correctional institution is a woman.

5 (3) A person who constitutes a Visiting Tribunal for a correctional institution cannot be appointed as an official visitor for the correctional institution.

10 (4) An official visitor will be appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment.

(5) The Governor may remove an official visitor from office—

(a) for breach of, or noncompliance with, a condition of appointment; or

15 (b) for misconduct; or

(c) for failure or incapacity to carry out official duties satisfactorily.

(6) The position of an official visitor becomes vacant if the official visitor—

20 (a) dies; or

(b) resigns by written notice given to the Minister; or

(c) completes a term of appointment and is not reappointed; or

(d) is removed from the position by the Governor under subsection (5); or

25 (e) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or

(f) is convicted of an indictable offence or sentenced to imprisonment for an offence; or

30 (g) becomes a member of the Parliament of this State or any other State or of the Commonwealth or becomes a member of a Legislative Assembly of a Territory of the Commonwealth.

(7) Nothing in this section is to be taken to prevent the appointment of a person as an official visitor for more than 1 correctional institution.

35 **20A—Independence**

(1) In exercising functions and powers under this Act, an official visitor must act independently, impartially and in the public interest.

(2) Neither the Minister nor the CE can—

40 (a) control how an official visitor is to exercise the visitor's statutory functions and powers; or

- (b) give any direction with respect to the content of any report prepared by an official visitor.

Note—

This provision does not derogate from any express power of the Minister or CE under this Act.

20B—Remuneration

An official visitor is entitled to remuneration, allowances and expenses determined by the CE.

20C—Staff and resources

The Minister must provide official visitors with the resources reasonably required for exercising their functions.

20D—Functions of official visitors

- (1) The functions of an official visitor in relation to the correctional institution in respect of which the visitor is appointed include the following:

- (a) to receive and investigate any complaint of a prisoner in the correctional institution;
- (b) to act as an advocate for prisoners in the correctional institution to promote the proper resolution of issues relating to the care, treatment or control of the prisoners;
- (c) to conduct visits to the correctional institution as required or authorised under this Division;
- (d) to conduct inspections of the correctional institution as required or authorised under this Division;
- (e) to promote the best interests of prisoners in the correctional institution;
- (f) to inquire into, investigate and provide advice to the Minister or the CE on any matter relating to the management of the correctional institution, or the care, treatment or control of the prisoners, either on the official visitor's own initiative or on referral by the Minister or the CE;
- (g) to make recommendations to the Minister or the CE on any matter for the purposes of improving the quality of care, treatment or control of prisoners in the correctional institution;
- (h) any other functions assigned to the official visitor under this or any other Act.

- (2) In exercising functions under this Division, an official visitor—

- (a) must encourage prisoners in the correctional institution to express their own views and give proper weight to those views; and

(b) must have regard to relevant legislation and other material, including international conventions and treaties, with a view to promoting the high quality care, treatment and control of prisoners in the correctional institution; and

(c) must pay particular attention to the needs and circumstances of prisoners in the correctional institution who—

(i) are Aboriginal or Torres Strait Islander persons; or

(ii) have a physical, psychological or intellectual disability; and

(d) may receive and consider information, reports and materials relevant to exercising the official visitor's statutory functions.

(3) An official visitor may receive and consider information, reports and materials, and interview a prisoner or other person, including in accordance with a requirement under section 20E(2), in private.

20E—Provision of information to official visitor

(1) A government or non-government organisation that is involved in the provision of services under this or any other Act must, at an official visitor's request, provide the official visitor with information relevant to the exercise of the official visitor's functions.

(2) If an official visitor has reason to believe that a person is capable of providing information or producing a document that may be relevant to the exercise of the official visitor's functions, the official visitor may, by notice in writing provided to the person, require the person to do 1 or more of the following:

(a) to provide that information to the official visitor in writing signed by that person or, in the case of a body corporate, by an officer of the body corporate;

(b) to produce that document to the official visitor;

(c) to attend before a person specified in the notice and answer relevant questions or produce relevant documents.

(3) A notice under subsection (2) is to specify the period within which, or the time, day and place at which, the person is required to provide the information or document, or to attend.

(4) A notice under subsection (2) must provide a period of time for compliance with a requirement under that subsection that has been determined by the official visitor to be reasonable in the circumstances.

(5) A person must comply with a requirement under subsection (2).
Maximum penalty: \$5 000.

- 5 (6) However, a request cannot be made to an organisation under this section if compliance with the request would involve the disclosure (directly or indirectly) of information in relation to or connected with a matter that forms or is the subject of a complaint, report, assessment, investigation, referral or evaluation under the *Independent Commissioner Against Corruption Act 2012*.
- (7) If a document is produced in accordance with a requirement under this section, the official visitor may take possession of, make copies of, or take extracts from, the document.

10 **20F—Requests to contact official visitor**

A prisoner in a correctional institution may make a request to contact an official visitor in respect of the correctional institution.

20G—Reporting obligations of official visitor

- 15 (1) An official visitor may, at any time, provide a report to the Minister on any matter arising out of the performance of the official visitor's functions.
- (2) An official visitor must, not later than 31 October in each year, provide a report to the Minister on the work of the official visitor during the previous financial year.
- 20 (3) The Minister must, within 6 sitting days after receiving a report under subsection (2), have copies of the report laid before both Houses of Parliament.

