

## House of Assembly

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South Australia

# Correctional Services (Miscellaneous) Amendment Bill 2012

A BILL FOR

An Act to amend the *Correctional Services Act 1982*; and to make a related amendment to the *Summary Offences Act 1953*.

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Part 1—Amendment of *Summary Offences Act 1953*

- 1 Amendment of section 15—Offensive weapons etc

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- 2 Transitional provision

**The Parliament of South Australia enacts as follows:**

**Part 1—Preliminary**

**1—Short title**

This Act may be cited as the *Correctional Services (Miscellaneous) Amendment Act 2012*.

**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 section 4—Interpretation

- (1) Section 4(1), definition of *the Chief Executive Officer*—delete the definition and substitute:

*CE* means the person holding or acting in the position of chief executive of the Department;

- (2) Section 4(1)—after the definition of *correctional institution* insert:

*correctional services dog* means a dog that has completed training of a kind approved by the CE for the purposes of this Act;

- (3) Section 4(1), definition of *designated condition*—delete the definition

- (4) Section 4(1)—after the definition of *prisoner* insert:

*probation and parole hostel* means premises declared by the Minister under section 17E to be a probation and parole hostel;

### 5—Amendment of section 5—Victims Register

Section 5—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE

### 6—Amendment of section 7—Power of Minister and CE to delegate

Section 7—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE

### 7—Amendment of section 9—CE's annual report

Section 9(1)—delete subsection (1) and substitute:

- (1) The CE must, not later than 31 October in each year, submit to the Minister a report on—
- (a) the operation of this Act and the work of the Department for the financial year ending on the preceding 30 June; and
  - (b) any other matter as the Minister may direct.

### 8—Amendment of section 22—Assignment of prisoners to particular correctional institutions

Section 22—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE

**9—Amendment of section 23—Initial and periodic assessment of prisoners**

Section 23—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE

**10—Amendment of section 24—CE has custody of prisoners**

Section 24—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE

**11—Amendment of section 25—Transfer of prisoners**

Section 25—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE

**12—Amendment of section 27—Leave of absence from prison**

- (1) Section 27—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE

- (2) Section 27(4)—delete "member of the police force" and substitute:

police officer

**13—Amendment of section 27A—Interstate leave of absence**

- (1) Section 27A—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE

- (2) Section 27A(2)(c)(ii)—delete "member of the police force" and substitute:

police officer

**14—Amendment of section 28—Removal of prisoner for criminal investigation, attendance in court etc**

- (1) Section 28(2)—delete "manager of the correctional institution in which the prisoner is being detained" and substitute:

CE

- (2) Section 28(4)—delete subsection (4) and substitute:

(4) If a prisoner—

(a) has been charged with an offence; or

(b) is suspected on reasonable grounds of—

(i) having committed an offence; or

(ii) having knowledge or information that might assist in the prevention or investigation of an offence,

the CE must, at the request of a police officer, release the prisoner into the custody of the police officer for the purposes of investigation of the offence, obtaining evidence as to the commission of the offence or identifying the prisoner as the person who committed the offence, in accordance with law.

**15—Amendment of section 29—Work by prisoners**

- (1) Section 29(1)—delete "manager" and substitute:

CE

- (2) Section 29(2)—delete "manager" wherever occurring and substitute in each case:

CE

- (3) Section 29(4)—delete "A manager" and substitute:

The CE

- (4) Section 29(5)—delete "manager" and substitute:

CE

**16—Amendment of section 30—Prison education**

Section 30—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE

**17—Amendment of section 31—Prisoner allowances and other money**

- (1) Section 31(1)—delete "Minister with the approval of the Treasurer" and substitute:

CE

- (2) Section 31(2)—delete "Minister with the approval of the Treasurer" and substitute:

CE

- (3) Section 31(2a)—delete "Minister" and substitute:

CE

- (4) Section 31(2a)—delete ", at rates approved by the Treasurer,"

- (5) Section 31(2a)—delete "manager of the prison" and substitute:

CE

- (6) Section 31(3)—delete "Minister" and substitute:

CE

- (7) Section 31(4)—delete "manager of the prison" and substitute:

CE

- (8) Section 31(4a)—delete "manager of a prison" and substitute:

CE

- (9) Section 31(4b)—delete "manager of the prison" and substitute:

CE

- (10) Section 31(5)—delete "Minister" and substitute:  
CE
- (11) Section 31(5a)—delete "The manager of a correctional institution" and substitute:  
Subject to subsections (5b) and (5c), the CE
- (12) Section 31—after subsection (5a) insert:
- (5b) A person who has been released from prison may not, without the approval of the CE, within a period of 12 months of release from prison, give money to a prisoner or deposit money in any account kept in the name of a prisoner.
- (5c) If a prisoner receives money in contravention of subsection (5b), the CE must make reasonable efforts to return the money to the person who made the payment.
- (13) Section 31(6)—delete "manager of a correctional institution may, on the direction of the Chief Executive Officer," and substitute:  
CE may
- (14) Section 31(6)—delete "Chief Executive Officer" second occurring and substitute:  
CE
- (15) Section 31(6a)—delete "manager of a correctional institution" and substitute:  
CE
- (16) Section 31(6a)—delete "manager" second occurring and substitute:  
CE
- (17) Section 31(6a)—delete "calculated in accordance with the Minister's directions" and substitute:  
determined by the CE
- (18) Section 31(6c)—delete "manager" and substitute:  
CE
- (19) Section 31(7)—delete "manager of the correctional institution" and substitute:  
CE
- (20) Section 31(7)—delete "manager" second occurring and substitute:  
CE

### **18—Substitution of section 32**

Section 32—delete the section and substitute:

#### **32—CE may sell items of personal use to prisoners**

- (1) The CE may sell any items of personal use or consumption that the CE thinks fit to prisoners.

