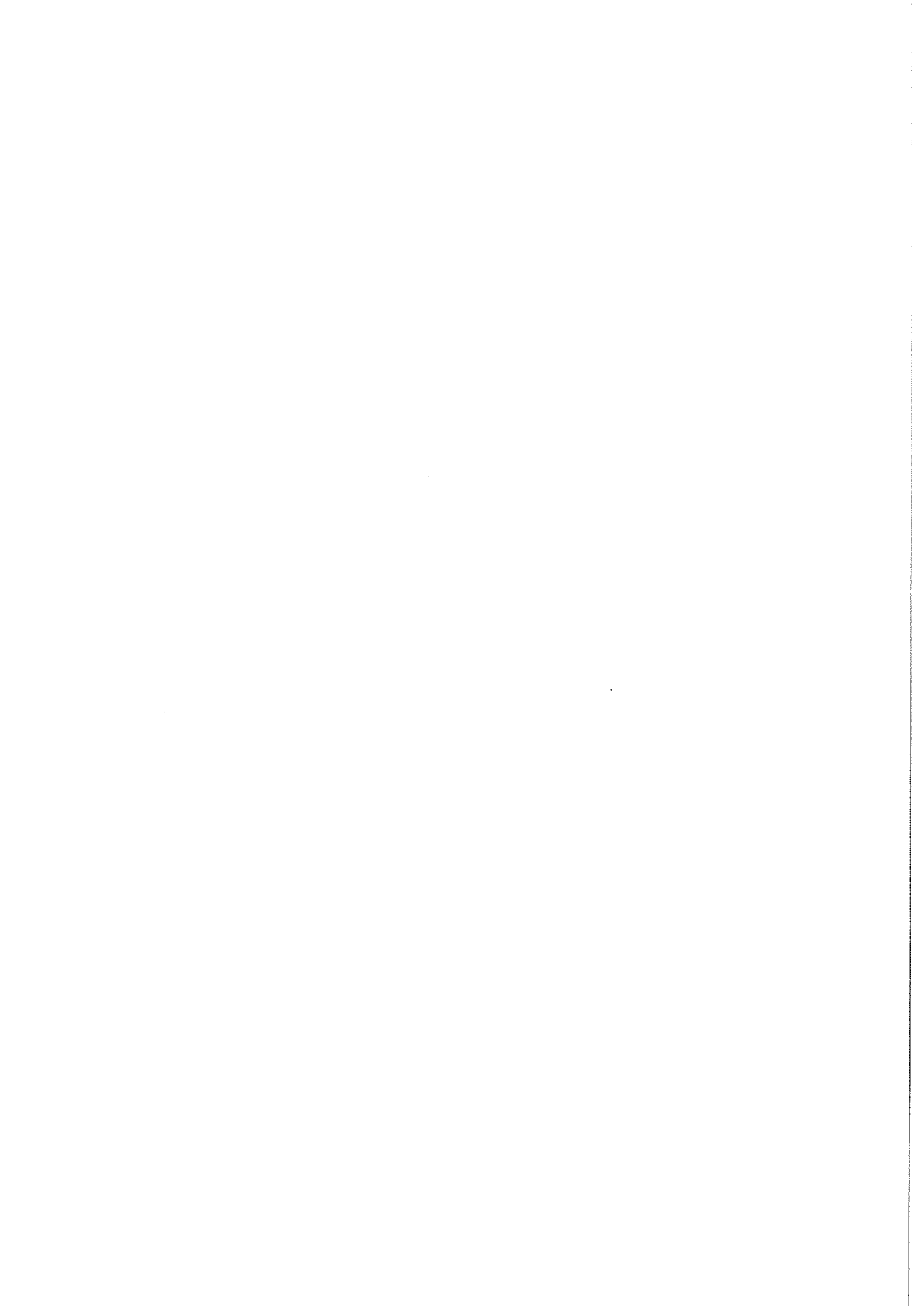


CORRECTIONAL SERVICES ACT 1982

Reprint No. 1—1.7.91	
Reprint No. 2—19.12.91	
Reprint No. 3—6.7.92	
Reprint No. 4—30.9.92	[New Parts 1, 4, 6, 7, 8 and Appendices]
Reprint No. 5—26.8.93	[New Parts 4, 8 and Appendices]
Reprint No. 6—1.1.94	[New Part 6 and Appendices]
Reprint No. 7—31.3.94	[New Part 4 and Appendices]
Reprint No. 8—1.8.94	[Whole Act replaced]
Reprint No. 9—20.4.95	[New Parts 4, 6, 8 and Appendices]
Reprint No. 10—30.10.95	[New Parts 1, 6 and Appendices]
Reprint No. 11—8.8.96	[New Parts 4, 5, 6, 8 and Appendix]
Reprint No. 12—3.10.99	[New Parts 1, 4, 6, 8 and Appendix]
Reprint No. 13—6.3.00	[New Parts 1, 4 and Appendix]
Reprint No. 14—1.7.00	[New Parts 1, 6 and Appendix]
Reprint No. 15—14.8.00	[New Part 5 and Appendix]

[Each Part is numbered from page 1. Subscribers to the Consolidation Service will receive complete replacement Parts incorporating amendments to this Act as they come into force.]



South Australia

CORRECTIONAL SERVICES ACT 1982

An Act to provide for the establishment and management of prisons and other correctional institutions; to regulate the manner in which persons in correctional institutions are to be treated by those responsible for their detention and care; and for other purposes.

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 14 August 2000.

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since the reprint published on 1 August 1994.

CORRECTIONAL SERVICES ACT 1982

being

Correctional Services Act 1982 No. 48 of 1982
[Assented to 29 April 1982]¹

as amended by

Correctional Services Act Amendment Act 1983 No. 67 of 1983 [Assented to 13 October 1983]²
Correctional Services Act Amendment Act 1984 No. 94 of 1984 [Assented to 20 December 1984]²
Correctional Services Act Amendment Act 1985 No. 66 of 1985 [Assented to 6 June 1985]²
Statutes Amendment (Parole) Act 1986 No. 69 of 1986 [Assented to 20 November 1986]³
Correctional Services Act Amendment Act 1986 No. 98 of 1986 [Assented to 11 December 1986]⁴
Correctional Services Act Amendment Act 1987 No. 22 of 1987 [Assented to 16 April 1987]
Correctional Services Act Amendment Act 1988 No. 36 of 1988 [Assented to 28 April 1988]
Statutes Amendment and Repeal (Sentencing) Act 1988 No. 51 of 1988 [Assented to 5 May 1988]⁵
Statute Law Revision Act 1989 No. 39 of 1989 [Assented to 4 May 1989]⁶
Correctional Services Act Amendment Act 1990 No. 30 of 1990 [Assented to 26 April 1990]⁷
Statute Law Revision Act (No. 2) 1990 No. 54 of 1990 [Assented to 22 November 1990]⁸
Correctional Services Act Amendment Act (No. 2) 1990 No. 76 of 1990 [Assented to 20 December 1990]⁹
Correctional Services (Drug Testing) Amendment Act 1991 No. 52 of 1991 [Assented to 28 November 1991]¹⁰
Statutes Amendment (Sentencing) Act 1992 No. 34 of 1992 [Assented to 21 May 1992]¹¹
Statutes Amendment and Repeal (Public Offences) Act 1992 No. 35 of 1992 [Assented to 21 May 1992]¹²
Correctional Services (Control of Prisoners' Spending) Amendment Act 1993 No. 65 of 1993 [Assented to 26 August 1993]
Statutes Amendment (Abolition of Compulsory Retirement) Act 1993 No. 75 of 1993 [Assented to 21 October 1993]¹³
Correctional Services (Prisoners' Goods) Amendment Act 1994 No. 4 of 1994 [Assented to 31 March 1994]
Statutes Amendment (Truth in Sentencing) Act 1994 No. 35 of 1994 [Assented to 2 June 1994]¹⁴
Statutes Amendment (Correctional Services) Act 1995 No. 21 of 1995 [Assented to 20 April 1995]¹⁵
Statutes Amendment (Paedophiles) Act 1995 No. 51 of 1995 [Assented to 27 July 1995]¹⁶
Correctional Services (Miscellaneous) Amendment Act 1996 No. 12 of 1996 [Assented to 24 April 1996]¹⁷
Statutes Amendment (Fine Enforcement) Act 1998 No. 60 of 1998 [Assented to 3 September 1998]¹⁸
Statutes Amendment and Repeal (Justice Portfolio) Act 1999 No. 42 of 1999 [Assented to 5 August 1999]¹⁹
Statutes Amendment (Warrants of Apprehension) Act 2000 No. 18 of 2000 [Assented to 1 June 2000]²⁰
Statutes Amendment and Repeal (Attorney-General's Portfolio) Act 2000 No. 57 of 2000 [Assented to 20 July 2000]²¹

