

South Australia

Correctional Services (Miscellaneous) Amendment Act 2018

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 (Miscellaneous) Amendment Act 2018*.

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 drug and alcohol testing of correctional services officers and employees and other persons;

5—Amendment of section 4—Interpretation

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

alcotest means a test by means of an apparatus of a kind approved for the conduct of alcotests under the *Road Traffic Act 1961*;

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

criminal intelligence means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or endanger a person's life or physical safety;

criminal organisation means a criminal organisation within the meaning of Division 1 or Division 2 of Part 3B of the *Criminal Law Consolidation Act 1935*;

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

member, of a criminal organisation, includes an associate member or a prospective member, however described;

6—Insertion of section 6

After section 5 insert:

6—Criminal intelligence

- (1) Information that is classified by the Commissioner of Police as criminal intelligence for the purposes of granting an approval under section 34(4)(e) or making an order under section 85A(1)(b) may not be disclosed to any person other than the CE, the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure.
- (2) If—
- (a) the CE—
- (i) refuses to grant an approval under section 34(4)(e);
or

- (ii) makes an order under section 85A(1)(b) excluding a person from a correctional institution or institutions; and
 - (b) the decision to do so is made because of information that is classified by the Commissioner of Police as criminal intelligence,
- the CE is not required to provide any grounds or reasons for the decision other than that it was made in the public interest or that it would be contrary to the public interest if the person were to be permitted to visit a prisoner in, or enter, the correctional institution or institutions.
- (3) In any proceedings relating to a decision of the CE to refuse to grant an approval under section 34(4)(e) or an order of the CE under section 85A(1)(b), the CE and the court before which the proceedings are being heard—
 - (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
 - (b) may take evidence consisting of or relating to information so classified by the Commissioner of Police by way of affidavit of a police officer of or above the rank of superintendent.
 - (4) The Commissioner of Police may not delegate the function of classifying information as criminal intelligence under this section except to a Deputy Commissioner or Assistant Commissioner of Police.

7—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:

if the prisoner has ever been found guilty of a child sexual offence
- (2) Section 34(4)—after paragraph (d) insert:
 - (e) a person who the CE believes on reasonable grounds is a member of a criminal organisation, or associates with, or has associated with, a member of a criminal organisation, may not visit a prisoner without the approval of the CE.

8—Insertion of Part 7A

After Part 7 insert:

Part 7A—Drug and alcohol testing scheme

81S—Interpretation

(1) In this Part—

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*;

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
- (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;

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

drug means a substance that is a controlled drug under the *Controlled Substances Act 1984*;

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;

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 Part.

(2) For the purposes of this Part, 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.

81T—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.
- (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 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.

81U—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;
 - (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.

81V—Drug and alcohol testing of other persons

- (1) The CE may, subject to the person's consent, require a person who enters a correctional institution to do any of the following in accordance with the rules:
- (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.

- (2) If a person does not consent to drug and alcohol testing under subsection (1), the CE may cause the person to be refused entry to or removed from the correctional institution, using only such force as is reasonably necessary for the purpose.

81W—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 Part.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) prescribe procedures for drug and alcohol testing under this Part; 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 Part; 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 or 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 Part.

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

- (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 Part must not be used for any purpose other than—
 - (a) for a purpose contemplated by this Part; or
 - (b) in connection with the control and management of officers and employees of the Department; or
 - (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 Part, or an admission or a statement made by a person relating to such drug and alcohol testing, is not admissible in any proceedings other than disciplinary proceedings under the *Public Sector Act 2009*.

9—Amendment of section 83—CE may make rules

- (1) Section 83(1)—delete "relating to the management of a correctional institution" and substitute:

for the purposes of this Act
- (2) Section 83(4)—delete "prisoners" and substitute:

persons affected by the rules

10—Amendment of section 85A—Exclusion of persons from correctional institution

- (1) Section 85A(1)(b)—delete paragraph (b) and substitute:
 - (b) if a person to whom this paragraph applies—
 - (i) enters or proposes to enter a correctional institution; or
 - (ii) visits or proposes to visit a prisoner in a correctional institution under section 34,

the CE may, by written order, direct that the person be excluded from a specified correctional institution, all correctional institutions of a specified class, or all correctional institutions, until further order or for a specified period.
- (2) Section 85A—after subsection (1) insert:
 - (1a) Paragraph (b) of subsection (1) applies to a person who the CE believes on reasonable grounds—
 - (a) is interfering with or is likely to interfere with the good order or security of a correctional institution; or
 - (b) is a member of a criminal organisation, or associates with, or has associated with, a member of a criminal organisation.

- (1a) Despite paragraph (b) of subsection (1), the CE may permit a person the subject of an order under that paragraph to visit a prisoner under section 34 (either on a particular occasion or on a regular basis (as the CE considers appropriate)).