20H—Confidentiality of information

25 Information about individual cases disclosed to an official visitor is to be kept confidential and is not liable to disclosure under the *Freedom of Information Act 1991*.

10—Amendment of section 29—Work by prisoners

- (1) Section 29(1)—delete "(other than a remand prisoner)"
- (2) Section 29(2)—delete subsection (2)

30 **11—Amendment of section 33—Prisoners' mail**

- (1) Section 33(3)—after paragraph (j) insert:
- or
- (k) material of a kind prohibited by the regulations or the CE.
- (2) Section 33—after subsection (3) insert:
- 35 (3a) A letter contravenes this section if the letter is sent, or proposed to be sent, by a prisoner to—
- (a) if, in relation to an offence for which the prisoner was imprisoned, there is a registered victim—the registered victim; or

(b) any other victim of an offence for which the prisoner was imprisoned; or

(c) a person involved, or who the CE suspects was involved, in the commission of an offence for which the prisoner was imprisoned.

5

(3) Section 33(7)(ca)—delete "inspector" and substitute:

official visitor

(4) Section 33(7)(d)—delete "legal practitioner" and substitute:

nominated legal practitioner of the prisoner

10

(5) Section 33(8)—delete "inspector" and substitute:

official visitor

(6) Section 33(8)—delete "legal practitioner" and substitute:

nominated legal practitioner of the prisoner sent from the practitioner's business address

15

(7) Section 33(14)—after the definition of *authorised officer* insert:

nominated legal practitioner, in relation to a prisoner, means a legal practitioner that the prisoner has, by notice in writing given to the CE, nominated as a legal practitioner that represents the prisoner, provided that a prisoner may only have up to 4 nominated legal practitioners at any particular time.

20

12—Amendment of section 35A—Power to monitor or record prisoner communication

(1) Section 35A(2)—delete subsection (2) and substitute:

25

(2) A party to a communication that may be monitored or recorded under this section is not required to be informed of the fact that the communication may be monitored or recorded, unless the communication occurs in circumstances (if any) prescribed by the regulations.

(2) Section 35A(3)—after paragraph (a) insert:

30

(ab) the Independent Commissioner Against Corruption; or

(3) Section 35A(3)(f)—delete "inspector" and substitute:

official visitor

(4) Section 35A—after subsection (5) insert:

35

(5a) Despite any other Act or law (but without limiting subsection (5)), a communication monitored or recorded under this section or evidence or information revealed by such a communication may be provided to, and may be received and used by—

(a) —

(i) law enforcement agencies; and

- (ii) prosecution authorities; and
- (iii) any other person or body prescribed by the regulations,

for the purposes of—

- (iv) any criminal investigation or proceedings; or
- (v) proceedings for the imposition of a penalty; or
- (vi) national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004* of the Commonwealth); and

- (b) the Independent Commissioner Against Corruption and the Office for Public Integrity for the purposes of any investigation or action in relation to suspected corruption, misconduct or maladministration in public administration.

(5b) Terms and expressions used in subsection (5a) and in the *Independent Commissioner Against Corruption Act 2012* have the same respective meanings in that subsection as they do in that Act.

13—Amendment of section 36—Power to keep prisoner apart from other prisoners

- (1) Section 36(3)—delete "A direction given pursuant to subsection (2)(a)" and substitute:

Subject to this section, a direction under subsection (2)

- (2) Section 36(4)—delete subsection (4) and substitute:

(4) A direction under subsection (2)(b), (c) or (d) may be extended by the CE for such period, not exceeding 30 days, as may be specified by the CE, if the CE is satisfied that it is desirable to do so on a ground referred to in subsection (2)(b), (c) or (d).

(4a) Nothing in subsection (4) is to be taken to prevent the CE from granting more than 1 extension in respect of a direction under subsection (2)(b), (c) or (d).

- (3) Section 36(6)—after "subsection (2)" insert:

or an extension

- (4) Section 36(7)—after "subsection (2)" insert:

or an extension

- (5) Section 36(7)—delete "so given" and substitute:

given under subsection (2) or issued under subsection (4)

- (6) Section 36(8)—after "subsection (2)" insert:

or an extension

(7) Section 36—after subsection (9) insert:

(9a) If the CE issues an extension the CE must, as soon as is reasonably practicable after issuing the extension, provide the Minister with a report of the circumstances relating to the extension.

5 (8) Section 36(10)—after "subsection (9)" insert:

or (9a)

(9) Section 36(10)—after "direction" insert:

or extension (as the case requires)

(10) Section 36—after subsection (10) insert:

10 (11) In this section—

extension means an extension issued by the CE under subsection (4).

14—Insertion of section 36A

After section 36 insert:

36A—Restraints to be used on prisoners in certain circumstances

15 (1) An officer or employee of the Department may use restraints on a prisoner—

20 (a) if the prisoner is being transferred from the place in which the prisoner is being detained to a place where the prisoner is to be detained; or

(b) if the prisoner is on leave of absence and is required to be in the custody of, and be supervised by, 1 or more officers or employees of the Department authorised by the Minister under section 27(2)(a)(i); or

25 (c) in any other circumstances determined by the CE.