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

Correctional Services Act 1982

- 1 Came into operation 19 August 1985: *Gaz.* 8 August 1985, p. 334.
- 2 Came into operation 19 August 1985: *Gaz.* 8 August 1985, p. 336.
- 3 Came into operation 8 December 1986: *Gaz.* 27 November 1986, p. 1700.
- 4 Came into operation 1 January 1987: *Gaz.* 18 December 1986, p. 1876.
- 5 Came into operation (except ss. 3-6, 12, 15-20, 22-27, 30-39, 41-68 and 70-78) 12 May 1988: *Gaz.* 12 May 1988, p. 1181; ss. 3 and 4 came into operation 8 September 1988: *Gaz.* 8 September 1988, p. 994; remainder of Act came into operation 1 January 1989: *Gaz.* 15 December 1988, p. 2009.
- 6 Came into operation (except Sched. 2) 19 June 1989: *Gaz.* 25 May 1989, p. 1395.
- 7 Came into operation 17 May 1990: *Gaz.* 17 May 1990, p. 1359.
- 8 Came into operation (except Schedules 2, 3 and 4) 22 November 1990: s. 2(1); Sched. 2 came into operation 1 August 1990: s. 2(2).
- 9 Came into operation 21 December 1990: *Gaz.* 20 December 1990, p. 1841.
- 10 Came into operation 19 December 1991: *Gaz.* 19 December 1991, p. 1903.
- 11 Came into operation 30 September 1992: *Gaz.* 24 September 1992, p. 1150.
- 12 Came into operation 6 July 1992: *Gaz.* 2 July 1992, p. 209.
- 13 Came into operation 1 January 1994: s. 2.
- 14 Came into operation 1 August 1994: *Gaz.* 14 July 1994, p. 69.
- 15 Came into operation (except s. 4) on assent: s. 2(1); s. 4 came into operation 1 August 1994: s. 2(2).
- 16 Came into operation 30 October 1995: *Gaz.* 21 September 1995, p. 783.
- 17 Came into operation 8 August 1996: *Gaz.* 1 August 1996, p. 220.
- 18 Part 2 (ss. 4-6) came into operation 6 March 2000: *Gaz.* 18 November 1999, p. 2358.
- 19 Part 5 (ss. 25-32) came into operation 3 October 1999: *Gaz.* 23 September 1999, p. 1208.
- 20 Part 2 (s. 4) came into operation 1 July 2000: *Gaz.* 15 June 2000, p. 3131.
- 21 Part 3 (ss. 5 & 6) came into operation 14 August 2000: *Gaz.* 10 August 2000, p. 444.

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LEGISLATIVE HISTORY**

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The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Correctional Services Act 1982*.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

"**Aboriginal people**" means the people who inhabited Australia before European colonisation;

"**Aborigine**" means a descendant of the Aboriginal people who is accepted as a member by a group in the community who claim descent from the Aboriginal people;

"**the Advisory Council**" means the *Correctional Services Advisory Council*;

"**the Board**" means the *Parole Board of South Australia*;

"**the Chief Executive Officer**" means the person holding or acting in the position of Chief Executive Officer of the Department;

"**child sexual offence**" means any of the following offences committed against or in relation to a child under 16 years of age (including a substantially similar offence against the law of another place):

- (a) rape;
- (b) indecent assault;
- (c) incest;
- (d) an offence involving unlawful sexual intercourse;
- (e) an offence involving an act of gross indecency;
- (f) an offence involving child prostitution;
- (g) an offence involving indecency or sexual misbehaviour including an offence against section 58A of the *Criminal Law Consolidation Act 1935* or against section 23 or 33 of the *Summary Offences Act 1953*;
- (h) an attempt to commit, or assault with intent to commit, any of the offences referred to in the above paragraphs;
- (i) any other offence (such as homicide or abduction), if there are reasonable grounds to believe that any of the offences referred to in the above paragraphs was also committed by the same person against or in relation to the child in the course of, or as part of the events surrounding, the commission of the offence;

"**CIC levy**" means a levy imposed under the *Criminal Injuries Compensation Act 1978*;

"**community corrections officer**" means an officer or employee of the Department whose duties include the supervision of offenders in the community;

"**contempt prisoner**" means a person committed to prison, or sentenced to imprisonment, for failure to comply with an order for the payment of a pecuniary sum, or for contempt of court;

"**correctional institution**" means a prison or police prison;

"**the Department**" means the Department for Correctional Services;

"**designated condition**", in relation to release on parole, means a condition of the parole that is designated by the Board as a condition the breach of which will result in automatic cancellation of parole;

"**drug**" means—

(a) a drug of dependence or prohibited substance, as defined in the *Controlled Substances Act 1984*; or

(b) a substance, generally supplied on prescription only, declared by the regulations to be a drug for the purposes of this Act;

"**magistrate**" means a magistrate appointed under the *Magistrates Act 1983*;

"**manager**", in relation to a correctional institution, means the person for the time being in charge of the institution;

"**non-parole period**" means a period fixed by a court as a period during which a prisoner may not be released on parole;

"**police prison**" means premises declared to be a police prison under Part 3;

"**prison**" means premises declared to be a prison under Part 3;

"**prisoner**" means a person committed to a correctional institution pursuant to an order of a court or a warrant of commitment;

"**remand prisoner**" means a person remanded in custody awaiting trial or sentence;

"**sentence of indeterminate duration**" means detention in custody until further order of a court;

"**victim**", in relation to an offence, means a person who suffered mental or physical injury or nervous shock as a result of the offence;

"**Visiting Tribunal**", in relation to a correctional institution, means a Visiting Tribunal established under this Act in respect of that institution.

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PART 2
CORRECTIONAL SERVICES

DIVISION 1—ADMINISTRATION

Power of Minister and Chief Executive Officer to delegate

7. (1) The Minister may, from time to time, by instrument in writing, delegate to the Chief Executive Officer any powers, duties or functions under this Act or any other Act.

(2) The Chief Executive Officer may, with the approval of the Minister, delegate to any employee of the Department, any of the powers, functions, duties or responsibilities vested in, imposed on or delegated to, the Chief Executive Officer under this Act or any other Act.

(2a) The Chief Executive Officer may, with the approval of the Minister, delegate to the manager of a police prison any of the powers, functions, duties or responsibilities—

(a) that are vested in, imposed on or delegated to the Chief Executive Officer; and

(b) that are applicable to the police prison or to those persons who are, or are to be, detained in it.

(3) A delegation under this section is revocable at will, and does not prevent the exercise or performance of any power, function, duty or responsibility by the Minister or the Chief Executive Officer.

(4) Any power, function, duty or responsibility vested in, imposed on or delegated to the Chief Executive Officer under this Act may, if the Chief Executive Officer is absent from or otherwise unable to perform the duties of office, be exercised or performed by such other employee of the Department as the Minister may authorise.

Use of volunteers in the administration of this Act

8. The Minister must promote the use of volunteers in the administration of this Act to such extent as the Minister thinks appropriate.

Annual report of Chief Executive Officer

9. (1) The Chief Executive Officer must, not later than 31 October in each year, submit to the Minister a report on the work of the Department during the previous financial year and on such other matters as the Minister may direct.

(2) The Minister must, as soon as practicable after receipt of a report submitted under this section, cause a copy of the report to be laid before each House of Parliament.

DIVISION 2—THE CORRECTIONAL SERVICES ADVISORY COUNCIL

Continuation of the Advisory Council

10. (1) The *Correctional Services Advisory Council* continues in existence.

(2) The Advisory Council consists of six members appointed by the Governor, of whom—

(a) one (the presiding member) will be a person who has, in the opinion of the Governor, extensive knowledge of, and experience in, the science of criminology or penology or any other related science; and

(b) one (the deputy presiding member) will be a person who has, in the opinion of the Governor, extensive knowledge of, and experience in, the field of business management, medicine, social welfare or education; and

- (c) one will be a person nominated by the Attorney-General; and
- (d) three will be persons nominated by the Minister.

(3) At least one of the members of the Advisory Council must be a woman and at least one must be a man.

Term of office of members

11. (1) The presiding member of the Advisory Council will be appointed for a term of five years.

(2) A member of the Advisory Council other than the presiding member will be appointed for such term, not exceeding three years, as the Governor determines and specifies in the instrument of appointment.