- (2) Withdrawals of money from any account held in the name of a prisoner, at the discretion of the CE in accordance with section 31, may be made for the purchase of items for sale under this section.
- (3) The CE is authorised—
  - (a) in selling items under this section, to set prices that, in the opinion of the CE, reflect the costs associated with selling the items; and
  - (b) if a surplus arises from time to time in selling items under this section, to retain the surplus and deposit it in the account established under section 32A.

### **32A—Prisoner Amenity Account**

- (1) The *Prisoner Amenity Account* is established.
- (2) The CE will be responsible for the administration of the account.
- (3) The account will consist of—
  - (a) any surplus deposited from time to time under section 32(3)(b); and
  - (b) any other money that the CE thinks may be appropriately deposited in the account from time to time.
- (4) The CE may apply any money standing to the credit of the account towards the provision of amenities to prisoners.

### **19—Amendment of section 33—Prisoners' mail**

- (1) Section 33—delete "the manager" wherever occurring and substitute in each case:  
the CE
- (2) Section 33(4)—delete "A manager" and substitute:  
The CE
- (3) Section 33(7)—after paragraph (b) insert:  
(ba) to the Health and Community Services Complaints Commissioner; or
- (4) Section 33(10)(c)—after "money" insert:  
, subject to subsection (10a)
- (5) Section 33—after subsection (10) insert:  
(10a) If a sum of money referred to in subsection (10)(c) is in a letter sent to a prisoner by a person who has been released from prison within a period of 12 months before the date of receipt of the letter, the CE must return the money to the sender.
- (6) Section 33(12)—delete "The manager" and substitute:  
The CE



- (7) Section 33(14), definition of *authorised officer*—delete "Chief Executive Officer" and substitute:

CE

**20—Amendment of section 33A—Prisoners' goods**

Section 33A—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE

**21—Amendment of section 34—Prisoners' rights to have visitors**

- (1) Section 34(1)—delete "A prisoner" and substitute:

Subject to this section, a prisoner

- (2) Section 34(2)—delete "A remand prisoner" and substitute:

Subject to this section, a remand prisoner

- (3) Section 34(3)—delete "The manager of a correctional institution" and substitute:

The CE

- (4) Section 34(3)(b)—delete "the manager" wherever occurring and substitute in each case:

the CE

- (5) Section 34—after subsection (3) insert:

- (4) The following restrictions apply to a visit to a prisoner (including a remand prisoner) under this section:

- (a) a person may not visit a prisoner unless the person provides such evidence as the CE thinks appropriate as to the person's identity;
- (b) a person who visits a prisoner may see and speak with the prisoner but is not permitted to touch the prisoner, unless the visit is part of a contact visiting program approved by the CE;
- (c) a person who has been released from prison may not, without the approval of the CE, within a period of 12 months of the person's release from prison, visit a prisoner;
- (d) a person under the age of 18 years may not, without the approval of the CE, visit a prisoner if any part of the imprisonment for which the prisoner was sentenced is in relation to a child sexual offence.

## 22—Insertion of section 35A

After section 35 insert:

### 35A—Power to monitor or record prisoner communication

- (1) Subject to this section, the CE may monitor or record a communication between a prisoner and another person.
- (2) The parties to a communication that may be monitored or recorded must, at the commencement of the communication, be informed of that fact.
- (3) The CE must not monitor or record a communication between a prisoner and—
  - (a) a legal practitioner who represents the prisoner, or who is communicating with the prisoner for the purpose of determining whether or not to represent the prisoner; or
  - (b) the Ombudsman; or
  - (c) the Health and Community Services Complaints Commissioner; or
  - (d) a Member of Parliament; or
  - (e) a Visiting Tribunal; or
  - (f) an inspector of the correctional institution in which the prisoner is detained; or
  - (g) a person or body of a class designated by the CE.
- (4) The exemption under subsection (3) applies only if the CE has, before the communication occurs, authorised the communication.
- (5) If a communication monitored or recorded under this section reveals information about an offence, the CE must give the information to the Commissioner of Police.
- (6) In this section—

**communication** includes conversation and a message, and any part of a conversation or message, whether—

- (a) in the form of—
  - (i) speech, music or other sounds; or
  - (ii) data; or
  - (iii) text; or
  - (iv) visual images, whether or not animated; or
  - (v) signals; or
- (b) in any other form or in any combination of forms.

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

Section 36—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE

**24—Amendment of section 37—Search of prisoners**

- (1) Section 37(1)—delete "manager of a correctional institution" and substitute:

CE

- (2) Section 37(1)(a)—delete "the correctional institution" and substitute:

a correctional institution

- (3) Section 37(1)(b)—delete "manager" and substitute:

CE

- (4) Section 37(1a)—delete "manager of a correctional institution" and substitute:

CE

- (5) Section 37(1a)—delete "manager" second occurring and substitute:

CE

- (6) Section 37(1a)(a)—before "institution" first occurring insert:

correctional

**25—Amendment of section 37AA—Drug testing of prisoners**

- (1) Section 37AA—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE

- (2) Section 37AA(1)—delete "manager of a correctional institution" and substitute:

CE

- (3) Section 37AA(1)(a)—delete "the institution" and substitute:

a correctional institution

- (4) Section 37AA(1)(b)—delete "the institution" and substitute:

a correctional institution

- (5) Section 37AA(1)(c)—delete paragraph (c)

- (6) Section 37AA(1)(d)—delete "the correctional institution" and substitute:

a correctional institution

- (7) Section 37AA—after subsection (1) insert:

(1a) The manager of a correctional institution may require a prisoner to undergo a drug test—

- (a) if the manager reasonably suspects that the prisoner has unlawfully used a drug; or

(b) in any other circumstance that the CE thinks fit.