(2) An officer or employee of the Department who uses restraints on a prisoner under this section must comply with any requirements determined by the CE.

15—Amendment of section 37A—Release on home detention

30 Section 37A(6), definition of *residence*—after "Aboriginal" insert:

or Torres Strait Islander

16—Amendment of section 42A—Minor breach of prison regulations

Section 42A(2)—before "employee" insert:

officer or

35 17—Amendment of section 45—Procedure at inquiry

Section 45(a)(ii) and (iii)—before "employee" wherever occurring insert in each case:

officer or

18—Insertion of Part 5 Division 3

Part 5—after Division 2 insert:

Division 3—Criminal offences

49—Disrupting security or order

- 5 (1) A prisoner must not take part in an unlawful assembly.
Maximum penalty: Imprisonment for 3 years.
- (2) A prisoner must not take part in a riot or mutiny.
Maximum penalty:
- 10 (a) if, during the riot or mutiny, the prisoner wilfully and unlawfully damages or destroys, or attempts to damage or destroy, property that is part of a correctional institution and the security of the correctional institution is endangered by the act—imprisonment for 15 years; or
- (b) if, during the riot or mutiny, the prisoner—
- 15 (i) demands something be done or not be done with threats of injury or detriment to any person or property; or
- (ii) escapes or attempts to escape from lawful custody, or helps another prisoner to escape or attempt to escape from lawful custody,
- 20 imprisonment for 10 years; or
- (c) if, during the riot or mutiny, the prisoner wilfully and unlawfully damages or destroys, or attempts to damage or destroy, any property—imprisonment for 7 years; or
- 25 (d) in any other case—imprisonment for 4 years.
- (3) In this section—
- mutiny* means 3 or more prisoners collectively challenging authority under this Act, with intent to subvert the authority, if the security of the correctional institution is endangered;
- 30 *riot* means an unlawful assembly that has begun to act in so tumultuous a way as to disturb the peace;
- unlawful assembly* means 3 or more prisoners—
- (a) assembled with intent to carry out a common purpose and there are reasonable grounds to believe the prisoners will—
- 35 (i) tumultuously disturb the peace; or
- (ii) provoke other prisoners to tumultuously disturb the peace; or

(b) who, having assembled with intent to carry out a common purpose, whether or not the assembly was lawful, conduct themselves in a way that there are reasonable grounds to believe the prisoners will—

- (i) tumultuously disturb the peace; or
(ii) provoke other prisoners to tumultuously disturb the peace.

49A—Possession of certain items by prisoners

A prisoner who has possession of—

- (a) a controlled drug (within the meaning of the *Controlled Substances Act 1984*); or
(b) an item prescribed by the regulations for the purposes of this paragraph,

in a correctional institution without the permission of the CE is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

19—Amendment of section 51—Offences by persons other than prisoners

(1) Section 51(1)(b)—after "introduces into" insert:

, or has possession of in,

(2) Section 51(1), penalty provision, (a)—delete paragraph (a) and substitute:

- (a) in the case of an offence against paragraph (b) of this subsection where the prohibited item is a controlled drug (within the meaning of the *Controlled Substances Act 1984*)—imprisonment for 10 years;
(ab) in the case of an offence against paragraph (b) of this subsection where the prohibited item is an item of a kind prescribed by the regulations for the purposes of this paragraph—imprisonment for 5 years;

(3) Section 51—after subsection (1) insert:

(2) A person who, without the permission of the CE or without lawful excuse, has possession of a controlled drug (within the meaning of the *Controlled Substances Act 1984*) in a correctional institution buffer zone is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(3) A person who, without the permission of the CE or without lawful excuse, has possession of a prohibited item of a kind prescribed by the regulations for the purposes of this subsection in a correctional institution buffer zone is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

(4) In this section—

correctional institution buffer zone—see subsection (5).

(5) The Minister may, by notice in the Gazette, declare an area surrounding the boundary of a correctional institution to be the correctional institution buffer zone for the correctional institution.

(6) The Minister may, by notice in the Gazette, revoke or vary a declaration under subsection (5).

20—Amendment of section 52—Power of arrest

(1) Section 52—after subsection (1) insert:

(1a) An officer or employee of the Department or a police officer may, without warrant, apprehend a person—

(a) who is subject to an order of a court or a warrant of commitment authorising their detention in custody; and

(b) who the officer or employee of the Department or police officer (as the case requires) suspects on reasonable grounds has been released from custody in error.

(2) Section 52(2)—after "Department" insert:

or a police officer (as the case requires)

(3) Section 52(2)—after "subsection (1)" insert:

or (1a)

(4) Section 52(2)(a)—after "large" insert:

or a person apprehended in the circumstances referred to in subsection (1a)

21—Amendment of section 55—Continuation of Parole Board

(1) Section 55(2)—delete "nine" and substitute:

11

(2) Section 55(3)(f)—delete "a person of Aboriginal descent" and substitute:

an Aboriginal or Torres Strait Islander person

22—Amendment of section 57—Allowances and expenses

(1) Section 57—delete "is entitled to receive such allowances and expenses as the Governor may from time to time determine" and substitute:

will be paid the allowances and expenses determined by the Remuneration Tribunal

(2) Section 57—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

(2) Jurisdiction is, by force of this section, conferred on the Remuneration Tribunal to make a determination or perform any other functions required by this section.