(3) On the expiration of the term of office of a member of the Advisory Council, the member is eligible for reappointment.

Allowances and expenses

12. A member of the Advisory Council is entitled to receive such allowances and expenses as the Governor may from time to time determine.

Removal from and vacancies of office

13. (1) The Governor may remove a member of the Advisory Council from office on the ground of—

- (a) mental or physical incapacity to carry out satisfactorily the duties of office; or
- (b) dishonourable conduct; or
- (c) neglect of duty.

(2) The office of a member of the Advisory Council becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office; or
- (c) resigns by giving notice in writing to the Minister; or
- (d) is removed from office by the Governor pursuant to subsection (1).

(3) On the office of a member of the Advisory Council becoming vacant, a person must be appointed to that office in accordance with this Act.

Manner in which business of the Advisory Council must be conducted

14. (1) The presiding member or, in the presiding member's absence, the deputy presiding member will preside at any meeting of the Advisory Council.

(2) Four members, one of whom must be the presiding member or the deputy presiding member, constitute a quorum of the Advisory Council, and no business may be transacted at any meeting of the Advisory Council unless a quorum is present.

(3) Subject to this Division, the business of the Advisory Council will be conducted in such manner as the Advisory Council may determine.

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Functions of the Advisory Council

15. (1) The functions of the Advisory Council are as follows:

- (a) to monitor and evaluate the administration and operation of this Act; and
- (b) to report to the Minister on any matter referred to the Advisory Council by the Minister; and
- (c) to report of its own motion to the Minister on any matter pertaining to the administration or operation of this Act; and
- (d) to perform such other functions as may be prescribed by or under this Act, or any other Act.

(2) A member of the Advisory Council is entitled at any reasonable time to enter and inspect any correctional institution and ask questions of any person within the institution.

Annual report

16. (1) The Advisory Council must, not later than 31 October in each year, report to the Minister on the administration and operation of this Act during the previous financial year.

(2) The Minister must, as soon as practicable after receipt of a report submitted under subsection (1), cause a copy of the report to be laid before each House of Parliament.

DIVISION 3—VISITING TRIBUNALS

Establishment of Visiting Tribunals

17. (1) There must be established for each correctional institution such number of Visiting Tribunals as the Minister thinks necessary or desirable.

(2) The Governor may, by proclamation, appoint—

- (a) a magistrate; or
- (b) two justices of the peace; or
- (c) a justice of the peace,

to be a Visiting Tribunal for a correctional institution.

(4) The Governor may, by further proclamation, vary or revoke a proclamation under this section.

DIVISION 4—COMMUNITY SERVICE ADMINISTRATION

Establishment of community service centres

17A. (1) The Minister may, by notice published in the *Gazette*, declare any premises to be a community service centre.

(2) The Minister may, by notice published in the *Gazette*, revoke or vary a declaration under this section.

(3) Community service centres are under the control of the Minister.

The community service advisory committee

17B. (1) The community service advisory committee established under the *Offenders Probation Act 1913* is continued in existence under this Act.

(2) The advisory committee is comprised of not less than three, nor more than five, members appointed by the Minister, of whom—

(a) one will be appointed after consultation with the United Trades and Labor Council; and

(b) one will be a person nominated by the Chief Executive Officer.

(3) The members of the advisory committee will hold office upon such terms and conditions as the Minister thinks fit.

(4) The functions of the advisory committee are—

(a) to formulate guidelines for the approval of projects and tasks suitable for the performance of community service by offenders; and

(b) to perform such other functions as the Minister may direct.

Community service committees

17C. (1) The Minister will establish a community service committee for each community service centre.

(2) A community service committee will consist of not less than three, nor more than five, members, of whom—

(a) one will be a magistrate or justice of the peace; and

(b) one will be appointed after consultation with the United Trades and Labor Council; and

(c) one will be a person nominated by the Chief Executive Officer.

(3) The members of a community service committee will hold office on such terms and conditions as the Minister thinks fit.

(4) The functions of a community service committee are—

(a) to approve, within the guidelines formulated by the community service advisory committee, the projects and tasks to be performed as community service work by offenders attending the community service centre in respect of which the committee was established; and

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- (b) to keep approved projects and tasks under regular review; and
- (c) to monitor the performance of community service work by offenders attending the centre; and
- (d) to perform such other functions as the Minister may direct.

(5) A community service committee must not approve a project or task for community service unless—

- (a) it is a project or task for the benefit of an organisation that does not seek to secure a pecuniary profit for its members; or
- (b) it is a project or task to aid a person, or group of persons, who, in the opinion of the committee, is or are disadvantaged through age, illness, incapacity, poverty or any other adversity; or
- (c) it is a project or task of a Government department or instrumentality or of a local government authority.

(6) A community service committee must not approve a project or task for community service work if an offender, in undertaking that project or task—

- (a) would replace a person who is being paid to perform any work; or
- (b) would perform any work for which funds are available.

Insurance cover to be provided by Minister

17D. (1) The Minister must provide insurance, upon such terms and conditions as the Minister thinks fit, for offenders in respect of death or injury arising out of, or occurring in the course of, community service performed pursuant to any Act.

(2) The Minister must provide insurance, upon such terms and conditions as the Minister thinks fit, for persons appointed as voluntary supervisors of offenders performing community service pursuant to any Act in respect of death or injury arising out of, or occurring in the course of, carrying out their duties as supervisors.

(3) The cost of providing insurance cover under this section will be borne by the Crown.

DIVISION 5—PROBATION HOSTELS

Establishment of probation hostels

17E. (1) The Minister may, by notice published in the *Gazette*, declare any premises to be a probation hostel.

(2) The Minister may, by notice published in the *Gazette*, vary or revoke a declaration under this section.

(3) Probation hostels are under the control of the Minister.



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**PART 3
CORRECTIONAL INSTITUTIONS**

DIVISION 1—ESTABLISHMENT OF CORRECTIONAL INSTITUTIONS

Governor may proclaim premises to be a prison or police prison

18. (1) The Governor may, by proclamation—

- (a) declare any premises to be a prison; or
- (b) declare any premises under the control of the Commissioner of Police to be a police prison,

for the purposes of this Act.

(2) The Governor may, by further proclamation, vary or revoke a proclamation under subsection (1).

Correctional institutions to be under the control of the Minister

19. (1) All correctional institutions established under this Act are under the control of the Minister.

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DIVISION 2—INSPECTION OF CORRECTIONAL INSTITUTIONS

Correctional institutions must be inspected on a regular basis

20. (1) The Minister must cause correctional institutions to be inspected on a regular basis by an inspector for the purpose of ascertaining whether the provisions of this Act relating to the treatment of prisoners are being complied with.

(2) The Governor may appoint such number of inspectors for the purposes of this section as the Governor thinks fit.

(2a) A person is not eligible for appointment as an inspector unless he or she—

- (a) is a person who has retired from judicial or magisterial office; or
- (b) is a legal practitioner; or
- (c) is a justice of the peace.

(3) An inspector cannot be directed to inspect a correctional institution in respect of which the inspector constitutes a Visiting Tribunal or is a member of such a Tribunal.

(4) For the purposes of, or in the course of, carrying out an inspection, an inspector may—

- (a) enter and inspect any part of the correctional institution; and
- (b) question any person within the institution; and
- (c) inquire into the treatment of the prisoners, or of a particular prisoner; and
- (d) receive and investigate any complaint of a prisoner.

(5) An inspector may, in investigating a complaint, be assisted by any other person authorised by the Attorney-General for the purpose.

(6) An inspector must, as soon as reasonably practicable after carrying out an inspection pursuant to this section, or at such other intervals as the Minister may direct, furnish the Minister with a written report on the inspection, including findings in relation to any complaint investigated by the inspector in the course of the inspection.

(7) An inspector may, in a report furnished pursuant to this section, make such recommendations on any matter arising out of the report as he or she thinks fit.

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**PART 4
IMPRISONMENT**

DIVISION 1—ADMISSION AND ASSIGNMENT OF PRISONERS

Documentation to be presented upon admission of a prisoner to a correctional institution

21A. A person who is to be detained in a correctional institution pursuant to an order of a court or a warrant of commitment cannot be admitted to a correctional institution for detention except on presentation of—

- (a) a written statement that contains particulars of the order of the court; or
- (b) the warrant of commitment, which must contain particulars of the order of the court on which it is founded.

Assignment of prisoners to particular correctional institutions

22. (1) A person who is remanded in custody awaiting trial or sentence will be detained in such correctional institution as the Chief Executive Officer may determine.

