

South Australia

# Correctional Services (Miscellaneous) Amendment Act 2009

An Act to amend the *Correctional Services Act 1982*; and to make related amendments to the *Young Offenders Act 1993*.

---

## Contents

### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

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

- 4 Amendment of section 4—Interpretation
- 5 Insertion of section 4A
  - 4A Appointment of officers of Department
- 6 Repeal of sections 17B and 17C
- 7 Amendment of section 20—Correctional institutions must be inspected on regular basis
- 8 Amendment of section 23—Initial and periodic assessment of prisoners
- 9 Amendment of section 24—Chief Executive Officer has custody of prisoners
- 10 Amendment of section 36—Power to keep prisoner apart from other prisoners
- 11 Amendment of section 37A—Release on home detention
- 12 Amendment of section 37B—Authorised officers
- 13 Amendment of section 38—Release of prisoner from prison or home detention
- 14 Amendment of section 41—Powers of Visiting Tribunals
- 15 Amendment of section 42A—Minor breaches of prison regulations
- 16 Amendment of section 43—Manager may deal with breaches of prison regulations
- 17 Amendment of section 51—Offences by persons other than prisoners
- 18 Amendment of section 66—Automatic release on parole for certain prisoners
- 19 Amendment of section 82—Unauthorised dealings with prisoners prohibited
- 20 Amendment of section 86—Prison officers may use reasonable force in certain cases
- 21 Repeal of section 86A
- 22 Amendment of section 89—Regulations

### Schedule 1—Related amendment of *Young Offenders Act 1993*

- 1 Amendment of section 4—Interpretation
- 2 Insertion of section 4A
  - 4A Designation as officers of Department for certain purposes

### Schedule 2—Transitional provision

- 1 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 2009*.

### **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**

Section 4—after subsection (1) insert:

- (2) A reference in this Act to an *officer of the Department* includes a reference to—
  - (a) a person who, immediately before the commencement of this subsection, held an appointment made by the Governor as an officer of the Department; or
  - (b) a person who, after the commencement of this subsection, is designated by the Minister as an officer of the Department under section 4A.

### **5—Insertion of section 4A**

After section 4 insert:

#### **4A—Appointment of officers of Department**

- (1) The Minister may, by written notice, designate a person to whom this section applies as a person who is to be taken to be an officer of the Department for the purposes of this Act, the *Prisoners (Interstate Transfer) Act 1982* and any other prescribed Act.
- (2) The Minister may, by written notice, revoke—
  - (a) the appointment of an officer of the Department made by the Governor before the commencement of this section; or
  - (b) a designation made under subsection (1).
- (3) This section applies to a person if—
  - (a) the person is engaged by another person (the *contractor*) to carry out certain work in the course of and for the purposes of the contractor's business; and

- (b) the contractor is engaged, in the course of and for the purposes of a business, by the Minister under a contract, arrangement or understanding for the purposes of this Act or another Act; and
  - (c) the Minister is satisfied that the person is a suitable person to be designated as an officer of the Department.
- (4) Section 74 of the *Public Sector Act 2009* does not apply to a person designated under subsection (1).

## **6—Repeal of sections 17B and 17C**

Sections 17B and 17C—delete the sections

## **7—Amendment of section 20—Correctional institutions must be inspected on regular basis**

Section 20(2) and (2a)—delete subsections (2) and (2a) and substitute:

- (2) The Governor may, on the recommendation of the Minister, by notice in the Gazette, appoint a suitable person to be an inspector for the purposes of this section.

## **8—Amendment of section 23—Initial and periodic assessment of prisoners**

Section 23(2)—delete subsection (2) and substitute:

- (2) The Minister may, for the purpose of assisting the Chief Executive Officer in carrying out assessments under this section, establish such committees as the Minister thinks fit.

## **9—Amendment of section 24—Chief Executive Officer has custody of prisoners**

- (1) Section 24(2)—after paragraph (b) insert:

; and

- (c) to vary any such regime,

- (2) Section 24—after subsection (2) insert:

- (3) A variation of a regime in respect of a particular prisoner under subsection (2) for any purpose does not constitute a penalty for the purposes of this Act.

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

Section 36(9)—delete subsection (9) and substitute:

- (9) If, under subsection (2), the Chief Executive Officer gives a direction—
  - (a) that a prisoner be kept separately and apart for a period exceeding 5 days; or

- (b) that will result in a prisoner being kept separately and apart for a period exceeding 5 consecutive days, or an aggregate of 5 days within any 10 day period,

the Chief Executive Officer must, as soon as reasonably practicable after giving the direction, provide the Minister with a report of the circumstances relating to the direction.

#### **11—Amendment of section 37A—Release on home detention**

Section 37A(1)—delete "and the regulations"

#### **12—Amendment of section 37B—Authorised officers**

Section 37B(5), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

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

Section 38—after subsection (3) insert:

(3a) If—

- (a) the Board orders the release of a prisoner from prison or home detention on parole on a specified date; and
- (b) pursuant to subsection (2), the Chief Executive Officer authorises the release of the prisoner before that specified date,

the release of the prisoner on the authority of the Chief Executive Officer will be on parole subject to the conditions imposed under this Act.