- 5
- (3) The Remuneration Tribunal may make different provision according to the member of the Board or the circumstances to which the determination is to apply and may vary an amount payable according to any other factor that the Remuneration Tribunal considers relevant.
- (4) The Remuneration Tribunal must, at least once in each prescribed period, review the allowances and expenses referred to in subsection (1) and may, if it considers it appropriate to do so, determine to increase any such amount payable by a specified amount.
- 10
- (5) The regulations may make further provision in relation to a determination of the Remuneration Tribunal for the purposes of this Act.

23—Amendment of section 59—Deputies

- 15
- (1) Section 59(1)(b)—delete "a member" and substitute:
any member
- (2) Section 59(2)—delete "the member's deputy" and substitute:
any deputy appointed under subsection (1)(b)
- (3) Section 59—after subsection (2) insert:
- 20
- (2a) For the purposes of subsection (1)(b), a person may be appointed as a deputy if the person has any of the qualifications referred to in section 55(3).

24—Amendment of section 60—Proceedings of the Board

- (1) Section 60(3)—after paragraph (c) insert:
- 25
- (d) another member of the Board nominated by the presiding member and 2 other members of the Board.
- (2) Section 60(5)(a)—delete "or first or second deputy presiding member" and substitute:
, the first or second deputy presiding member, or the member nominated under subsection (3)(d),

25—Amendment of section 64—Reports by Board

- (1) Section 64(2)—delete "year" first occurring and substitute:
designated period
- (2) Section 64—after subsection (5) insert:
- 30
- (6) In this section—
- 35
- designated period* means the period of time (which must be 5 years or less) designated by the presiding member of the Board for the purposes of subsection (2).

26—Amendment of section 66—Automatic release on parole for certain prisoners

(1) Section 66(1)—delete subsection (1) and substitute:

(1) Subject to this section, the Board must order that a prisoner who is liable to serve a total period of imprisonment of less than 5 years and for whom a non-parole period has been fixed be released from prison or home detention on parole on the day on which the non-parole period expires.

(1a) However, if, because the commencement of a prisoner's non-parole period has been back dated, the non-parole period expires prior to the date on which it is fixed, the Board must order that the prisoner be released from prison or home detention on parole not later than 30 days after the day on which the non-parole period is fixed.

(2) Section 66(2)—after paragraph (ab) insert:

(aba) a prisoner if any part of the imprisonment for which the prisoner was sentenced is in respect of a serious drug offence (within the meaning of Part 3 Division 4 of the *Sentencing Act 2017*); or

(3) Section 66(2)(ad)—after "section 74" insert:

or 74AAA

27—Amendment of section 67—Release on parole by application to Board

(1) Section 67(2)(b)—before "employee" insert:

officer or

(2) Section 67(4)—after paragraph (ca) insert:

(cb) in the case of a prisoner who is serving a sentence of life imprisonment where the Board is informed of the impact that the release of the prisoner on parole is likely to have on a victim of an offence for which the prisoner was imprisoned (other than a registered victim) and the victim's family—that impact; and

(3) Section 67—after subsection (4) insert:

(4a) Information as to the impact referred to in subsection (4)(ca) or (cb) may be provided to the Board by the registered victim, other victim or family member (as the case requires) or on their behalf by the Commissioner for Victim's Rights.

(4) Section 67(7a)—delete "who is serving a sentence of life imprisonment" and substitute:

of a prescribed class

(5) Section 67—after subsection (7a) insert:

(7ab) The Board must not, in providing reasons to a prisoner under subsection (7a)(a)(ii), disclose to the prisoner information relating to a victim of an offence for which the prisoner is serving a sentence of imprisonment or a member of the victim's immediate family.

- (6) Section 67(7b)—delete "who is serving a sentence of life imprisonment" and substitute:

of a prescribed class

- (7) Section 67(11)—delete "this section" and substitute:

subsection (6)

- (8) Section 67—after subsection (11) insert:

(12) In this section—

prisoner of a prescribed class has the same meaning as in Division 4.

28—Amendment of section 68—Conditions of release on parole

- (1) Section 68(1aa)(b)—delete paragraph (b) and substitute:

(b) —

(i) in the case of a prisoner released under section 66—is subject to the prescribed conditions; and

(ii) in all cases—may be subject to any other condition (including a condition that the prisoner be monitored by use of an electronic device) to be effective until the expiration of the period of parole (or such earlier date as is specified by the Board).

- (2) Section 68—after subsection (1a) insert:

(1ab) If the Board is satisfied that a prisoner will not, on their release on parole, be undertaking remunerative or voluntary work or a course of education, training or instruction, the Board must consider imposing a condition on that release to be effective until the expiration of the period of parole (or such earlier date as is specified by the Board) that the prisoner perform community service as determined by the Board.

(1ac) If a person subject to a parole condition requiring performance of community service is sentenced to imprisonment for an offence (whenever committed) or for non-payment of a pecuniary sum or is returned to prison under this Division, the parole condition will be taken to have been revoked.