(2) Subject to this section, a person who is sentenced to imprisonment or committed to prison will be imprisoned in such correctional institution as the Chief Executive Officer may determine.

(3) Subject to this Act, a person who is sentenced to a term of imprisonment exceeding 15 days must not be imprisoned in a police prison.

(4) A person may be detained in a particular correctional institution pursuant to this section notwithstanding that the warrant of commitment by virtue of which the person is detained in custody directs that he or she be detained in some other correctional institution.

DIVISION 3—ASSESSMENT OF PRISONERS

Initial and periodic assessment of prisoners

23. (1) The Chief Executive Officer must, as soon as practicable after the initial admission to a prison of a person who has been sentenced to a term of imprisonment exceeding six months, to life imprisonment or to a sentence of indeterminate duration, and thereafter at regular intervals of not more than one year, assess the prisoner and his or her circumstances and determine whether or not the prisoner should be transferred to some other prison.

(2) The Minister may establish a committee for the purpose of assisting the Chief Executive Officer in carrying out assessments under this section.

(3) In carrying out an assessment under this section, the Chief Executive Officer must have regard to—

- (a) the age, sex and social, medical, psychological and vocational background and history of the prisoner; and
- (b) the needs of the prisoner in respect of education or training or medical or psychiatric treatment; and

- (c) the aptitude or suitability of the prisoner for any particular form of training or work; and
- (d) the nature of the offence, or offences, in respect of which the prisoner is imprisoned and the length of sentence; and
- (e) the information contained in any file held by a court in respect of the prisoner; and
- (f) the behaviour of the prisoner while in prison; and
- (g) the security of, and availability of accommodation in, any prison under consideration; and
- (h) the question of maintaining the prisoner's family ties; and
- (i) where relevant, any proposed plans in respect of the release of the prisoner and his or her social rehabilitation; and
- (j) such other matters as the Chief Executive Officer thinks relevant.

(4) The Chief Executive Officer must notify the prisoner before commencing an assessment, and must, if the prisoner so requests, grant the prisoner an opportunity to make representations in person to the Chief Executive Officer or to a committee established pursuant to subsection (2).

(5) The prisoner may make written representations in respect of his or her assessment to the Chief Executive Officer or to a committee established pursuant to subsection (2).

(6) After the first assessment of a prisoner has been completed, the Chief Executive Officer must prepare a programme in relation to the prisoner that contains particulars of any proposals for the education or training or medical or psychiatric treatment of the prisoner, and may, after any subsequent assessment, add to or vary that programme.

DIVISION 4—CUSTODY OF PRISONERS

Chief Executive Officer has custody of prisoners

24. (1) The Chief Executive Officer has the custody of a prisoner, whether the prisoner is within, or outside, the precincts of the place in which he or she is being detained, or is to be detained.

(2) Subject to this Act, the Chief Executive Officer has an absolute discretion—

- (a) to place any particular prisoner or prisoner of a particular class in such part of the correctional institution; and
- (b) to establish in respect of any particular prisoner, or prisoner of a particular class, or in respect of prisoners placed in any particular part of the correctional institution, such a regime for work, recreation, contact with other prisoners or any other aspect of the day-to-day life of prisoners,

as from time to time seems expedient to the Chief Executive Officer.

DIVISION 5—TRANSFER AND LEAVE OF ABSENCE OF PRISONERS

Transfer of prisoners

25. (1) The Chief Executive Officer may, by written order, direct that a prisoner be transferred from the place in which he or she is being detained to any other correctional institution.

(2) An order given by the Chief Executive Officer under subsection (1) is sufficient authority for the transfer of the prisoner in accordance with the order and the detention of the prisoner in the correctional institution to which he or she is transferred.

Prisoner may be temporarily detained in any other prison, etc., while in transit

26. While a prisoner is being taken to any place in which he or she is to be detained, or is being taken for any purpose contemplated by this Act from any place in which he or she is being detained, the prisoner may, without any authority other than this section, be detained in any other place for as long as may reasonably be required in the course of effecting the transfer.

Leave of absence from prison

27. (1) The Chief Executive Officer may, by written order, grant to a prisoner leave to be absent from the place in which he or she is being detained—

- (a) for the medical or psychiatric examination, assessment or treatment of the prisoner; or
- (b) for the attendance of the prisoner at an educational or training course; or
- (c) for the participation of the prisoner in paid employment or in any form of recreation, entertainment or community service; or
- (d) for such compassionate purpose as the Chief Executive Officer thinks fit; or
- (e) for any purpose related to criminal investigation; or
- (f) for such other purpose as the Chief Executive Officer thinks fit.

(2) Leave of absence granted under this section may be subject to such conditions as the Chief Executive Officer thinks fit, including, where the Chief Executive Officer thinks it is appropriate, a condition that the prisoner will be in the custody of, and supervised by, one or more employees of the Department authorised by the Minister for the purpose.

(2a) If leave of absence is to be granted to a prisoner for participation in paid employment, the Chief Executive Officer may impose a condition requiring the prisoner to pay to the Chief Executive Officer a specified amount per week, calculated in accordance with the Minister's directions, towards the cost of his or her board and lodging while so employed, or towards reducing the amount of any CIC levy that the prisoner is liable to pay in respect of any offence.

(3) The Chief Executive Officer may, by further written order, revoke any leave of absence granted under this section, or vary any of the conditions to which it is subject.

(4) Where a prisoner is still at large after the revocation or expiry of leave of absence, the prisoner may be apprehended without warrant by any member of the police force or any employee of the Department authorised by the Minister for the purpose.

(5) A prisoner who is still at large after the expiry of leave of absence will be taken to be unlawfully at large.

(6) A prisoner is not, while still at large after revocation of leave of absence, serving his or her sentence of imprisonment.

Removal of prisoner for criminal investigation, attendance in court, etc.

28. (1) A prisoner is entitled to attend before a justice or a court for the purpose of preliminary examination, trial or sentence for the offence in respect of which the prisoner is being detained or for any other offence with which he or she has been charged.

(2) Where a prisoner is required to attend before a justice, court or coroner, whether as a party to any proceedings or as a witness, the justice, court or coroner hearing the proceedings may, by order, direct the manager of the correctional institution in which the prisoner is being detained to cause the prisoner to be brought before the justice, court, or coroner, in accordance with the order.

(3) On the determination or an adjournment of proceedings at which a prisoner attends under this section, the prisoner may be returned to the correctional institution without any further process or authority.

(4) Where a prisoner is suspected of having committed an offence, or has been charged with an offence, the manager of the correctional institution must, at the request of a member of the police force, release the prisoner into the custody of that member of the police force for the purposes of investigation of the offence, obtaining evidence as to the commission of the offence or identifying the prisoner as the person who committed the offence, in accordance with law.

DIVISION 6—MANAGEMENT OF PRISONERS

Prison work

29. (1) A prisoner (other than a remand prisoner) is, while in a correctional institution, required to perform such work, whether within or outside the precincts of the correctional institution, as the manager directs.

(2) A remand prisoner may, at his or her own request, and subject to any directions of the manager, perform any work that has been arranged by the manager.

(3) Tasks selected for prison work must, as far as reasonably practicable, be selected on the basis that they are likely to provide prisoners with experience in a recognised profession, trade or other field of employment.

(4) A manager must, in directing a prisoner to perform any particular work, have regard to the age and the physical and mental health of the prisoner, and any skills or work experience of the prisoner.

Prison education

30. The Chief Executive Officer must arrange for such courses of instruction or training as the Chief Executive Officer thinks fit to be made available to prisoners.

Prisoner allowances and other money

31. (1) A prisoner is, while in a correctional institution, entitled to an allowance at a rate from time to time fixed by the Minister with the approval of the Treasurer.

(2) A prisoner who performs work pursuant to this Division is entitled to a further allowance at a rate from time to time fixed by the Minister with the approval of the Treasurer.

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(2a) The Minister may establish a system of bonus payments, at rates approved by the Treasurer, for prisoners who, in the opinion of the manager of the prison, display a positive attitude, or apply themselves with particular effort, to the performance of work or other tasks or duties in the prison.

(3) The Minister may, for the purposes of subsection (2), fix rates of allowance that vary according to—

- (a) the classes of work to which they apply; or
- (b) the correctional institution in which the work will be performed; or
- (c) the different security classifications of prisoners performing the work; or
- (d) any combination of those factors.

(4) All allowances to which a prisoner is entitled under this section will be credited to the prisoner to an account, or accounts, kept in his or her name by the manager of the prison.