**26—Amendment of section 37A—Release on home detention**

Section 37A—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE

**27—Amendment of section 37B—Authorised officers**

Section 37B(2)—delete "Chief Executive Officer" and substitute:

CE

**28—Amendment of section 37C—Revocation of release**

(1) Section 37C—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE

(2) Section 37C(3)—delete "member of the police force" and substitute:

police officer

**29—Amendment of section 38—Release of prisoner from prison or home detention**

Section 38—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE

**30—Amendment of section 39A—Delivery of property and money to prisoner on release**

Section 39A—delete "Chief Executive Officer" and substitute:

CE

**31—Amendment of section 39B—Manner in which former prisoner's personal property is to be dealt with**

(1) Section 39B(1)—delete "manager of the correctional institution" and substitute:

CE

(2) Section 39B(2)—delete "manager of the correctional institution" and substitute:

CE

(3) Section 39B(2)(a)—delete "manager" wherever occurring and substitute in each case:

CE

(4) Section 39B(2)(b)—delete "manager" wherever occurring and substitute in each case:

CE

**32—Amendment of section 42A—Minor breach of prison regulations**

- (1) Section 42A(1)—delete "manager of the correctional institution" and substitute:  
CE
- (2) Section 42A(1)—delete "manager" second occurring and substitute:  
CE
- (3) Section 42A(1)(d)—delete "manager" and substitute:  
CE
- (4) Section 42A(2)—delete "manager" wherever occurring and substitute in each case:  
CE
- (5) Section 42A(2)—delete "manager's" and substitute:  
CE's

**33—Amendment of section 43—CE may deal with breach of prison regulations**

- (1) Section 43(1)—delete "manager of the correctional institution" and substitute:  
CE
- (2) Section 43(2)—delete "manager" wherever occurring and substitute in each case:  
CE
- (3) Section 43(3)—delete "manager" wherever occurring and substitute in each case:  
CE

**34—Amendment of section 44—CE may refer matter to Visiting Tribunal**

- (1) Section 44(1)—delete "manager of a correctional institution" and substitute:  
CE
- (2) Section 44(2)—delete "manager" and substitute:  
CE
- (3) Section 44(4)—delete "manager" and substitute:  
CE

**35—Amendment of section 45—Procedure at inquiry**

Section 45—delete "manager" wherever occurring and substitute in each case:  
CE

**36—Amendment of section 46—Appeal against penalty imposed by CE**

- (1) Section 46(1)—delete "a manager" and substitute:  
the CE
- (2) Section 46(4)(b)—delete "manager" and substitute:  
CE

**37—Repeal of section 49**

Section 49—delete the section

**38—Amendment of section 50A—Prisoner must comply with conditions to which temporary leave of absence is subject**

Section 50A(1)—delete "Chief Executive Officer" and substitute:

CE

**39—Amendment of section 51—Offences by persons other than prisoners**

(1) Section 51—delete "manager" wherever occurring and substitute in each case:

CE

(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—

(i) a controlled drug within the meaning of the *Controlled Substances Act 1984*; or

(ii) an item of a kind prescribed by the regulations for the purposes of this subparagraph—

imprisonment for 5 years;

(3) Section 51(2)—delete subsection (2)

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

(1) Section 66(2)—before paragraph (a) insert:

(aa) a prisoner if any part of the imprisonment for which the person was sentenced is in respect of an offence committed while the prisoner was on parole; or

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

(ad) a prisoner who has been returned to prison under section 74 for breach of a parole condition; or

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

(1) Section 67—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE

(2) Section 67(4)(f)(ii)—delete subparagraph (ii) and substitute:

(ii) from the CE; and

(3) Section 67—after subsection (7) insert:

- (7a) If the Governor does not approve the recommendation of the Board that a prisoner be released on parole, the Minister must, within 30 days after being requested to do so by the Board, advise the Board of matters (if any) that the Minister believes might assist the prisoner in making any further application for parole.
- (7b) The Board must not disclose advice given by the Minister under subsection (7a).
- (7c) The Minister and the Board cannot be required to disclose advice given by the Minister under subsection (7a) by any law of the State or for the purposes of any proceedings before a court, tribunal or any other body.

#### **42—Amendment of section 68—Conditions of release on parole**

(1) Section 68(1)—delete subsection (1) and substitute:

- (1) The release on parole of a prisoner serving a sentence of life imprisonment—
  - (a) is subject to each of the following conditions:
    - (i) a condition prohibiting the prisoner from committing any offence;
    - (ii) a condition prohibiting the prisoner from possessing an offensive weapon unless the Board permits the prisoner to possess such a weapon and the prisoner complies with the terms and conditions of the permission;
    - (iii) until the expiration of the period of parole (or for such lesser period as may be specified in the order of the Governor under section 67)—a condition that the prisoner must—
      - (A) be under the supervision of a community corrections officer; and
      - (B) obey the reasonable directions of the community corrections officer; and
  - (b) may be subject to any other condition recommended by the Board and approved by the Governor to be effective until the expiration of the period of parole (or for such lesser period as may be specified in the Governor's order), including a condition that—
    - (i) for the period of up to 1 year commencing on the day on which the prisoner is released—the prisoner must—