- (3) Section 68(2)—after paragraph (ca) insert:

(cb) in the case of a prisoner who is serving a sentence of life imprisonment where the Board is informed of the impact that the release of the prisoner on parole is likely to have on a victim of an offence for which the prisoner was imprisoned (other than a registered victim) and the victim's family—that impact; and

(4) Section 68(2a)—delete subsection (2a) and substitute:

(3) Information as to the impact referred to in subsection (2)(ca) or (cb) may be provided to the Board by the registered victim, other victim or family member (as the case requires) or on their behalf by the Commissioner for Victim's Rights.

(5) Section 68(4)—delete "Notwithstanding any other provision of this Division" and substitute:

Despite any other provision of this Division but subject to subsection (4a)

(6) Section 68(4)—delete "he or she" and substitute:

the prisoner

(7) Section 68—after subsection (4) insert:

(4a) If, in the opinion of the CE, a prisoner is unreasonably refusing to accept the conditions to which the prisoner's parole will be subject, or is unable to accept them due to a physical or cognitive impairment—

(a) the CE may accept the conditions on behalf of the prisoner; and

(b) the prisoner will be taken to have accepted the conditions from the date of acceptance by the CE.

(8) Section 68(5)—delete "a prisoner who is to be released under section 66 does not accept the conditions of parole" and substitute:

the parole conditions of a prisoner who is to be released under section 66 are not accepted by or on behalf of the prisoner

(9) Section 68(5)(b)—delete paragraph (b) and substitute:

(b) may, if the parole conditions will now be accepted by or on behalf of the prisoner, order the release of the prisoner on that acceptance.

(10) Section 68—after subsection (5) insert:

(6) For the purposes of subsection (1aa)(b)(i), the presiding member of the Board must determine from time to time a set of conditions to which release on parole under section 66 will be subject.

(7) The presiding member of the Board must ensure that an up to date copy of the prescribed conditions is published in the Gazette and on a website determined by the presiding member.

(8) In this section—

prescribed conditions means the conditions determined by the presiding member of the Board under subsection (6).

29—Amendment of section 74—Board may take action for breach of parole conditions

(1) Section 74(1)—delete subsection (1) and substitute:

(1) If the Board is satisfied that—

(a) in the case of a person released on parole who is serving a sentence of life imprisonment—the person has, while on parole, breached a condition of the parole; or

(b) in the case of any other person released on parole—the person has, while on parole, breached a condition of the parole that is constituted by the commission of an offence or that is, in the opinion of the Board, a serious breach,

the Board may, by order, direct that the person serve in prison the balance of the sentence, or sentences, of imprisonment in respect of which the person was on parole, being the balance unexpired as at the day on which the breach was committed.

(2) Section 74(4)—delete subsection (4)

(3) Section 74(4b) and (5)—delete subsections (4b) and (5) and substitute:

(5) If a person who is returned to prison under this section is released on parole, that release will be taken to be under the order of the Board in force immediately prior to the return of the person to prison.

30—Insertion of section 74AAA

After section 74 insert:

74AAA—Board may suspend release on parole or take other action for certain breaches of parole conditions

(1) If the Board is satisfied that a person who has been released on parole (not being a person serving a sentence of life imprisonment) has, while on parole, breached a condition of the parole (other than a breach of a kind referred to in section 74(1)(b)), the Board may, by order—

(a) direct that the person serve in prison a period of their remaining balance that the Board considers appropriate, but not exceeding—

(i) the period between the day on which the breach occurred and the date of expiry of the parole; or

(ii) 6 months,

whichever is the lesser; or

(b) vary the conditions of, or impose further conditions on, the person's release on parole.

(2) Subsection (1)(a) applies despite the fact that, at the time of finding the breach proved, the parole has expired or been discharged.

- (3) Without limiting the generality of subsection (1)(b), a condition imposed under subsection (1)(b) may require the person—
- (a) to reside at specified premises (including premises declared under this Act to be a probation and parole hostel); and
- (b) to undertake at specified places such activities and programs as are determined by the Board from time to time.
- (4) The Board cannot make an order under this section in relation to a person who is under the supervision of a community corrections officer unless it has obtained and considered a report from the CE.
- (5) If a person who has been returned to prison pursuant to this section commits an offence while in prison and a sentence of imprisonment is imposed for the offence, the person is liable to serve in prison the balance of the sentence, or sentences, unexpired as at the day on which the offence was committed.
- (6) The following provisions apply to the parole of a person in respect of whom the Board makes an order under subsection (1)(a):
- (a) the parole is suspended for the duration of the period served in prison under the order;
- (b) on release from prison, the suspension of parole ceases (so that the person will be on parole under the order of the Board in force immediately prior to the return of the person to prison).
- (7) Despite subsection (6)(b), the release of a person from prison will not be release on parole if the period of their parole has expired.
- (8) For the purposes of this section, a person's parole will be taken to expire if the date of expiry of the parole occurs while the person is in prison in accordance with an order made under subsection (1)(a) (despite the suspension of the parole under this section).
- (9) Any period for which the person is detained in custody or in prison after breaching a condition of parole is to be counted as or towards the period that the person is liable to serve in prison under this section (and any date on which the period to be served is to be taken to have commenced will be fixed accordingly).
- (10) In this section—
- remaining balance*, in relation to a person who has breached a condition of parole, means the balance of the sentence, or sentences, of imprisonment in respect of which the person was on parole (being the balance unexpired as at the day on which the breach was committed).