(4a) The manager of a prison may establish an account in the name of a prisoner into which is paid from time to time a proportion (not exceeding 30 per cent) of the prisoner's weekly income under this section, for the purposes of the resettlement of the prisoner in the community on being discharged from prison.

(4b) The amount standing to a prisoner's credit in a resettlement account cannot be drawn on while the prisoner is in prison unless the manager of the prison is of the opinion that special reason exists for doing so.

(5) The Minister must review regularly the rates of the allowances to which a prisoner is entitled under this section.

(5a) The manager of a correctional institution must, if a prisoner receives any money (other than the allowances paid pursuant to this section) that is to be held in trust for the prisoner, establish an account in the name of the prisoner into which all such money will be paid.

(6) The manager of a correctional institution may, on the direction of the Chief Executive Officer, deduct from any money standing to the credit of a prisoner pursuant to this section any amount due and payable by the prisoner by way of repayment of a loan made by the Chief Executive Officer.

(6a) If the manager of a correctional institution is aware, by virtue of a warrant executed against the prisoner (whether issued before or after the commencement of this subsection), that a prisoner is liable for a CIC levy imposed in respect of any offence, the manager must deduct from the prisoner's weekly income under this section an amount calculated in accordance with the Minister's directions.

(6b) Subsection (6a) does not apply in relation to a prisoner who is being detained by virtue only of a warrant of commitment issued before the commencement of this subsection solely for the enforcement of a CIC levy.

(6c) Money deducted under subsection (6a), and any money paid to the manager at any time by a prisoner in or towards satisfaction of a CIC levy, must be paid into the Criminal Injuries Compensation Fund.

(7) Subject to this Act, withdrawals from any account held in the name of a prisoner, and the purposes for which they are made, are at the discretion of the manager of the correctional institution and, without limiting the generality of that discretion, withdrawals may be refused where the manager thinks that the refusal is justified in the interests of the good management of the prisoner or of the correctional institution generally.

Purchase of items of personal use by prisoners

32. The manager of a correctional institution must make available for purchase by prisoners such items of personal use or consumption as may be prescribed, and may make available for purchase any other items that the manager thinks fit, but withdrawals of money for the purchase of items made available under this section are at the discretion of the manager in accordance with section 31.

Prisoners' mail

33. (1) Subject to this section—

- (a) prisoners are entitled to receive and send letters; and
- (b) letters sent to prisoners must be handed to them as soon as reasonably practicable after delivery to the institution; and
- (c) letters sent by prisoners must be forwarded as soon as reasonably practicable.

* * * * *

(3) A letter sent to or by a prisoner contravenes this section if it contains—

- (a) a threat of a criminal act; or
- (b) a proposal or plan to commit a criminal act, or to do anything towards the commission of a criminal act; or
- (c) an unlawful threat or demand; or
- (d) an incitement to violence, or material likely to inflame violence; or
- (e) plans for any activity prohibited by the regulations; or
- (f) an item prohibited by the regulations; or
- (g) a sum of money, whether in cash or otherwise, or a request for any such sum, where the prior permission of the manager has not been obtained in respect of that sum or request; or
- (h) a request for any goods, without the prior permission of the manager; or
- (i) a statement that is in code.

(4) A manager may cause all letters sent to or by prisoners to be opened and examined by an authorised officer for the purpose of determining whether any letter contravenes this section.

* * * * *

(6) An authorised officer may, for the purpose of perusing a letter opened by the authorised officer that is in a language other than English, cause the letter to be translated.

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(7) A letter sent by a prisoner—

- (a) to the Ombudsman; or
- (b) to a Member of Parliament; or
- (c) to a Visiting Tribunal; or
- (ca) to an inspector of the correctional institution; or
- (d) to a legal practitioner at the practitioner's business address,

cannot be opened pursuant to this section.

(7a) Nothing in this section empowers an authorised officer to open a declaration vote sent by a prisoner to a returning officer.

(8) Where an authorised officer is satisfied on reasonable grounds that a letter sent to a prisoner is from the Ombudsman, a Member of Parliament, a Visiting Tribunal, an inspector or a legal practitioner, the authorised officer must not open that letter.

(10) Where a letter sent to a prisoner is found to contravene this section, the manager may—

(a) in the case of a letter—

- (i) hand it over to the prisoner; or
- (ii) retain it and hand it over to the prisoner on discharge from prison; or
- (iii) furnish a copy of it to the prisoner with any material that contravenes this section deleted from the copy, provided that the letter is handed over to the prisoner on discharge from prison; or
- (iv) retain it as evidence of an offence, provided that a copy of it, or an expurgated copy of it, is handed over to the prisoner as soon as reasonably practicable, or on discharge from prison; and

(b) in the case of a prohibited item found in a letter—

- (i) cause the item to be destroyed; or
- (ii) retain it and hand it over to the prisoner on discharge from prison; or
- (iii) retain it as evidence of an offence; or
- (iv) return it to the sender; or
- (v) dispose of it in such other manner as the manager thinks fit; and

(c) in the case of a sum of money—

- (i) hold the money for as long as may be necessary for the purposes of ascertaining the identity of the sender and the circumstances of the payment; or

- (ii) credit the whole, or part, of it to the prisoner; or
- (iii) hold the whole, or part, of it on behalf of the prisoner and pay it over to the prisoner in accordance with this Act on discharge from prison; or
- (iv) return the whole, or part of it to the sender; or
- (v) if the prisoner is not lawfully entitled to the money, and the identity or whereabouts of the sender cannot be ascertained—pay the money to the Treasurer as unclaimed money for the purposes of the *Unclaimed Moneys Act 1891*; or
- (vi) retain it as evidence of an offence.

(11) Where a letter sent by a prisoner is found to contravene this section, the manager may—

(a) in the case of a letter—

- (i) return it to the prisoner; or
- (ii) retain it as evidence of an offence, provided that a copy is furnished to the prisoner at some time prior to any hearing in respect of the offence; and

(b) in the case of a prohibited item found in a letter—

- (i) cause the item to be destroyed; or
- (ii) retain it and hand it over to the prisoner on discharge from prison; or
- (iii) retain it as evidence of an offence; or
- (iv) return it to the prisoner; or
- (v) forward it to the intended recipient; or
- (vi) dispose of it in such other manner as the manager thinks fit; and

(c) in the case of a sum of money—

- (i) hold it for as long as may be necessary for the purposes of ascertaining the circumstances of the payment; or
- (ii) retain it as evidence of an offence; or
- (iii) pay it into the General Revenue of the State; or
- (iv) disburse it in such other manner as the Minister may direct.

(12) The manager must advise a prisoner in such manner as the manager thinks fit of any action taken under this section in respect of a letter, or anything contained in a letter, sent to or by the prisoner.

(13) An authorised officer must not, otherwise than as required by law or in the performance of duties, disclose to any other person the contents of any letter perused pursuant to this section.

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(14) In this section—

"authorised officer" means an employee of the Department authorised by the Chief Executive Officer for the purposes of this section, not being a person who is employed in a position involving substantial day-to-day contact with prisoners.

Prisoners' goods

33A. (1) A prisoner is not entitled to receive any goods from a person outside the prison unless the prisoner has the permission of the manager to do so.

(2) A prisoner is entitled to send or give any goods to a person outside the prison other than items prohibited by the regulations.

(3) The manager may cause all goods, and all parcels apparently containing goods, sent or given to a prisoner, or sent or given by a prisoner, to be examined.

(4) If goods sent or given to a prisoner consist of items prohibited by the regulations or are goods in respect of which permission is not given, the manager has an absolute discretion to deal with or dispose of the goods as he or she thinks fit (for example, by returning them to the sender or donor, selling, destroying or storing them, handing them over to a member of the prisoner's family).

(5) Goods sent or given by a prisoner must be forwarded or handed on to the recipient unless the goods are prohibited items or are to be kept as evidence of an offence.

(6) Goods that a person is prohibited by some other Act or law from possessing must be destroyed unless they are to be kept as evidence of an offence.

(7) The Minister may fix charges for the storage of goods on behalf of prisoners.

(8) Any costs incurred in dealing with or disposing of goods (including storage charges) may be deducted by the manager from any account (other than a resettlement account) held on behalf of the prisoner under this Act.

(9) If a prisoner fails, on being discharged from prison, to take any goods that have been stored in the prison on his or her behalf, the manager may deal with or dispose of the goods as the manager thinks fit.

(10) Any proceeds from the sale of goods under this section will (after deduction of the costs of storage and sale) be credited to the prisoner's account or, if the prisoner has been discharged and his or her whereabouts are known, refunded to the prisoner.