- (A) reside at specified premises (including premises declared under this Act to be a probation and parole hostel or a prison); and
    - (B) undertake at specified places such activities and programs as determined by the Board from time to time to assist in the reintegration of the prisoner into the community; and
  - (ii) the prisoner be monitored by use of an electronic device.
- (1aa) The release on parole of a prisoner (other than a prisoner serving a sentence of life imprisonment)—
  - (a) is subject to each of the following conditions:
    - (i) a condition prohibiting the prisoner from committing any offence;
    - (ii) a condition prohibiting the prisoner from possessing an offensive weapon unless the Board permits the prisoner to possess such a weapon and the prisoner complies with the terms and conditions of the permission;
    - (iii) until the expiration of the period of parole (or such earlier date as is specified by the Board)—a condition that the prisoner must—
      - (A) be under the supervision of a community corrections officer; and
      - (B) obey the reasonable directions of the community corrections officer; and
  - (b) 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(1a)—after paragraph (c) insert:
  - (d) a condition requiring the prisoner, on making an application for employment, to provide the prospective employer with a report about the prisoner's criminal history.
- (3) Section 68(3)—delete subsection (3)

**43—Amendment of section 71—Variation or revocation of parole conditions**

Section 71(4)—delete "that community corrections officer" and substitute:

the CE



**44—Amendment of section 72—Discharge from parole of prisoners other than life prisoners**

Section 72(2)—delete "that community corrections officer" and substitute:  
the CE

**45—Repeal of section 73**

Section 73—delete the section

**46—Amendment of section 74—Cancellation of release on parole by Board for breach of conditions**

- (1) Section 74(1)—delete subsection (1) and substitute:
  - (1) If the Board is satisfied that a person who has been released on parole has, while on parole, breached a condition of the parole, 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(2)—delete "that community corrections officer" second occurring and substitute:

the CE
- (3) Section 74(4)—delete "(not being a designated condition)"
- (4) Section 74—after subsection (5) insert:
  - (6) Any period for which the person is detained in custody or in prison after breaching the condition 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 sentence is to be taken to have commenced will be fixed accordingly).

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

- (1) Section 74AA(1)—delete "(not being a designated condition)"
- (2) Section 74AA(4)(b)(ii)—delete "Chief Executive Officer" and substitute:

CE

**48—Amendment of section 75—Automatic cancellation of parole on imprisonment for offence committed while on parole**

Section 75—after subsection (2) insert:

- (3) Any period for which the person is detained in custody or in prison after committing the offence 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 sentence is to be taken to have commenced will be fixed accordingly).

## 49—Substitution of section 76

Section 76—delete the section and substitute:

### 76—Apprehension etc of parolees on Board warrant

- (1) If the presiding member or deputy presiding member of the Board suspects on reasonable grounds that a person who has been released on parole may have breached a condition of parole, the presiding member or deputy presiding member may—
  - (a) summon the person to attend before the Board; or
  - (b) for the purpose of bringing the person before the Board, issue a warrant for the arrest of the person.
- (2) If a member of the Board (other than the presiding member or deputy presiding member) suspects on reasonable grounds that a person who has been released on parole may have breached a condition of parole—
  - (a) the member may summon the person to attend before the Board; or
  - (b) for the purpose of bringing the person before the Board, the member may apply to—
    - (i) the presiding member or deputy presiding member of the Board for the issue of a warrant for the arrest of the person; or
    - (ii) a magistrate for the issue of a warrant for the arrest of the person.
- (3) If a person fails to comply with a summons to attend before the Board issued under this section—
  - (a) the Board may proceed to deal with the matter in the person's absence; or
  - (b) for the purpose of bringing the person before the Board, the presiding member or deputy presiding member may issue a warrant for the arrest of the person.
- (4) A warrant issued under this section authorises the detention of the person in custody pending appearance before the Board.
- (5) A member of the Board may apply to a magistrate for a warrant for the arrest and return to prison of a person whose release on parole has been cancelled.
- (6) A magistrate must, on application under this section, issue a warrant for the arrest of a person or for the arrest and return to prison of a person (as the case may require) unless it is apparent, on the face of the application, that no reasonable grounds exist for the issue of the warrant.
- (7) The Board may, if it thinks there is good reason to do so, by order, cancel a warrant issued under this section that has not been executed.

### **76A—Apprehension etc of parolees on application of CE**

- (1) If the CE or a police officer suspects on reasonable grounds that a person who has been released on parole may have breached a condition of parole, the CE or police officer may apply to—
  - (a) the presiding member or deputy presiding member of the Board; or
  - (b) if, after making reasonable efforts to contact the presiding member and deputy presiding member, neither is available—a magistrate,for the issue of a warrant for the arrest of the person.
- (2) A warrant issued under this section authorises the detention of the person in custody pending appearance before the Board.
- (3) A magistrate must, on application under this section, issue a warrant for the arrest of a person or for the arrest and return to prison of a person (as the case may require) unless it is apparent, on the face of the application, that no reasonable grounds exist for the issue of the warrant.
- (4) If a warrant is issued by a magistrate under this section—
  - (a) the CE or police officer (as the case requires) must, within 2 working days of the warrant being issued, provide the Board with a written report on the matter; and
  - (b) the warrant will expire at the end of the period of 2 working days after the day on which the report is provided to the Board; and
  - (c) the presiding member or deputy presiding member of the Board must consider the report within 2 working days after receipt and—
    - (i) issue a fresh warrant for the continued detention of the person pending appearance before the Board; or
    - (ii) cancel the warrant, order that the person be released from custody and, if appearance before the Board is required, issue a summons for the person to appear before the Board.
- (5) If a warrant expires under subsection (4)(b) or a fresh warrant is not issued under subsection (4)(c)(i), the person must be released from detention.
- (6) The Board may, if it thinks there is good reason to do so, by order, cancel a warrant issued under this section that has not been executed.