31—Amendment of section 74AA—Board may impose community service for breach of conditions

Section 74AA(1)—after "section 74" insert:

or 74AAA

32—Amendment of section 76—Apprehension etc of parolees on Board warrant

(1) Section 76(5)—delete "a magistrate" and substitute:

the presiding member or deputy presiding member of the Board

(2) Section 76(6)—delete "A magistrate" and substitute:

The presiding member or deputy presiding member of the Board (as the case requires)

33—Amendment of section 77—Proceedings before the Board

(1) Section 77(2)(a)—before "employee" insert:

officer or

(2) Section 77(2)(ba)—delete paragraph (ba) and substitute:

(ba) the following persons may make such submissions to the Board as they think fit in writing or, by prior arrangement with the Board, in person:

(a) the registered victim;

(b) any other victim of an offence for which the prisoner was imprisoned; and

(3) Section 77—after subsection (2) insert:

(2a) In proceedings for the purposes of this Part relating to an alleged breach of a parole condition by a person released on parole who is serving a sentence of life imprisonment, the Board must—

(a) give notice of the date and time fixed for hearing the matter to—

(i) the Attorney-General; and

(ii) the Commissioner of Police; and

(iii) the Commissioner for Victims' Rights; and

(b) take into account any submissions made to the Board in relation to the matter by a person referred to in paragraph (a)(i) to (iii).

(4) Section 77(3)—after "practitioner" insert:

but, if the person is a prisoner, the person is not entitled to be physically present in those proceedings before the Board (and the Board may deal with the proceedings in the person's absence).

(5) Section 77—after subsection (3) insert:

(3a) Despite subsection (3), the Board may, in proceedings before the Board, if the Board considers it appropriate to do so in a particular case—

- 5 (a) receive evidence or submissions from a prisoner who is not physically present before the Board by means of an audio visual link or an audio link; or
- (b) allow the prisoner to appear or be physically present before the Board.

10 **34—Amendment of heading to Part 6 Division 4**

Heading to Part 6 Division 4—delete "life" and substitute:

certain

35—Amendment of section 77A—Interpretation

(1) Section 77A—before the definition of *Australian Parliament* insert:

15 *accessory* has the same meaning as in section 241(1) of the *Criminal Law Consolidation Act 1935*;

(2) Section 77A—after the definition of *prescribed reviewable decision* insert:

principal offender has the same meaning as in section 241(1) of the *Criminal Law Consolidation Act 1935*;

20 *prisoner of a prescribed class* means—

- (a) a prisoner who is serving a sentence of life imprisonment for an offence; or
- (b) a prisoner who is serving a sentence of imprisonment for an offence against section 12 of the *Criminal Law Consolidation Act 1935*; or
- 25 (c) a prisoner who is serving a sentence of imprisonment for an offence against section 241(1) of the *Criminal Law Consolidation Act 1935* as an accessory if the offence established as having been committed by the principal offender is the offence of murder;

30 (3) Section 77A, definition of *reviewable decision*—delete "serving a sentence of life imprisonment" and substitute:

of a prescribed class

(4) Section 77A—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

35 (2) For the purposes of this Division, a reference to an *offence of murder* includes—

- (a) an offence of conspiracy to murder; and
- (b) an offence of aiding, abetting, counselling or procuring the commission of murder.

36—Insertion of Part 6A

After Part 6 insert:

Part 6A—Management of officers, employees of Department etc

77Q—Preliminary

This Part applies in addition to, and does not limit the operation of, the *Public Sector Act 2009*.

77R—Investigative powers of CE

- (1) The CE may, for the purposes of the review or investigation of any matter relevant to the CE's powers, functions, duties or responsibilities under this or any other Act—
 - (a) by notice in writing—
 - (i) require an officer or employee of the Department to appear at a specified time and place; or
 - (ii) require an officer or employee of the Department to produce a specified document or object that is relevant to the subject matter of the review or investigation; and
 - (b) require an officer or employee of the Department to answer truthfully questions put by the CE that are relevant to the subject matter of the review or investigation.
- (2) An officer or employee of the Department who fails to comply with a requirement under this section or hinders the exercise of powers under this section is guilty of misconduct for the purposes of the *Public Sector Act 2009* and any other Act.
- (3) A person is not obliged to answer a question or to produce a document or object (other than a document or object of the Government) under this section if to do so would tend to incriminate the person of an offence.

77S—Removal and reassignment of duties of officer or employee working in correctional institution

- (1) If the CE does not have confidence in the suitability of a prescribed employee to continue working in a correctional institution, having regard to the prescribed employee's integrity, honesty or conduct, the CE may—
 - (a) cause the prescribed employee to be immediately removed from the correctional institution (if necessary); and
 - (b) assign other duties to the prescribed employee and determine the place or places at which the duties are to be performed.

(2) In this section—

prescribed employee means an officer or employee of the Department whose usual duties involve working in a correctional institution.

5 **37—Amendment of section 81E—Notice to victims to be published**

Section 81E—after subsection (3) insert:

(3a) The CE must forward a copy of the notice to the Commissioner for Victims' Rights.