(11) Money not refunded under subsection (10) will be dealt with in accordance with the *Unclaimed Moneys Act 1891*.

Prisoners' rights to have visitors

34. (1) A prisoner (other than a remand prisoner) is, while in a correctional institution, entitled to be visited by a person, or a number of persons not exceeding the prescribed number, on one occasion, or such greater number of occasions as may be prescribed, in each period of two weeks.

(2) A remand prisoner is entitled to be visited by a person, or a number of persons not exceeding the prescribed number, on three occasions, or such greater number of occasions as may be prescribed, in each week.

(3) The manager of a correctional institution may, if of the opinion that special reasons exist for doing so—

- (a) permit a prisoner to be visited on any further occasion than is provided by or under this Act; or
- (b) debar a particular person from visiting a prisoner for such period as the manager thinks fit, or until further order of the manager.

Prisoners' rights to access to legal aid and legal services

35. (1) A prisoner is not by virtue of imprisonment debarred from the benefit of any Act or law relating to legal aid.

(2) Where a prisoner is visited by a legal practitioner for the purpose of rendering any legal services, that visit will not be held to be a visit for the purposes of section 34.

Power to keep a prisoner apart from all other prisoners

36. (1) A prisoner must not be kept separately and apart from all other prisoners in the correctional institution except in accordance with this section.

(2) The Chief Executive Officer may direct that a prisoner be kept separately and apart from all other prisoners in the correctional institution if the Chief Executive Officer is of the opinion that it is desirable to do so—

- (a) in the interests of the proper administration of justice where an investigation is to be conducted into an offence alleged to have been committed by the prisoner; or
- (b) in the interests of the safety or welfare of the prisoner; or
- (c) in the interests of protecting other prisoners; or
- (d) in the interests of security or good order within the correctional institution.

(3) A direction given pursuant to subsection (2)(a) has effect for such period, not exceeding 30 days, as may be specified in the direction.

(4) Any other direction under subsection (2) has effect until revoked by the Chief Executive Officer.

(5) A direction cannot be given more than once pursuant to subsection (2)(a) in respect of the incident giving rise to the alleged offence.

(6) A direction given under subsection (2)—

- (a) must be in writing; and
- (b) may be revoked at any time by the Chief Executive Officer.

(7) A copy of a direction given under subsection (2) must be served personally on the prisoner within 24 hours of being so given.

(8) Despite the fact that a direction under subsection (2) is in force in respect of a prisoner, the Chief Executive Officer may permit the prisoner to have contact with such other prisoners on such occasions as the Chief Executive Officer thinks fit.

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(9) The Chief Executive Officer must, as soon as reasonably practicable after giving a direction under subsection (2), furnish the Minister with a report of the circumstances in which the direction was given.

(10) On receiving a report under subsection (9), the Minister may review the matter and may confirm or revoke the direction.

Search of prisoners

37. (1) The manager of a correctional institution may cause a prisoner or a prisoner's belongings to be searched in any of the following cases:

- (a) where the prisoner enters the correctional institution or moves from one part of the institution to another;
- (b) where the manager has reasonable cause to suspect that the prisoner has in his or her possession in the correctional institution an item prohibited by the regulations;
- (c) where the prisoner is required pursuant to this Act to provide a specimen of his or her urine for analysis.

(2) The following provisions apply to the search of a prisoner:

- (a) those present at any time during the search when the prisoner is naked, except a medical practitioner, must be of the same sex as the prisoner;
- (b) at least two persons, apart from the prisoner, must be present at all times during the search when the prisoner is naked;
- (c) for the purposes of the search, the prisoner may be required—
 - (i) to open his or her mouth;
 - (ii) to strip;
 - (iii) to adopt particular postures;
 - (iv) to do anything else reasonably necessary for the purposes of the search,

and if the prisoner does not comply with such a requirement reasonable force may be applied to secure compliance.

(3) Force must not be applied to open a prisoner's mouth except by or under the supervision of a medical practitioner.

(4) Nothing may be introduced into an orifice of a prisoner's body for the purposes of a search except by a medical practitioner.

(5) A search must be carried out expeditiously and undue humiliation of the prisoner must be avoided.

Drug testing of prisoners

37AA. (1) The manager of a correctional institution may require a prisoner to provide a specimen of his or her urine for analysis in the following circumstances:

- (a) where the manager suspects that the prisoner has unlawfully used a drug;

- (b) where the manager, for the purpose of ascertaining the incidence of unlawful drug use in the correctional institution—
 - (i) has caused the random selection of prisoners from the whole, or any part, of the institution for urine testing; or
 - (ii) proposes that all prisoners within the institution, or a part of the institution, be so tested.

(2) For the purposes of this Act, a prisoner uses a drug if he or she smokes or consumes the drug or administers the drug to himself or herself, or permits another person to administer the drug to him or her.

(2a) An allegation in a complaint or information or other notice of charge for an offence (whether against this Act or any other Act) that a sample of urine was obtained from a specified prisoner on a specified day and that it was assigned a specified identifying number, is, in the absence of proof to the contrary, proof of the facts alleged and that those things were done in accordance with this Act.

(3) In any legal proceedings, an apparently genuine certificate purporting to be signed by an analyst and certifying that a specified drug was found to be present in a specified sample of urine is, in the absence of proof to the contrary, proof of the matters so certified.

DIVISION 6A—HOME DETENTION

Release of eligible prisoners on home detention

37A. (1) Subject to this section and the regulations, the Chief Executive Officer has an absolute discretion to release a prisoner from prison to serve a period of home detention in accordance with this Division.

(1a) A prisoner who is serving a sentence of imprisonment in respect of which a non-parole period has not been fixed is not (except where the total term to be served is less than one year) eligible for release under this section.

(2) A prisoner will not be released under this Division unless—

(a) in the case of a prisoner serving a sentence in respect of which a non-parole period has been fixed, the prisoner has served at least one-half of that non-parole period; and

(c) the prisoner satisfies any other criteria determined by the Minister for the purposes of this section.

(3) The release of a prisoner under this Division is subject to the following conditions:

(a) a condition requiring the prisoner to remain at the prisoner's residence during the period of home detention and not to leave the residence at any time during that period except for the following purposes:

- (i) remunerated employment; or
- (ii) urgent medical or dental treatment for the prisoner; or

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- (iii) any other purpose approved or directed by the authorised officer to whom the prisoner is assigned; and
 - (b) a condition requiring the prisoner to be of good behaviour during the period of home detention; and
 - (c) a condition requiring the prisoner to obey the lawful directions of the authorised officer during the period of home detention; and
 - (d) such other conditions as the Chief Executive Officer thinks appropriate.
- (4) A prisoner released under this Division will, unless the release is earlier revoked, remain on home detention—
- (a) in the case of a prisoner subject to a non-parole period—until he or she is released on parole;
 - (b) in the case of any other prisoner—until the time at which he or she would, but for this Division, have been released from prison pursuant to this Act.
- (5) The Chief Executive Officer may, by notice in writing served personally on the prisoner, vary or revoke any of the conditions to which the prisoner's release is subject.

(6) In this section—

"**non-parole period**", in relation to a prisoner serving a sentence imposed for an offence against a law of the Commonwealth, includes the minimum term to be served under a recognisance release order;

"**residence**" includes, if the prisoner is an Aborigine who resides on tribal lands or an Aboriginal reserve, any area of land specified in the instrument of release.

Authorised officers

37B. (1) The Minister may appoint such authorised officers for the purposes of this Division as the Minister thinks fit.

(2) The Chief Executive Officer must, on the release of a prisoner under this Division, assign the prisoner to an authorised officer and may from time to time re-assign the prisoner to another authorised officer.

(3) An authorised officer to whom a prisoner is assigned—

(a) may give reasonable directions to the prisoner—

- (i) requiring the prisoner to take up, not to take up or not to give up some particular employment; or
- (ii) requiring the prisoner to attend a particular course of counselling or instruction; and

(b) may give the prisoner other directions of a kind authorised by the Minister either generally or in relation to the particular prisoner.

(4) Any authorised officer may, at any time—

- (a) enter or telephone the residence of a prisoner serving a period of home detention; or
- (b) telephone the prisoner's place of employment or any other place at which the prisoner is permitted or required to attend; or
- (c) question any person at that residence or place as to the whereabouts of the prisoner,

for the purposes of ascertaining whether or not the prisoner is complying with the conditions to which the prisoner's release is subject.

(5) A person must not—

- (a) hinder an authorised officer in the exercise of powers under this section; or
- (b) fail to answer truthfully any question put to the person by an authorised officer pursuant to those powers.

