

South Australia

**Correctional Services (Miscellaneous) Amendment
Bill 2017**

A BILL FOR

An Act to amend the *Correctional Services Act 1982*; and to make related amendments 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 <i>Correctional Services (Miscellaneous) Amendment Act 2017</i> .
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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 support the reintegration of prisoners, probationers and parolees with the community as part of their rehabilitation; and
- (h) to make provision in relation to the management of officers and employees.
- (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:
- 10
- (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;
- 15
- (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—
- 20
- (i) be evidence based; and
- (ii) be individually designed as much as reasonably practicable—
- 25
- (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
- 30
- (B) to address offending behaviours; and
- (C) to address the physical and mental health of the prisoner, probationer or parolee; and
- 35
- (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
- 40
- (iv) support a focus on connecting and reintegrating with the community; 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.

5 **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
- 10 (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

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

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

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

8—Substitution of Part 3 Division 2

20 Part 3 Division 2—delete Division 2 and substitute:

Division 2—Official inspectors

20—Official inspectors

- 25 (1) The Governor may appoint for each correctional institution such number of official inspectors as the Governor thinks necessary or desirable.
- (2) The Governor must, in making appointments under this section, ensure that—
 - (a) at least 1 official inspector for each correctional institution is an Aboriginal or Torres Strait Islander person; and
 - 30 (b) at least 1 official inspector for each correctional institution is a legal practitioner; and
 - (c) at least 1 official inspector for each correctional institution is a woman.
- 35 (3) A person who constitutes a Visiting Tribunal for a correctional institution cannot be appointed as an official inspector for the correctional institution.

(4) An official inspector 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 (5) The Governor may remove an official inspector from office—

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

(b) for misconduct; or

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

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

(a) dies; or

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

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

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

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

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

25 (g) becomes a member of the Parliament of this State or any other State of the Commonwealth 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 inspector for more than 1 correctional institution.

20A—Independence

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

(2) Neither the Minister nor the CE can—

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

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

Note—

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

20B—Remuneration

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

20C—Staff and resources

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

20D—Functions of official inspectors

(1) The functions of an official inspector in relation to the correctional institution in respect of which the inspector 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 inquire into, and provide advice to, the Minister and the CE in relation to any systemic reform necessary to improve—
 - (i) the quality of care, treatment or control of prisoners in the correctional institution; or
 - (ii) the management of the correctional institution;
- (d) to conduct visits to the correctional institution as required or authorised under this Division;
- (e) to conduct inspections of the correctional institution as required or authorised under this Division;
- (f) to promote the best interests of prisoners in the correctional institution;
- (g) to inquire into and investigate any matter referred to the official inspector by the Minister or the CE;
- (h) any other functions assigned to the official inspector by this or any other Act.

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

- (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 inspector's statutory functions.

20E—Use and obtaining of information

- (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 inspector's request, provide the official inspector with information relevant to the exercise of the official inspector's functions.
- (2) If an official inspector 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 inspector's functions, the official inspector 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 inspector 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 inspector;
- (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 inspector to be reasonable in the circumstances.
- (5) A person must comply with a requirement under subsection (2).
Maximum penalty: \$5 000.
- (6) If a document is produced in accordance with a requirement under this section, the official inspector may take possession of, make copies of, or take extracts from, the document.

20F—Requests to contact official inspector

- (1) A prisoner in a correctional institution, a relative of a prisoner or any person who is providing support to a prisoner in a correctional institution may make a request to contact an official inspector in respect of the correctional institution.
- (2) If such a request is made to the CE, the CE must advise a relevant official inspector of the request within 2 days after receipt of the request.

20G—Reporting obligations of official inspector

- (1) An official inspector may, at any time, provide a report to the Minister on any matter arising out of the performance of the official inspector's functions.
- 5 (2) An official inspector must, at the end of each successive 2 year period after their appointment as an official inspector, provide a report to the Minister on any relevant matters arising out of the performance of the official inspector's functions during the relevant period.
- 10 (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

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

9—Amendment of section 22—Assignment of prisoners to particular correctional institutions

Section 22(3)—delete subsection (3)

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)

11—Amendment of section 33—Prisoners' mail

- (1) Section 33(3)—after paragraph (j) insert:

25 or

- (k) material of a kind prohibited by—
- (i) the regulations; or
- (ii) the CE.