10 **38—Amendment of section 81L—Payments out of fund where legal proceedings notified**

Section 81L(5)(a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) pay half of the remaining amount into the Victims of Crime Fund under the *Victims of Crime Act 2001*; and

(b) credit the other half of the remaining amount—

15 (i) to the resettlement account kept in the prisoner's name in accordance with section 31; or

(ii) if the prisoner has been discharged from prison—to an account nominated by the former prisoner.

20 **39—Amendment of section 81M—Payments out of fund where notice from creditor received**

Section 81M(5)(a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) pay half of the remaining amount into the Victims of Crime Fund under the *Victims of Crime Act 2001*; and

(b) credit the other half of the remaining amount—

25 (i) to the resettlement account kept in the prisoner's name in accordance with section 31; or

(ii) if the prisoner has been discharged from prison—to an account nominated by the former prisoner.

30 **40—Amendment of section 81O—Payments out of fund where no notice given**

Section 81O(2)(a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) pay half of the remaining amount into the Victims of Crime Fund under the *Victims of Crime Act 2001*; and

(b) credit the other half of the remaining amount—

35 (i) to the resettlement account kept in the prisoner's name in accordance with section 31; or

(ii) if the prisoner has been discharged from prison—to an account nominated by the former prisoner.

41—Amendment of section 81T—Drug and alcohol testing of officers and employees

Section 81T(2)—after "testing" first occurring insert:

under subsection (1)

5 **42—Amendment of section 85C—Confidentiality**

(1) Section 85C—before subsection (1) insert:

10 (a1) The Board must not disclose information or evidence provided by a medical practitioner or psychologist in connection with the performance of the Board's functions or powers under this Act, unless the presiding member of the Board has authorised the disclosure.

(a2) A person must not disclose—

15 (a) protected information; or

(b) information the disclosure of which the person reasonably believes would give rise to a serious risk to the life or safety of a person,

unless authorised to do so by the CE.

Maximum penalty: \$20 000.

20 (2) Section 85C(1)—delete "A person must not disclose information relating to" and substitute:

Without limiting a preceding subsection, a person must not disclose information relating to a person who is or has been

(3) Section 85C—after subsection (2) insert:

25 (3) In this section—

health practitioner means a person registered under the *Health Practitioner Regulation National Law (South Australia)* to practise in a health profession;

30 **medical practitioner** means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

protected information means information—

35 (a) contained in a report prepared by a health practitioner for the purposes of assisting the Department in the assessment, placement or management of a prisoner; or

(b) relating to the safety or security of a correctional institution; or

40 (c) the disclosure of which could reasonably be expected to prejudice a criminal investigation or national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004* of the Commonwealth);

psychologist means a person registered under the *Health Practitioner Regulation National Law* to practise in the psychology profession (other than as a student).

43—Insertion of section 85CB

5 After section 85CA insert:

85CB—Disclosure of information relating to criminal history

- 10 (1) The CE may request the Commissioner of Police to provide to the CE any prescribed information about a relevant person to which the Commissioner has access.
- 15 (2) Nothing in subsection (1) is to be taken to require the Commissioner of Police to provide information that the Commissioner considers—
- (a) may prejudice or otherwise hinder an investigation to which the information may be relevant; or
 - (b) may lead to the identification of an informant; or
 - 20 (c) may affect the safety of a police officer, complainant or other person.
- (3) To avoid doubt, a request may be made and prescribed information may be provided under this section without the consent of the relevant person to whom the information relates.
- 25 (4) Without limiting section 6 but despite any other Act or law, if, in relation to an application of—
- (a) a person applying for appointment as an officer or employee of the Department; or
 - (b) an officer or employee of the Department applying for appointment to a designated position,
- the CE refuses the application on the basis of prescribed information provided under this section, the CE is not required to provide to the applicant any grounds or reasons for the refusal other than that it was made in the public interest or that it would be contrary to the public interest if the application were not refused.
- 30 (5) In this section—
- designated position* means an appointment to a position in the Department designated by the CE;
- prescribed information*, in relation to a relevant person, means the following information:
- (a) information or a report about the person's criminal history;
 - (b) other information that relates to whether the person is suitable—
- 40 (i) to be, or to continue to be, employed or engaged by the Department or a service provider; or

- (ii) to perform voluntary work or other activities in a correctional institution;

relevant person means any of the following persons:

- (a) an officer or employee of the Department;
- (b) a person applying for appointment as an officer or employee of the Department;
- (c) any other person who performs a function under this Act;
- (d) a service provider;
- (e) a person who performs or seeks to perform voluntary work or other activities in a correctional institution;

service provider—if services are to be provided by a person or body in connection with the performance of functions of the Minister, CE or Department under an agreement or arrangement with the Minister, CE or Department, the person or body who provides the services is a service provider.