Maximum penalty: \$2 500.

Revocation of release

37C. (1) The Chief Executive Officer—

- (a) must revoke the release of a prisoner under this Division if the prisoner breaches a condition to which the release is subject; and
- (b) may, in the absolute discretion of the Chief Executive Officer, revoke the release of a prisoner under this Division for any other reason.

(2) A prisoner is not in breach of the condition requiring the prisoner to remain at the prisoner's residence if the prisoner leaves the residence for the purpose of averting or minimising a serious risk of death or injury (either to the prisoner or some other person).

(3) On the revocation of the release of a prisoner under this Division, the prisoner may be apprehended, without warrant, by a member of the police force or any authorised officer and returned to prison.

(4) Where a prisoner breaches a condition to which the release of the prisoner is subject or is, during the period of home detention, sentenced to imprisonment for an offence (whenever committed), the prisoner is liable to serve in prison the balance of the non-parole period or the term of imprisonment (as the case may require), being—

- (a) in the case of a breach of condition or an offence committed during the period of home detention—the unexpired balance as at the date of the breach or offence; and
- (b) in the case of an offence committed at any other time—the unexpired balance as at the date on which the further sentence of imprisonment is imposed.

(5) Subsection (4) applies notwithstanding that the period of home detention may have expired before the prisoner can be apprehended.

(6) A prisoner is, on breaching the condition referred to in section 37A(3)(a), unlawfully at large.

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Crown not liable to maintain prisoners on home detention

37D. The Crown is not liable to maintain a prisoner who is serving a period of home detention.

DIVISION 7—RELEASE OF PRISONERS FROM PRISON

Release of prisoner from prison or home detention

38. (1) Subject to this Act, a prisoner (other than a remand prisoner) will be released from the correctional institution in which the prisoner is being detained on the day on which the prisoner's sentence of imprisonment expires, unless released earlier under any other provision of this Act, or under any other Act or law.

(2) Subject to subsection (3), the Chief Executive Officer may, by instrument in writing, authorise the release of a prisoner from prison or from home detention on any day during the period of 30 days preceding the day on which the prisoner is due, or would have been due, to be released from prison pursuant to any other provision of this Act.

(3) Subsection (2) does not apply in relation to a prisoner who is serving a term of imprisonment for default in payment of a pecuniary sum.

(4) In this section—

"pecuniary sum" has the same meaning as in the *Criminal Law (Sentencing) Act 1988*.

Time of release from prison

39. (1) A prisoner must be released from the correctional institution in which the prisoner is being detained as near as practicable to 10 a.m. on the day of the prisoner's release.

(3) Where a contempt prisoner purges his or her contempt or complies with the court order for payment of a pecuniary sum, and does so between 5 p.m. on one day and 9 a.m. on the next day, the manager of the correctional institution is not, notwithstanding any other provision of this Act or any other Act or law, required to release the prisoner from the institution until that next day, at some time after 10 a.m.

Delivery of property and money to prisoner on release

39A. Where a prisoner is released from prison on home detention or parole, or on the expiration or extinguishment of his or her sentence of imprisonment, the Chief Executive Officer must, as soon as reasonably practicable, hand over to the prisoner any personal property held on the prisoner's behalf, and must pay to the prisoner any money held to the prisoner's credit pursuant to this Act—

(a) in a lump sum; or

(b) in the case of a prisoner released on parole subject to the supervision of a community corrections officer, in a lump sum, or in such instalments payable during the period of supervision as the community corrections officer may determine.

Manner in which former prisoner's personal property is to be dealt with

39B. (1) Where a former prisoner has left any personal property in a correctional institution in which he or she was at some time detained, the manager of the correctional institution must give a written notice to the former prisoner, sent by post to his or her last known address, setting out particulars of the personal property and of the place at which it may be collected.

(2) If the former prisoner fails to collect the personal property within three months of being given a notice under subsection (1), the manager of the correctional institution must deal with the property in the following manner:

- (a) where the property consists solely of items that would, in the opinion of the manager, be of negligible monetary value and of no sentimental value to the former prisoner, the manager may dispose of the property in such manner as the manager thinks fit; and
- (b) in any other case—
 - (i) if the whereabouts of the former prisoner is known to the manager, the manager must cause the property to be delivered to the former prisoner except where it is not practicable to do so, in which case the manager may dispose of the property in such manner as the manager thinks fit; or
 - (ii) if the whereabouts of the former prisoner is, after reasonable inquiries, unknown to the manager, the manager may dispose of the property in such manner as the manager thinks fit.

(3) Money received from the sale of any personal property pursuant to this section will be paid into the General Revenue of the State.

Certain prohibited items not to be returned to prisoners

39C. Nothing in this Division requires the delivery or return to a person of any item of personal property the possession of which by that person is prohibited by law.

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**PART 5
OFFENCES**

DIVISION 1—POWERS OF VISITING TRIBUNALS

* * * * *

Powers of a Visiting Tribunal

41. (1) For the purposes of a hearing under this Division a Visiting Tribunal may—

- (a) by summons signed by the person, or one of the persons, constituting the Tribunal, require the attendance before the Visiting Tribunal of any person whom the Visiting Tribunal thinks fit to call before it; or
- (b) by summons signed by the person, or one of the persons, constituting the Tribunal, require the production of any books, papers or documents; or
- (c) inspect any books, papers or documents produced before it, retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents; or
- (d) require any person to make an oath or affirmation that the person will answer truthfully all questions put by the Visiting Tribunal, or by any person appearing before the Visiting Tribunal, relevant to any matter being inquired into by the Visiting Tribunal (which oath or affirmation may be administered by the person, or one of the persons, constituting the Visiting Tribunal); or
- (e) require any person appearing before the Visiting Tribunal (whether summoned to appear or not) to answer any relevant question put by the Visiting Tribunal, or one of the persons constituting the Visiting Tribunal, or by any other person appearing before the Visiting Tribunal.

(2) Subject to subsection (3), a person who—

- (a) having been duly served with a summons, fails, without reasonable excuse, to attend before the Visiting Tribunal, or to produce any books, papers or documents, as required by the summons; or
- (b) misbehaves before a Visiting Tribunal, wilfully insults a Visiting Tribunal or any person who constitutes a Visiting Tribunal, or interrupts the proceedings of a Visiting Tribunal; or
- (c) refuses to be sworn, to affirm or to answer a relevant question when required to do so by a Visiting Tribunal,

is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for 3 months.

(3) A person is not required to answer a question put pursuant to this section if the answer would tend to incriminate the person.

Immunity from liability of persons who constitute Visiting Tribunals

42. No liability attaches to a person who constitutes, or is a member of, a Visiting Tribunal for any act or omission by the person, or by the Visiting Tribunal, in good faith and in the exercise or purported exercise of powers, or the discharge or purported discharge of duties, under this Act.

* * * * *

DIVISION 2—BREACHES OF REGULATIONS

Minor breaches of prison regulations

42A. (1) Where the manager of the correctional institution is satisfied that a prisoner has committed a breach of a regulation that is specified to be a regulation to which this section applies, the manager may give the prisoner notice in writing that—

- (a) sets out the date of the alleged offence and briefly states the facts on which the allegation is founded; and
- (b) identifies the particular regulation that is alleged to have been breached; and
- (c) specifies that the prisoner may elect to be charged with, and receive a formal hearing in relation to, the offence; and
- (d) specifies the punishment that the manager proposes to impose if the prisoner does not elect to be charged with the offence.

(2) If the prisoner does not within 24 hours give notice in writing to the manager, or an employee of the Department specified in the manager's notice, that the prisoner elects to be charged with the offence, the manager may, without affording further opportunity for persons—

- (a) to hear or view evidence; or
- (b) to call, examine or cross-examine witnesses; or
- (c) to make submissions on the alleged breach or penalty,

impose on the prisoner one or both of the following penalties:

- (d) forfeiture of any specified amenities or privileges for a specified period not exceeding seven days; or
- (e) exclusion from any work that is performed in association with other prisoners for a specified period not exceeding seven days.

Manager may deal with breaches of prison regulations

43. (1) Where it is alleged that a prisoner has committed a breach of the regulations, the manager of the correctional institution may, within the prescribed time, charge the prisoner with the offence, and conduct an inquiry into the allegation, in the prescribed manner.