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

30 official inspector

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

nominated legal practitioner of the prisoner

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

official inspector

- 35 (5) Section 33(8)—delete "legal practitioner" and substitute:

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

- (6) 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.

12—Amendment of section 34—Prisoners' rights to have visitors

- (1) Section 34(4)(d)—delete "if any part of the imprisonment for which the prisoner was sentenced is in relation to a child sexual offence" and substitute:

who has ever been found guilty of a child sexual offence

- (2) Section 34—after subsection (4) insert:

(5) The restriction under subsection (4)(d) applies to a prisoner—

(a) whether the offence was committed before or after the commencement of the *Correctional Services (Miscellaneous) Amendment Act 2017*; and

(b) whether the finding of guilt was made before or after the commencement of the *Correctional Services (Miscellaneous) Amendment Act 2017*.

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

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

(2) The regulations may, in relation to a communication of a kind prescribed by the regulations that may be monitored or recorded, provide that the parties to the communication must, at the commencement of the communication, be informed of that fact.

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

official inspector

- (3) Section 35A—after subsection (5) insert:

(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.

14—Insertion of section 36A

After section 36 insert:

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

- (1) An officer or employee of the Department or a police officer employed in a correctional institution may use restraints on a prisoner—
- (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
 - (c) in any other circumstances determined by the CE.
- (2) An officer or employee of the Department or a police officer employed in a correctional institution 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

Section 37A(6), definition of *residence*—after "Aboriginal" insert:
or Torres Strait Islander

16—Insertion of Part 5 Division 3

Part 5—after Division 2 insert:

Division 3—Criminal offences

49—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.

5 Maximum penalty: Imprisonment for 5 years.

17—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:

10 (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;

15 (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:

20 (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.

25 (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).

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

35 18—Amendment of section 55—Continuation of Parole Board

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

an Aboriginal or Torres Strait Islander person

19—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.
- (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.
- (5) The regulations may make further provision in relation to a determination of the Remuneration Tribunal for the purposes of this Act.

20—Amendment of section 60—Proceedings of the Board

- (1) Section 60(3)—after paragraph (c) insert:

(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),

21—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:

(6) In this section—

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).

22—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

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

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

of a prescribed class

(2) 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.

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

of a prescribed class

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

subsection (6)

(5) Section 67—after subsection (11) insert:

(12) In this section—

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

24—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(2a)—delete subsection (2a)

(3) 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)

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

the prisoner

(5) 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.

(6) 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

(7) 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.

(8) 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).

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

Section 74(1)—after "condition of the parole" insert:

5 that is constituted by the commission of an offence or that is, in the opinion of the Board, a serious breach

26—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

- 10 (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 (other than a breach of a kind referred to in section 74(1)), the Board may, by order—
- 15 (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) 3 months,
- 20 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.
- 25 (3) Without limiting the generality of paragraph (b) of subsection (1), a condition imposed under that paragraph 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.
- 30 (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.
- 35

(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).

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

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

or 74AAA

28—Amendment of section 77—Proceedings before the Board

(1) 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).

(2) 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—

(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.

29—Amendment of heading to Part 6 Division 4

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

5 **certain**

30—Amendment of section 77A—Interpretation

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

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

- 10 (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*;

prisoner of a prescribed class means—

- 15 (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
- (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—
- 20 (i) the offence established as having been committed by the principal offender is the offence of murder; and
- (ii) the principal offender committed the offence of murder in prescribed circumstances;

- 25 (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:

- 30 (2) For the purposes of this Division—

- (a) an offence of murder will be taken to have been committed in *prescribed circumstances* if, in the opinion of the Commissioner—

- 35 (i) the offence was committed in the course of deliberately and systematically inflicting severe pain on the victim; or

- 5 (ii) there are reasonable grounds to believe that the offender also committed a serious sexual offence against or in relation to the victim of the offence in the course of, or as part of the events surrounding, the commission of the offence (whether or not the offender was also convicted of the serious sexual offence); and

(b) a reference to an *offence of murder* includes—

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

31—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:

- 15 (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—
 (i) to the resettlement account kept in the prisoner's name in accordance with section 31; or
20 (ii) if the prisoner has been discharged from prison—to an account nominated by the former prisoner.

32—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:

- 25 (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—
 (i) to the resettlement account kept in the prisoner's name in accordance with section 31; or
30 (ii) if the prisoner has been discharged from prison—to an account nominated by the former prisoner.