44—Amendment of section 85D—Release of information to eligible persons

- (1) Section 85D(1)—delete "in writing"
- (2) Section 85D(2)(b)—delete "family or a close associate of the prisoner" and substitute:
immediate family

45—Insertion of section 85E

After section 85D insert:

85E—Confidentiality of biometric data

- (1) A person must not use or disclose biometric data derived from a biometric identification procedure relating to a visitor to a prison except as is reasonably required for the purposes of carrying out the biometric identification procedure.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (2) A person must not use or disclose biometric data derived from a biometric identification procedure relating to a prisoner except as is reasonably required—

- (a) for the purposes of carrying out the biometric identification procedure; or
- (b) in connection with the control and management of a correctional institution; or
- (c) for any other purpose contemplated by this Act.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(3) In this section—

biometric data means fingerprint data, iris scan data, or any other prescribed data or data of a prescribed kind that describes physical characteristics of a person or part of a person that may be used to identify the person;

biometric identification procedure means a procedure in which biometric data relating to a person is obtained by means of photograph or scan and compared with other biometric data for the purposes of identifying the person.

46—Amendment of section 86B—Use of correctional services dogs

Section 86B(2)(a)—after "hostel" insert:

(including a search of an officer or employee of the Department)

47—Insertion of sections 87A and 87B

After section 87 insert:

87A—Operation of remotely piloted aircraft

(1) A person must not operate a remotely piloted aircraft within 100 metres of a correctional institution except with the permission of the CE.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(2) In this section—

aircraft has the same meaning as in the *Civil Aviation Act 1988* of the Commonwealth but does not include an aircraft of a prescribed kind.

87B—Remotely piloted aircraft—special powers

(1) The CE may cause a remotely piloted aircraft to be seized and retained if the CE reasonably suspects that the remotely piloted aircraft has been operated in contravention of section 87A or affords evidence as to the commission of an offence against that section.

(2) If the Magistrates Court, on application by the CE, or any court hearing proceedings for an offence against section 87A, finds that a remotely piloted aircraft seized under subsection (1) (a *seized remotely piloted aircraft*) was the subject of an offence against section 87A, the court may, by order, forfeit the seized remotely piloted aircraft to the Crown.

(3) A seized remotely piloted aircraft that is the subject of an order for forfeiture under this section may be sold, destroyed or otherwise disposed of as the CE directs.

- 5 (4) Subject to subsection (5), if a seized remotely piloted aircraft has not been forfeited to the Crown in proceedings commenced within the prescribed period after its seizure, a person from whose lawful possession the remotely piloted aircraft was seized, or a person with legal title to it, is entitled to recover the seized remotely piloted aircraft from the CE (if necessary, by action in a court of competent jurisdiction).
- 10 (5) Despite subsection (4), a court hearing proceedings under that subsection in relation to a seized remotely piloted aircraft may, if it thinks fit, make an order under subsection (2) for forfeiture of the seized remotely piloted aircraft to the Crown.
- (6) Nothing in this section affects the operation of the *Criminal Assets Confiscation Act 2005*.
- 15 (7) In this section—
aircraft has the meaning given by section 87A(2);
prescribed period means 2 years or such longer period as the Magistrates Court may, on application by the CE, allow.

Schedule 1—Related amendment and transitional provisions

Part 1—Amendment of *Public Sector Act 2009*

20 **1—Amendment of section 59—Right of review**

Section 59(2)—after paragraph (b) insert:

- 25 (ba) to a decision by the CE of the *Correctional Services Act 1982* to refuse an application in accordance with section 85CB(4) of that Act (to the extent that the refusal of the application involves an employment decision for the purposes of this Act); or

Part 2—Transitional provisions

2—Visiting inspectors

A visiting inspector holding office on the commencement of this clause will cease to hold office on that commencement.

30 **3—Allowances and expenses of members of Parole Board to continue**

On the commencement of this clause, the allowances and expenses payable to a member of the Parole Board will continue to be determined in accordance with the *Correctional Services Act 1982* as if this Act had not been enacted until any required determinations of the Remuneration Tribunal have come into operation.

35 **4—Review of release on parole relating to prisoners of a prescribed class**

- (1) The amendments to the *Correctional Services Act 1982* made by sections 27(4) and (6) to (8) (inclusive), 34 and 35 of this Act do not apply to a prisoner of a prescribed class if, prior to the commencement of this clause, the prisoner has been released on parole.

(2) However, if, after the commencement of this clause, the release on parole of a prisoner of a prescribed class is cancelled, the amendments to the *Correctional Services Act 1982* made by sections 27(4) and (6) to (8) (inclusive), 34 and 35 of this Act will apply to the prisoner (including any application for release on parole made by the prisoner after that commencement).

(3) For the purposes of this clause—

prisoner of a prescribed class has the same meaning as in Part 6 Division 4 of the *Correctional Services Act 1982* (as amended by section 35 of this Act).

5—General

(1) An amendment effected by a provision of this Act (other than a provision referred to in clause 4) applies in relation to a prisoner serving a sentence of imprisonment or on parole on or after the commencement of the provision (regardless of when the prisoner was sentenced).

(2) However, section 68(1aa)(b)(i) of the *Correctional Services Act 1982* (as inserted by section 28(1) of this Act) does not affect the conditions of parole of a prisoner released on parole prior to the commencement of section 28(1).

6—Other matters

To avoid doubt, Part 6A of the *Correctional Services Act 1982* (as inserted by section 36 of this Act) applies on and after the commencement of this clause to a person appointed as an officer or employee of the Department (regardless of when the officer or employee was appointed).