### **76B—Arrest of parolee by police officer**

- (1) A police officer may, on the authorisation of a senior police officer, without warrant, arrest a person who has been released on parole if the police officer suspects on reasonable grounds that the person has, while on parole, breached a condition of parole and the police officer is satisfied that—
  - (a) the breach is not trivial; and
  - (b) unless the person is immediately arrested, the person is likely to continue to breach conditions of parole, commit further breaches or commit an offence.
- (2) If a person is arrested under subsection (1)—
  - (a) the person must be taken to the nearest police station; and
  - (b) within 12 hours of the arrest—the presiding member or deputy presiding member of the Board (or, if neither of those members is available, a magistrate) must be notified of the arrest; and
  - (c) as soon as is reasonably practicable after being so notified—the presiding member or deputy presiding member (or the magistrate) (as the case requires) must, by order, direct that the person—
    - (i) be detained in a correctional institution pending attendance before the Board; or
    - (ii) be released and summoned to attend before the Board; or
    - (iii) be released from detention.
- (3) In this section—

*senior police officer* means a police officer of or above the rank of Inspector.

### **50—Amendment of section 77—Proceedings before Board**

- (1) Section 77—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE
- (2) Section 77(2)(b)—delete "member of the police force" and substitute:

police officer

## 51—Insertion of Part 7

After section 77 insert:

### **Part 7—Prisoner compensation quarantine funds**

#### **Division 1—Preliminary**

##### **78—Interpretation**

(1) In this Part—

*agreement* includes compromise and acceptance of an offer of compromise;

*award of damages* means damages—

- (a) awarded pursuant to a judgment of a court; or
- (b) paid or payable in accordance with an agreement between the parties to the agreement;

*civil wrong* means an act or omission of the State that—

- (a) gives rise to a claim by a prisoner against the State; and
- (b) occurred while the claimant was a prisoner; and
- (c) arose out of and in connection with his or her detention in a correctional institution;

*claim* means a claim brought in tort, in contract or under a statute or otherwise;

*criminal act*—see subsections (2) and (3);

*damages* includes any form of monetary compensation;

*initial quarantine period*, in relation to a prisoner compensation quarantine fund, means the period of 12 months from the date on which the notice in respect of the fund under section 81E is published;

*prisoner* includes a former prisoner, but does not include a remand prisoner;

*prisoner compensation quarantine fund*—see section 81B(4);

*quarantine period*, in relation to a prisoner compensation quarantine fund relating to a prisoner, means—

- (a) the initial quarantine period; and
- (b) the period ending on the final determination of all legal proceedings by victims against the prisoner that are commenced within the initial quarantine period and notified to the CE under section 81J(1);

*State* includes—

- (a) the CE; and

(b) an officer of the Department;

*victim* includes a member of a victim's immediate family.

- (2) In this Part, a *criminal act* means conduct that, on the balance of probabilities, would constitute an offence.
- (3) The definition of criminal act applies whether or not a prisoner whose conduct is alleged to constitute an offence has been, will be, or is capable of being, proceeded against or convicted of the offence.

### **79—Application**

- (1) This Part applies to any award of damages to a prisoner in respect of a claim made by or on behalf of the prisoner against the State for a civil wrong.
- (2) This Part does not apply to an award of damages to a prisoner in respect of a claim of false imprisonment.
- (3) This Part does not affect (and is subject to) any obligation imposed on the State or the CE by or under an enactment of the State or the Commonwealth to pay some other person money owed or due to or held on account of the prisoner.

### **Division 2—Award of damages to prisoners**

#### **80—Agreements must be approved by court**

An agreement between the State and a prisoner for the payment of damages for a civil wrong is of no effect until it has been approved by a court of competent jurisdiction.

#### **81—Determination of amounts for medical and legal costs**

- (1) An award of damages for a civil wrong must specify the amounts (if any) awarded or agreed in respect of—
  - (a) existing and future medical costs; and
  - (b) legal costs.
- (2) If the parties to an agreement between the State and a prisoner for the payment of damages for a civil wrong are unable to agree on an amount to be specified under subsection (1), the court must determine the amounts to be specified in the agreement for the purposes of that subsection, and the agreement is varied accordingly.

#### **81A—Matters to be considered by court**

- (1) This section applies to—
  - (a) an award of damages by a court for a civil wrong; and
  - (b) an agreement between the State and a prisoner for the payment of damages for a civil wrong.

- (2) The court must not make the award, or approve the agreement, unless the court is satisfied—
  - (a) that section 81(1) has been complied with; and
  - (b) that, in all the circumstances, the amounts specified for the purposes of section 81(1) are appropriate portions of the total amount payable under the award or agreement having regard to—
    - (i) the claim; and
    - (ii) the loss or damage suffered by the prisoner; and
    - (iii) the need to ensure as far as possible that victims are not deprived of an opportunity to enforce a successful claim for damages against a prisoner.
- (3) If legal costs are to be assessed and paid under an order made on taxation, the legal costs are taken under this Part to be specified in the award of damages.

### **Division 3—Payment of money to prisoner compensation quarantine fund**

#### **81B—Damages awarded to prisoner to be paid to prisoner compensation quarantine fund**

- (1) The amount of any award of damages to a prisoner in respect of a civil wrong must be paid by the State to the CE immediately after the damages are awarded.
- (2) The amount to be paid under subsection (1) does not include any amount specified in the award of damages made or approved by the court as attributable to—
  - (a) existing and future medical costs; and
  - (b) legal costs.
- (3) An amount paid to the CE under subsection (1)—
  - (a) must be held in trust for the prisoner by the CE during the quarantine period and until the final payment is made out of the prisoner compensation quarantine fund in accordance with this Part; and
  - (b) may be paid out of the prisoner compensation quarantine fund only as authorised by this Part.
- (4) Money held by the CE in trust for a prisoner under this Part constitutes a *prisoner compensation quarantine fund*.
- (5) This section does not apply if the amount that would, but for this subsection, be required to be paid to the CE under subsection (1) does not exceed \$10 000.