33—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:

- 35 (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—
 (i) to the resettlement account kept in the prisoner's name in accordance with section 31; or
40 (ii) if the prisoner has been discharged from prison—to an account nominated by the former prisoner.

34—Insertion of Part 7A

After Part 7 insert:

Part 7A—Management of officers, employees of Department etc

Division 1—Preliminary

81S—Interpretation

In this Part—

designated position means an appointment to a position in the Department designated by the CE for the purposes of this Part.

Division 2—General

81T—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.

81U—Commissioner of Police may object to certain applications for engagement or appointment

- (1) The CE may refer an application of a person to whom this subsection applies to the Commissioner of Police.

- 5
- (2) The Commissioner of Police may object to an application referred to the Commissioner under subsection (1) if the Commissioner considers that it would not be in the public interest for the applicant to be appointed as an officer or employee of the Department or appointed to a designated position (as the case requires).
- (3) If the Commissioner of Police objects to an application referred to the Commissioner under subsection (1), the CE may refuse the application.
- 10
- (4) The CE is not required to provide to the applicant any grounds or reasons for refusing an application under this section.
- (5) Subsection (1) applies to—
- (a) a person applying for appointment as an officer or employee of the Department; and
- (b) an officer or employee of the Department applying for appointment to a designated position.
- 15

Division 3—Drug and alcohol testing of officers, employees etc

81V—Interpretation

- 20
- (1) In this Division—
- alcotest* means a test by means of an apparatus of a kind approved for the conduct of alcotests under the *Road Traffic Act 1961*;
- biological sample* means a sample of blood, urine or oral fluid;
- breath analysing instrument* means an apparatus of a kind approved as a breath analysing instrument under the *Road Traffic Act 1961*;
- 25
- breath analysis* means an analysis of breath by a breath analysing instrument;
- critical incident* means—
- (a) an incident where a person is killed or suffers serious bodily injury in a correctional institution or probation and parole hostel; or
- 30
- (b) an incident, or a class of incident, in a correctional institution or probation and parole hostel determined by the CE to be a critical incident;
- drug* means a substance that is a controlled drug under the *Controlled Substances Act 1984*;
- 35
- drug and alcohol testing*—see section 81W(1);
- drug screening test* means a test by means of an apparatus of a kind approved by the regulations for the conduct of drug screening tests;
- 40
- forensic material* means any human material from which the person from whom the material was taken could be identified;

oral fluid includes saliva;

oral fluid analysis means the analysis of a person's oral fluid to determine whether a drug is present in the oral fluid;

rules means the rules made under section 83 for the purposes of this Division.

- 5
- (2) For the purposes of this Division, a person *uses a drug* if the person—
- (a) consumes, smokes or administers the drug to themselves; or
 - (b) permits another person to administer the drug to them.

10 **81W—Drug and alcohol testing of officers and employees**

- (1) An officer or employee of the Department may, in accordance with this section, be required to do any of the following:
- (a) to submit to an alcotest or breath analysis, or both, for the purpose of testing for the presence of alcohol;
 - (b) to submit to a drug screening test for the purpose of testing for the presence of drugs;
 - (c) to provide a biological sample for the purpose of a blood test, urinalysis or an oral fluid analysis to test for the presence of alcohol or drugs,
- 15
- (*drug and alcohol testing*).
- 20
- (2) An officer or employee of the Department may be required to undergo drug and alcohol testing, in accordance with the rules, in any of the following circumstances:
- (a) if the officer or employee has, while on duty, been involved in a critical incident;
 - (b) if there is a reasonable cause to believe that the officer or employee has recently consumed alcohol or used a drug;
 - (c) if the officer or employee is applying for appointment to a designated position;
 - (d) if the CE considers that the officer or employee should undergo drug and alcohol testing.
- 25
- 30

81X—Drug and alcohol testing of applicants to Department

- (1) A person to whom this subsection applies will, in accordance with the rules, be required to do any of the following:
- (a) to submit to an alcotest or breath analysis, or both, for the purpose of testing for the presence of alcohol;
 - (b) to submit to a drug screening test for the purpose of testing for the presence of drugs;
- 35

- (c) to provide a biological sample for the purpose of a blood test, urinalysis or an oral fluid analysis to test for the presence of alcohol or drugs.
- (2) Subsection (1) applies to a person applying for appointment as an officer or employee of the Department.