#### **14—Amendment of section 41—Powers of Visiting Tribunals**

Section 41(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$7 500 or imprisonment for 3 months.

#### **15—Amendment of section 42A—Minor breaches of prison regulations**

- (1) Section 42A(2)(d)—delete "seven" and substitute:

10

- (2) Section 42A(2)(e)—delete "seven" and substitute:

10

#### **16—Amendment of section 43—Manager may deal with breaches of prison regulations**

- (1) Section 43(2)(b)—delete "28" and substitute:

35

- (2) Section 43(2)(c)—delete "14" and substitute:

21

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

Section 51(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (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 2 years;
- (b) in any other case—imprisonment for 6 months.

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

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

- (ab) a prisoner if any part of the imprisonment for which the prisoner was sentenced is in respect of an offence of personal violence; or
- (ac) a prisoner if any part of the imprisonment for which the prisoner was sentenced is in respect of an offence against section 85 (being an offence consisting of arson) or 85B of the *Criminal Law Consolidation Act 1935*; or

(2) Section 66—after subsection (2) insert:

(3) In this section—

*offence of personal violence* means any of the following offences (including a substantially similar offence against a corresponding previous enactment or the law of another place):

- (a) an offence against the person under Part 3 of the *Criminal Law Consolidation Act 1935*;
- (b) a home invasion;
- (c) an offence of robbery or aggravated robbery;
- (d) a conspiracy to commit, or an attempt to commit, an offence referred to in paragraph (a), (b) or (c);
- (e) an offence that is committed in circumstances in which the offender uses violence or a threat of violence for the purpose of committing the offence, in the course of committing the offence, or for the purpose of escaping from the scene of the offence.

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

(1) Section 82(1)—after "contract" insert:

or other dealing of a prescribed class

(2) Section 82(3)(c)—delete "class prescribed by the regulations for the purposes of this section" and substitute:

prescribed class

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

Section 86—after "officer" insert:

or employee

## **21—Repeal of section 86A**

Section 86A—delete the section

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

- (1) Section 89(2)—delete paragraph (d)
- (2) Section 89(2)(h) and (i)—after "officers" wherever occurring insert in each case:  
or employees
- (3) Section 89(2)(j)—delete "or any other personal property"
- (4) Section 89(2)—after paragraph (j) insert:
  - (ja) prohibiting, restricting or regulating the holding or acquisition of personal property (other than money) of prisoners, or of prisoners of a particular class, (including the transfer, storage or disposal of such property); and
- (5) Section 89(2)(m)—delete "\$2 500" and substitute:  
\$5 000
- (6) Section 89(3)(b)—delete "matters" and substitute:  
persons, things

## **Schedule 1—Related amendment of *Young Offenders Act 1993***

### **1—Amendment of section 4—Interpretation**

Section 4—after its current contents (now to be designated as subsection (1)) insert:

- (2) A reference in this Act to an *officer of the Department* includes a reference to—
  - (a) a person who, immediately before the commencement of this subsection, held an appointment made by the Governor as an officer of the Department; or
  - (b) a person who, after the commencement of this subsection, is designated by the Minister as an officer of the Department under section 4A.

## 2—Insertion of section 4A

After section 4 insert:

### 4A—Designation as officers of Department for certain purposes

- (1) The Minister may, by written notice, designate a person to whom this section applies as a person who is to be taken to be an officer of the Department for the purposes of this Act, the *Youth Court Act 1993* and any other prescribed Act.
- (2) The Minister may, by written notice, revoke—
  - (a) the appointment of an officer of the Department made by the Governor before the commencement of this section; or
  - (b) a designation made under subsection (1).
- (3) This section applies to a person if—
  - (a) the person is engaged by another person (the *contractor*) to carry out certain work in the course of and for the purposes of the contractor's business; and
  - (b) the contractor is engaged, in the course of and for the purposes of a business, by the Minister under a contract, arrangement or understanding for the purposes of this Act or another Act; and
  - (c) the Minister is satisfied that the person is a suitable person to be designated as an officer of the Department.
- (4) Section 74 of the *Public Sector Act 2009* does not apply to a person designated under subsection (1).

## Schedule 2—Transitional provision

### 1—Transitional provision

- (1) The amendments made by Part 2 of this Act to section 66 of the *Correctional Services Act 1982* (the *principal Act*) are intended to apply in respect of prisoners serving sentences of imprisonment immediately before the commencement of this clause regardless of when the prisoners were sentenced.
- (2) However, if, before the commencement of this clause, the Board had, under section 66 of the principal Act, ordered a prisoner to be released from prison or home detention on parole, the prisoner is, subject to the provisions of Part 6 Division 3 of the principal Act as in force immediately before that commencement, to be released on parole.