### **81C—Prisoner compensation quarantine funds**

- (1) A prisoner compensation quarantine fund consists of—
  - (a) an amount held by the CE in trust for a prisoner under this Part; and
  - (b) any interest earned on that money.
- (2) The CE must deposit all money in a prisoner compensation quarantine fund into an interest-bearing account with an ADI.
- (3) The following may be paid out of the prisoner compensation quarantine fund:
  - (a) amounts required to be paid out to a person in accordance with section 81L or 81M;
  - (b) amounts required to be paid out in accordance with section 81O in respect of the prisoner;
  - (c) the costs of administration of the fund (including any taxes payable in respect of the fund).
- (4) The CE may only pay out of a prisoner compensation quarantine fund the costs of administration of the fund if that payment would not decrease the level of the fund below the amount of damages paid into the fund.
- (5) The CE is responsible for the administration of the prisoner compensation quarantine fund.

### **Division 4—Notice of prisoner compensation quarantine fund**

#### **81D—Victim may ask to be notified of award of damages to prisoner**

- (1) A victim in relation to a criminal act by a prisoner may apply to the CE to be notified of an award of damages to the prisoner.
- (2) An application must be in writing.

#### **81E—Notice to victims to be published**

- (1) The CE must publish a notice advising of an award of damages to a prisoner as soon as practicable after the amount of damages is paid to the CE under section 81B.
- (2) The notice must—
  - (a) state that the award of damages has been made to the prisoner in a claim against the State (but must not state the amount of the award of damages); and
  - (b) state the name of the prisoner and any other name by which the prisoner is known; and



- (c) state that money in that award has been paid to a prisoner compensation quarantine fund; and
  - (d) state the initial quarantine period for that fund; and
  - (e) invite victims in relation to criminal acts of the prisoner to seek further information from the CE about the fund; and
  - (f) contain contact details for seeking the further information.
- (3) The notice must be published in—
- (a) the Gazette; and
  - (b) a daily newspaper circulating generally in South Australia; and
  - (c) a daily newspaper circulating generally in Australia.
- (4) The CE may also—
- (a) publish the notice on the Internet; and
  - (b) forward a copy of the notice to any victim who has applied to the CE under section 81D to be notified of an award of damages in respect of the prisoner.

### **81F—Applications for information**

- (1) A victim in relation to a criminal act by a prisoner may apply to the CE for information about a prisoner compensation quarantine fund with respect to that prisoner within the initial quarantine period in respect of that fund.
- (2) The CE may, if satisfied that the applicant is a victim in relation to a criminal act of a prisoner, disclose, by written notice, the following information to the applicant:
- (a) the amount of the award paid into the prisoner compensation quarantine fund in respect of the prisoner;
  - (b) the start of the initial quarantine period;
  - (c) when the initial quarantine period will end if no legal proceedings are notified under section 81J(1);
  - (d) whether the CE has been notified of any other claim in respect of the prisoner and, if so, the number of other such claims;
  - (e) any other information that the CE believes, from time to time, will assist the applicant to make an informed decision as to whether to bring proceedings against the prisoner.
- (3) The notice must include a statement advising the applicant—
- (a) that the information is disclosed solely for use by the applicant in deciding whether or not to bring legal proceedings; and

- (b) that the applicant should consider seeking independent legal advice; and
- (c) that the information does not constitute legal advice or a recommendation to bring or not to bring legal proceedings; and
- (d) of the effect of sections 81H and 81I.

### **81G—Disclosure of information by CE authorised**

The provision of information by the CE under section 81E or 81F—

- (a) is authorised despite any agreement to which the CE or the State is a party that would otherwise prohibit or restrict the disclosure of information concerning an award of damages; and
- (b) does not constitute a contravention of such an agreement.

### **81H—Confidentiality of information**

A person to whom information is provided under section 81E or 81F by the CE must treat the information in an appropriate manner that respects the confidentiality of the information.

### **81I—Offence to disclose information**

- (1) A person to whom information is disclosed under section 81E or 81F must not disclose the information to any other person except for the purposes of, or in connection with, the taking and determination of legal proceedings by the person against the prisoner concerned.  
Maximum penalty: \$10 000.
- (2) A person (other than a person to whom information is disclosed under section 81E or 81F) who becomes aware of any information disclosed to a person under either of those sections must not use that information or disclose it to any person.  
Maximum penalty: \$10 000.
- (3) Nothing in subsection (1) prevents a person from disclosing information to a lawyer in the course of consulting the lawyer for legal advice.
- (4) Subsections (1) and (2) do not apply to information that is in the public domain.

### **81J—Notice to CE by victim**

- (1) A victim who, within the initial quarantine period for a prisoner compensation quarantine fund relating to a prisoner, commences legal proceedings for the recovery of damages against the prisoner in respect of a criminal act by the prisoner may give written notice to the CE of that fact.

- (2) A victim may, within 14 days after the final determination of legal proceedings notified by the victim under subsection (1), give the CE written notice of the final determination of, and any amount (including any legal costs) awarded to the victim in, those proceedings.

### **81K—Notice to CE by creditors**

- (1) A person who has a judgment debt against the prisoner, or is entitled under any enactment to payment of an amount by the prisoner, and who has not recovered that judgment debt, or been paid that amount, may give notice to the CE of that fact.
- (2) A notice under subsection (1) must—
  - (a) be in writing; and
  - (b) be accompanied by a copy of any relevant document that substantiates the facts set out in the notice; and
  - (c) be given during the quarantine period.
- (3) The CE may require a person who has given a notice under this section to provide any further information that the CE reasonably requires to substantiate the facts set out in the notice.

