

House of Assembly—No 67

As laid on the table and read a first time, 28 October 2010

South Australia

**Correctional Services (Prisoner Compensation
Quarantine Funds) Amendment Bill 2010**

A BILL FOR

An Act to amend the *Correctional Services Act 1982*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Correctional Services (Prisoner Compensation Quarantine Funds) Amendment Act 2010*.

5 **2—Commencement**

This Act will come into operation 3 months after assent.

3—Amendment provisions

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

10 **Part 2—Amendment of *Correctional Services Act 1982***

4—Insertion of Part 7

After Part 6 insert:

Part 7—Prisoner compensation quarantine funds

Division 1—Preliminary

15 **78—Interpretation**

(1) In this Part—

agreement includes compromise and acceptance of an offer of compromise;

award of damages means damages—

- 20
- (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—

- 25
- (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;

30 *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 Chief Executive Officer under section 81J(1);

State includes—

- (a) the Chief Executive Officer; 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, proceeding against or convicted of the offence.

79—Application

- (1) This Part applies to an 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 Chief Executive Officer 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 Chief Executive Officer immediately after the damages are awarded.

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- (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 Chief Executive Officer under subsection (1)—
- (a) must be held in trust for the prisoner by the Chief Executive Officer 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.
- 10
- (4) Money held by the Chief Executive Officer in trust for a prisoner under this Part constitutes a *prisoner compensation quarantine fund*.
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- (5) This section does not apply if the amount that would, but for this subsection, be required to be paid to the Chief Executive Officer under subsection (1) does not exceed \$10 000.

20 **81C—Prisoner compensation quarantine funds**

- (1) A prisoner compensation quarantine fund consists of—
- (a) an amount held by the Chief Executive Officer in trust for a prisoner under this Part; and
 - (b) any interest earned on that money.
- 25
- (2) The Chief Executive Officer 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).
- 30
- 35
- (4) The Chief Executive Officer 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.
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- (5) The Chief Executive Officer 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

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- (1) A victim in relation to a criminal act by a prisoner may apply to the Chief Executive Officer 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

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- (1) The Chief Executive Officer 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 Chief Executive Officer under section 81B.
 - (2) The notice must—
 - 15 (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
 - 20 (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 Chief Executive Officer about the fund; and
 - 25 (f) contain contact details for seeking the further information.
 - (3) The notice must be published in—
 - (a) the Gazette; and
 - 30 (b) a daily newspaper circulating generally in South Australia; and
 - (c) a daily newspaper circulating generally in Australia.
 - (4) The Chief Executive Officer may also—
 - (a) publish the notice on the Internet; and
 - 35 (b) forward a copy of the notice to any victim who has applied to the Chief Executive Officer under section 81D to be notified of an award of damages in respect of the prisoner.

81F—Applications for information

- 5
- (1) A victim in relation to a criminal act by a prisoner may apply to the Chief Executive Officer 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 Chief Executive Officer 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:
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- (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);
- 15
- (d) any other information that the Chief Executive Officer 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—
- 20
- (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
- 25
- (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 Chief Executive Officer authorised

30 The provision of information by the Chief Executive Officer under section 81E or 81F—

- 35
- (a) is authorised despite any agreement to which the Chief Executive Officer 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

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

81I—Offence to disclose information

- 5 (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.

- 10 (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.

- 15 (3) Nothing in subsection (1) prevents a person from disclosing information to a lawyer in the course of consulting the lawyer for legal advice.

- 15 (4) Subsections (1) and (2) do not apply to information that is in the public domain.

81J—Notice to Chief Executive Officer by victim

- 20 (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 Chief Executive Officer of that fact.

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

81K—Notice to Chief Executive Officer by creditors

- 30 (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 Chief Executive Officer of that fact.

- (2) A notice under subsection (1) must—

- 35 (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.

- 40 (3) The Chief Executive Officer may require a person who has given a notice under this section to provide any further information that the Chief Executive Officer 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

- 5 (1) This section applies if the Chief Executive Officer 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 Chief Executive Officer 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.
- 10 (3) The Chief Executive Officer 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—
- 15 (a) any award against the prisoner that was notified to the Chief Executive Officer under section 81J(2); and
- (b) any judgment debt against, or entitlement to be paid by, the prisoner that was notified to the Chief Executive Officer under section 81K,

20 that the Chief Executive Officer is satisfied is a valid claim on the prisoner.

- 25 (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 Chief Executive Officer must make payments from the fund under that subsection on a pro rata basis having regard to any priority of payment required by law.
- (5) If any amount remains in the prisoner compensation quarantine fund after all amounts are paid out under subsection (3), the Chief Executive Officer must, within or as soon as practicable after the end of the period of 45 days after the end of the quarantine period—
- 30 (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

- 35 (1) This section applies if the Chief Executive Officer 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.
- 40 (2) The Chief Executive Officer 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.

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- (3) The Chief Executive Officer 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 Chief Executive Officer under section 81K during the initial quarantine period; and
- (b) that the Chief Executive Officer is satisfied is a valid claim on the prisoner.
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- (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 Chief Executive Officer must make payments from the fund under that subsection on a pro rata basis having regard to any priority of payment required by law.
- 15
- (5) If any amount remains in the prisoner compensation quarantine fund after all amounts are paid out under subsection (3), the Chief Executive Officer must, within or as soon as practicable after the end of the period of 45 days after the end of the initial quarantine period—
- 20
- (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.

25 **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).

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81O—Payments out of fund where no notice given

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- (1) This section applies if no notice is given to the Chief Executive Officer 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 Chief Executive Officer must, within or as soon as practicable after the end of the period of 45 days after the end of the initial quarantine period—
- 40
- (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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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.

81S—Annual report

The Chief Executive Officer must, not later than 31 October in each year, submit a report on the operation of this Part to the Minister and the Attorney General.

5—Amendment of section 89—Regulations

Section 89(2)—after paragraph (ja) insert:

- (jb) prescribing matters to be included in applications and notices under Part 7; and

Schedule 1—Transitional provision

1—Transitional provision

- 5 (1) Part 7 of the *Correctional Services Act 1982* (as inserted by section 4 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*.