81Y—Procedures for drug and alcohol testing

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Division.
- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) prescribe procedures for drug and alcohol testing; and
 - (b) provide for the authorisation of persons to conduct drug and alcohol testing and operate equipment for that purpose; and
 - (c) regulate the collection of biological samples taken from persons for the purposes of drug and alcohol testing under this Division; and
 - (d) provide for the analysis of test results, including the accreditation of persons conducting the analysis; and
 - (e) provide for the approval of devices used in carrying out drug and alcohol testing and analysis; and
 - (f) provide for the use of results from any testing or analysis, or the steps that may be taken on account of any testing or any evidence or information produced as a result of testing; and
 - (g) prescribe the circumstances that amount to a defence to disciplinary proceedings under the *Public Sector Act 2009* relating to drug and alcohol testing or proceedings for a breach of the regulations; and
 - (h) prescribe evidentiary provisions to facilitate proof of matters for the purposes of disciplinary proceedings under the *Public Sector Act 2009* relating to drug and alcohol testing and proceedings relating to a breach of the regulations; and
 - (i) provide for the confidentiality of test results; and
 - (j) regulate the destruction of biological samples collected for testing; and
 - (k) provide for the protection of persons involved in taking or conducting testing from liability for acts or omissions done in good faith and in accordance with this Division.

81Z—Biological samples, test results etc not to be used for other purposes

- 5 (1) A biological sample (and any other forensic material taken incidentally in the course of testing a person for the presence of drugs or alcohol) taken under this Division must not be used for any purpose other than—
- (a) for a purpose contemplated by this Division; or
- (b) in connection with the control and management of officers and employees of the Department; or
- 10 (c) for the purpose of disciplinary proceedings under the *Public Sector Act 2009*.
- (2) The results of any drug and alcohol testing or analysis conducted under this Division, or an admission or a statement made by a person relating to such drug and alcohol testing, is not admissible in any
- 15 proceedings other than disciplinary proceedings under the *Public Sector Act 2009*.

35—Amendment of section 83—CE may make rules

- (1) Section 83—after subsection (1) insert:
- (1a) The CE may make rules for the purposes of Part 7A Division 3.
- 20 (2) Section 83(2)—after "subsection (1)" insert:
or (1a)
- (3) Section 83(4)—after "prisoners" insert:
and officers and employees of, and applicants for employment with, the
Department

36—Amendment of section 85C—Confidentiality

- (1) Section 85C—before subsection (1) insert:
- (a1) A person must not disclose—
- (a) protected information; or
- 30 (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.
- (2) Section 85C(1)—delete "A person must not disclose information relating to" and
- 35 substitute:
Without limiting subsection (a1), a person must not disclose information relating to a person who is or has been

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

(3) In this section—

health practitioner means a person who practises a health profession (within the meaning of the *Health Practitioner Regulation National Law (South Australia)*);

protected information means information—

- (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
- (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).

37—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

38—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.

39—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)

40—Insertion of sections 87A and 87B

After section 87 insert:

87A—Operation of unmanned aircraft

(1) A person must not operate an unmanned 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—Unmanned aircraft—special powers

(1) The CE may cause an unmanned aircraft to be seized and retained if the CE reasonably suspects that the unmanned 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 an unmanned aircraft seized under subsection (1) (a *seized unmanned aircraft*) was the subject of an offence against section 87A, the court may, by order, forfeit the unmanned aircraft to the Crown.

(3) A seized unmanned 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.

(4) Subject to subsection (5), if a seized unmanned 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 unmanned aircraft was seized, or a person with legal title to it, is entitled to recover the unmanned aircraft from the CE (if necessary, by action in a court of competent jurisdiction).

(5) Despite subsection (4), a court hearing proceedings under that subsection in relation to a seized unmanned aircraft may, if it thinks fit, make an order under subsection (2) for forfeiture of the seized unmanned aircraft to the Crown.

(6) Nothing in this section affects the operation of the *Criminal Assets Confiscation Act 2005*.

(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 amendments and transitional provisions

Part 1—Amendment of *Public Sector Act 2009*

1—Amendment of section 59—Right of review

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

(ba) to a decision by the CE under the *Correctional Services Act 1982* to refuse an application under section 81U 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—Transitional provision—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.

3—Transitional provision—review of release on parole relating to prisoners of a prescribed class

(1) The amendments to the *Correctional Services Act 1982* made by sections 23 and 30 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 23 and 30 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 30 of this Act).