## **Division 5—Payments out of prisoner compensation quarantine fund**

### **81L—Payments out of fund where legal proceedings notified**

- (1) This section applies if the CE has received a notice under section 81J(1) in respect of legal proceedings against a prisoner to whom a prisoner compensation quarantine fund relates.
- (2) The CE must not pay any money out of the prisoner compensation quarantine fund to any person until the end of the quarantine period for the fund.
- (3) The CE must, within 45 days after the end of the quarantine period, pay out of the prisoner compensation quarantine fund to the persons entitled to payment any amounts required to satisfy—
  - (a) any award (including any legal costs) against the prisoner that was notified to the CE under section 81J(2); and
  - (b) any judgment debt against, or entitlement to be paid by, the prisoner that was notified to the CE under section 81K,that the CE is satisfied is a valid claim on the prisoner.

- (4) If the amount in the prisoner compensation quarantine fund is not sufficient to pay the amounts required to be paid out under subsection (3), the CE must make payments from the fund under that subsection on a proportionate basis having regard to any priority of payment required by law.

**Example—**

The law may require priority to be given to payment of (for example) child support.

- (5) If any amount remains in the prisoner compensation quarantine fund after all amounts are paid out under subsection (3), the CE must, within or as soon as practicable after the end of the period of 45 days after the end of the quarantine period—
- (a) credit to the prisoner the remaining amount to an account kept in the prisoner's name in accordance with section 31; or
  - (b) if the prisoner has been discharged from prison—credit to the former prisoner the remaining amount to an account nominated by the former prisoner.

**81M—Payments out of fund where notice from creditor received**

- (1) This section applies if the CE has been given notice by a person under section 81K and has not been notified under section 81J(1) of legal proceedings against that prisoner.
- (2) The CE must not pay any money out of the prisoner compensation quarantine fund to any person until the end of the initial quarantine period for the fund.
- (3) The CE must, within 45 days after the end of the initial quarantine period, pay out of the prisoner compensation quarantine fund to the persons entitled to payment any amounts required to satisfy any judgment debt against, or entitlement to be paid by, the prisoner—
- (a) that was notified to the CE under section 81K during the initial quarantine period; and
  - (b) that the CE is satisfied is a valid claim on the prisoner.
- (4) If the amount in the prisoner compensation quarantine fund is not sufficient to pay the amounts required to be paid out under subsection (3), the CE must make payments from the fund under that subsection on a proportionate basis having regard to any priority of payment required by law.

**Example—**

The law may require priority to be given to payment of (for example) child support.

- (5) If any amount remains in the prisoner compensation quarantine fund after all amounts are paid out under subsection (3), the CE must, within or as soon as practicable after the end of the period of 45 days after the end of the initial quarantine period—
- (a) credit to the prisoner the remaining amount to an account kept in the prisoner's name in accordance with section 31; or
  - (b) if the prisoner has been discharged from prison—credit to the former prisoner the remaining amount to an account nominated by the former prisoner.

### **81N—Restriction not to affect payment of administration costs**

Sections 81L and 81M do not prevent the payment out of a prisoner compensation quarantine fund of any amount for the costs of administering the fund (including payment of taxes in respect of the fund) authorised under section 81C (and those costs are payable out of the fund before payment of any other amount under section 81L or 81M).

### **81O—Payments out of fund where no notice given**

- (1) This section applies if no notice is given to the CE under section 81J(1) or 81K in relation to the prisoner to whom a prisoner compensation quarantine fund relates within the initial quarantine period.
- (2) The CE must, within or as soon as practicable after the end of the period of 45 days after the end of the initial quarantine period—
- (a) credit to the prisoner the remaining amount to an account kept in the prisoner's name in accordance with section 31; or
  - (b) if the prisoner has been discharged from prison—credit to the former prisoner the remaining amount to an account nominated by the former prisoner.

### **81P—Payments taken to be payments at direction of prisoner**

The payment by the CE of an amount out of a prisoner compensation quarantine fund in accordance with this Part is taken to be a payment at the direction of the prisoner and operates as a discharge, to the extent of the payment, of any liability of the State or the CE to pay the amount to the prisoner as damages.

### **81Q—When are legal proceedings finally determined?**

- (1) For the purposes of this Part, legal proceedings are not finally determined if—
- (a) a period for bringing an appeal in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal); or
  - (b) an appeal in respect of the legal proceedings is pending.

- (2) However, if legal proceedings are settled or discontinued, they will be taken to be finally determined for the purposes of this Part.

## **Division 6—Miscellaneous**

### **81R—Offence to provide false or misleading information**

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided to the CE under this Part.

Maximum penalty:

- (a) if the person made the statement knowing that it was false or misleading—\$10 000;  
(b) in any other case—\$2 500.

### **52—Amendment of section 82—Unauthorised dealings with prisoners prohibited**

- (1) Section 82(1)—delete "Chief Executive Officer" and substitute:  
CE
- (2) Section 82(3)(b)—delete "member of the police force" and substitute:  
police officer

### **53—Amendment of section 83—CE may make rules**

- (1) Section 83(1)—delete "The manager of a correctional institution may, with the approval of the CE," and substitute:  
The CE may
- (2) Section 83(1)—delete "the institution" and substitute:  
a correctional institution
- (3) Section 83(2)—delete "A manager may, with the approval of the Chief Executive Officer," and substitute:  
The CE may

### **54—Substitution of section 84**

Section 84—delete the section and substitute:

### **84—Compliance with the execution of process**

Subject to this Act, the CE and the manager of a correctional institution must comply with any order or direction lawfully given by an officer of a court or police officer for the purposes of the due execution of any process or order of a court or magistrate or issued otherwise pursuant to law.

**55—Amendment of section 85—Execution of warrants**

- (1) Section 85—delete "Chief Executive Officer" and substitute:

CE

- (2) Section 85—delete "justice" and substitute:

magistrate

**56—Amendment of section 85A—Exclusion of persons from correctional institution**

Section 85A—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE

**57—Amendment of section 85B—Power of search and arrest of non-prisoners**

- (1) Section 85B(1)—delete "The manager of a correctional institution" and substitute:

The CE

- (2) Section 85B(1)(a)—delete "the institution" and substitute:

a correctional institution

- (3) Section 85B(2)—delete "the manager of the correctional institution" and substitute:

the CE

- (4) Section 85B—delete "the manager" wherever occurring and substitute in each case:

the CE

- (5) Section 85B—after subsection (13) insert:

- (14) To avoid doubt, a reference in this section to a correctional institution includes a reference to all of the land identified in a proclamation under section 18(1) relating to the institution.

**58—Amendment of section 85C—Confidentiality**

- (1) Section 85C—delete "divulge" and substitute:

disclose

- (2) Section 85C—after paragraph (b) insert:

- (ba) if, in the opinion of the CE, it is necessary to disclose the information in order to avert a serious risk to public safety; or

- (3) Section 85C—after paragraph (e) insert:

or

- (f) in accordance with subsection (2).

- (4) Section 85C—after its present contents as amended by this clause (now to be designated as subsection (1)) insert:
- (2) The Board must, in respect of a prisoner released on parole, notify the Commissioner of Police of—
    - (a) the place of residence of the parolee; and
    - (b) the conditions to which the release on parole is subject.

### **59—Insertion of section 85CA**

After section 85C insert:

#### **85CA—Disclosure of health information**

- (1) The—
  - (a) Chief Executive of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Health Care Act 2008*; and
  - (b) Chief Executive of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Mental Health Act 2009*,must disclose to the CE such personal information about a prisoner as is reasonably required for the treatment, care or rehabilitation of the prisoner.
- (2) Protocols or guidelines may be established for the purposes of this section.
- (3) In this section—

*personal information* means information or an opinion, whether true or not, relating to a prisoner whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

### **60—Amendment of section 85D—Release of information to registered victims etc**

Section 85D—delete "Chief Executive Officer" wherever occurring and substitute in each case:

CE

### **61—Amendment of section 86—Prison officers may use reasonable force in certain cases**

Section 86—delete "member of the police force" and substitute:

police officer



## 62—Insertion of sections 86A and 86B

After section 86 insert:

### 86A—Prison officer may carry prescribed weapon

- (1) The CE may authorise an officer or employee of the Department to carry a prescribed weapon while on duty for purposes specified by the CE.
- (2) An officer or employee authorised to carry a prescribed weapon under this section must comply with any requirements of the CE in relation to the handling, storage and responsible use of the weapon.
- (3) In this section—  
*prescribed weapon* means a weapon prescribed by the regulations for the purposes of this section.

### 86B—Use of correctional services dogs

- (1) The CE may authorise an officer or employee of the Department to use a correctional services dog at a correctional institution or probation and parole hostel to assist in the maintenance of the good order or security of the institution or hostel.
- (2) Without limiting subsection (1), a correctional services dog may be used for any of the following purposes:
  - (a) to carry out a search at a correctional institution or probation and parole hostel for any reason;
  - (b) to track an escaped prisoner;
  - (c) to patrol a correctional institution or probation and parole hostel;
  - (d) to restrain a prisoner;
  - (e) to assist a police officer in the execution of the police officer's functions at a correctional institution or probation and parole hostel.

## 63—Amendment of section 88B—Evidentiary provisions

- (1) Section 88B—delete "Chief Executive Officer" and substitute:  
CE
- (2) Section 88B—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
  - (2) In any proceedings, an apparently genuine document purporting to be a certificate signed by the CE (or a delegate of the CE), and certifying that a dog used during a specified period for a specified purpose under section 86B within a specified area, or at a specified correctional institution, was a correctional services dog constitutes proof, in the absence of proof to the contrary, of the matters so certified.

## **64—Amendment of section 89—Regulations**

- (1) Section 89(2)(g)—delete "manager of a correctional institution" and substitute:  
CE
- (2) Section 89(2)(i)—delete "members of the police force" and substitute:  
police officers
- (3) Section 89(2)—after paragraph (ja) insert:
  - (jb) prescribing matters to be included in applications and notices under Part 7; and
- (4) Section 89(3)(c)—delete "Chief Executive Officer" and substitute:  
CE

## **Schedule 1—Related amendment and transitional provision**

### **Part 1—Amendment of *Summary Offences Act 1953***

#### **1—Amendment of section 15—Offensive weapons etc**

Section 15(2a)—after paragraph (b) insert:

- (ba) an officer or employee of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Correctional Services Act 1982*, who has possession of, or uses, a prohibited weapon for the purpose or in the course of his or her duties as such an officer or employee;

### **Part 2—Transitional provision**

#### **2—Transitional provision**

- (1) Part 7 of the *Correctional Services Act 1982* (as inserted by section 51 of this Act) applies to an award of damages to a prisoner on or after the commencement of this clause in respect of a claim made by or on behalf of the prisoner against the State for a civil wrong regardless of when legal proceedings in respect of the civil wrong commenced.
- (2) Words used in subclause (1) have the same meaning as in Part 7 of the *Correctional Services Act 1982*.