(2) If, after conducting an inquiry under subsection (1), the manager is satisfied beyond reasonable doubt that the allegation has been proved, the manager may impose on the prisoner any one or more of the following penalties:

- (a) forfeiture to the Crown of a sum, not exceeding the amount prescribed for the purposes of this paragraph, payable out of any money held by the manager on behalf of the prisoner, or any allowance to be paid to the prisoner under this Act; or

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- (b) forfeiture of any specified amenities or privileges for a specified period not exceeding 28 days; or
- (c) exclusion from any work that is performed in association with other prisoners for a specified period not exceeding 14 days,

or may reprimand and caution the prisoner.

(3) If, after conducting an inquiry under subsection (1), the manager is not satisfied beyond reasonable doubt that the allegation has been proved, the manager must dismiss the charge.

Manager may refer any matter to a Visiting Tribunal

44. (1) The manager of a correctional institution may, at any time before imposing a penalty on a prisoner in respect of an alleged breach of the regulations, refer the matter to a Visiting Tribunal for hearing and determination.

(2) The Visiting Tribunal may, on hearing any matter referred to it under subsection (1) and on being satisfied beyond reasonable doubt that the allegation against the prisoner is proved, impose on the prisoner any one or more of the following penalties:

* * * * *

- (c) forfeiture to the Crown of a sum, not exceeding the amount prescribed for the purposes of this paragraph, payable out of any money held by the manager on behalf of the prisoner, or any allowance to be paid to the prisoner under this Act; or
- (d) forfeiture of any specified amenities or privileges for a specified period not exceeding 2 months; or
- (e) exclusion from any work that is performed in association with other prisoners for a specified period not exceeding 28 days,

or it may reprimand and caution the prisoner.

* * * * *

(4) Where a prisoner causes any loss of or damage to property as a result of a breach of the regulations, the Visiting Tribunal may, whether or not it imposes a penalty in respect of the breach, direct that the prisoner pay to the owner of the property as compensation for the loss or damage such sum, not exceeding an amount prescribed for the purposes of this subsection, as the Visiting Tribunal thinks fit, payable out of any money held by the manager on behalf of the prisoner, or any allowance to be paid to the prisoner under this Act.

(5) If, after hearing a matter referred to it under subsection (1), the Visiting Tribunal is not satisfied beyond reasonable doubt that the allegation against the prisoner is proved, it must dismiss the charge.

Procedure at inquiries under this Division

45. In any proceedings under this Division for an offence against the regulations, the following provisions apply:

- (a) the manager or Visiting Tribunal—
 - (i) must afford the prisoner the opportunity of hearing or viewing all the evidence in support of the charge; and

- (ii) must afford the prisoner and the manager, or any employee of the Department authorised by the manager for the purpose, reasonable opportunities to make submissions in relation to the charge and to call, examine or cross-examine witnesses; and
 - (iii) must permit the manager or authorised employee to make submissions as to the penalty to be imposed; and
 - (iv) must permit the prisoner to hear any submissions made, and to make submissions, as to the penalty to be imposed;
- (b) if the prisoner refuses to attend at the hearing of the proceedings, the manager or Visiting Tribunal may hear and determine the proceedings *ex parte*;
- (ba) the prisoner is not entitled to be represented in the proceedings by a legal practitioner;
- (c) the manager or Visiting Tribunal is not, subject to this Act, bound by legal forms or technicalities or the rules of evidence, but may inform himself, herself or itself, in such manner as he, she or it thinks fit;
- (d) where more than one penalty of forfeiture of amenities or privileges or exclusion from work is imposed for an offence, or for a number of offences arising out of the one incident, those penalties cannot be made consecutive one on the other;
- (e) no conviction may be recorded against a prisoner who is found guilty of a breach of the regulations.

Appeals against penalties imposed by managers

46. (1) A prisoner may appeal to a Visiting Tribunal against any penalty imposed on the prisoner by a manager.

(2) An appeal under this section must be instituted in the prescribed manner.

(3) On the institution of an appeal under this section the penalty appealed against is suspended.

(4) On determining an appeal under this section the Visiting Tribunal may—

(a) affirm the penalty; or

(b) increase, decrease or otherwise vary the penalty, or revoke it and substitute any other penalty that could have been imposed in the first instance by the manager.

(5) No appeal lies against an order of a Visiting Tribunal made on an appeal under this section.

Appeals against orders of Visiting Tribunals

47. (1) A prisoner may appeal against an order of a Visiting Tribunal made in any proceedings against the prisoner under this Division on the ground that the proceedings were not conducted in accordance with the provisions of this Act.

(1a) An appeal under this section lies—

(a) to the District Court if the order appealed against was made by a Visiting Tribunal constituted of a magistrate; and

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- (b) to the Magistrates Court if the order was made by a Visiting Tribunal constituted of a justice, or justices, of the peace.
- (2) An appeal under this section must be instituted in the prescribed manner.
- (2a) The notice of appeal must specify the grounds on which the appeal is made.
- (3) On the institution of an appeal under this section, the order appealed against is suspended.
- (4) On any appeal under this section the court may—
 - (a) dismiss the appeal; or
 - (b) quash the order of the Visiting Tribunal; or
 - (c) quash the order of the Visiting Tribunal and make any order that the court thinks should have been made by the Visiting Tribunal in the first instance.
- (5) No appeal lies against a decision of a court on an appeal under this section.

Justices Act does not apply to proceedings under this Division

48. The *Summary Procedure Act 1921* does not apply to or in relation to any proceedings under this Division.

Manager may delegate power to deal with breaches of prison regulations

49. (1) The manager of a correctional institution may, with the approval of the Chief Executive Officer, delegate to any employee of the Department any of his or her powers or functions under this Division.

- (2) A delegation under this section—
 - (a) may be subject to conditions specified in the delegation; and
 - (b) may be revoked by the manager or varied by the manager with the approval of the Chief Executive Officer; and
 - (c) does not prevent the manager from acting in any matter.

DIVISION 4—PRISONERS AT LARGE

Effect of prisoner being at large

50.

- (3) A prisoner is not, while unlawfully at large, serving his or her sentence of imprisonment.

Prisoner must comply with conditions to which temporary leave of absence is subject

50A. (1) A prisoner who has been granted leave of absence from a correctional institution by the Chief Executive Officer pursuant to this Act and who contravenes or fails to comply with a condition to which the leave is subject is guilty of an offence.

Maximum penalty: Imprisonment for 1 year.

(2) A term of imprisonment to which a prisoner is sentenced for an offence against this section is cumulative on any other imprisonment that the prisoner is liable to serve.

Offences by persons other than prisoners

51. (1) A person who—

- (a) communicates with a prisoner in a manner prohibited by the regulations; or
- (b) delivers to a prisoner, or introduces into a correctional institution without the permission of the manager, any item prohibited by the regulations; or
- (c) loiters outside a correctional institution for any unlawful purpose,

is guilty of an offence.

Maximum penalty: Imprisonment for 6 months.

(2) It is a defence to a charge of an offence of introducing into a correctional institution without the permission of the manager an item prohibited by the regulations if the defendant proves that he or she had reasonable grounds for being in possession of the item and at no time had any intention of parting with possession of it while within the institution.

Power of arrest by officers of the Department

52. (1) An employee of the Department may, without warrant, apprehend—

- (a) any person who the officer suspects on reasonable grounds of being an escaped prisoner or a prisoner otherwise unlawfully at large; or
- (b) any person who the employee suspects on reasonable grounds of having assisted or being about to assist a prisoner in an escape or attempted escape or of having removed or attempted to remove, or being about to remove, a prisoner from custody.

(2) An employee of the Department who has apprehended a person pursuant to subsection (1) must—

- (a) in relation to a prisoner unlawfully at large, return the prisoner forthwith to a correctional institution; and
- (b) in relation to any other person, take the person forthwith to the nearest police station.

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PART 6
PAROLE

DIVISION 1—THE PAROLE BOARD

Continuation of the Parole Board

55. (1) The *Parole Board of South Australia* continues in existence.

(2) The Board consists of six members appointed by the Governor, of whom—

(a) one, the presiding member of the Board, will be—

(i) a judge of the Supreme Court; or

(ii) a District Court judge; or

(iii) a person who has retired from the office of judge of the Supreme Court or District Court judge; or

(iv) a person who has, in the opinion of the Governor, extensive knowledge of, and experience in, the science of criminology, penology, or any other related science; and

(b) one will be a legally qualified medical practitioner who has, in the opinion of the Governor, extensive knowledge of, and experience in, the practice of psychiatry; and

(c) one will be a person who has, in the opinion of the Governor, extensive knowledge of, or experience in, criminology, sociology or any other related science; and

(d) three will be persons nominated by the Minister.

(3) At least one member of the Board must be a woman and at least one member must be a man.

(3a) At least one member of the Board must be a person of Aboriginal descent.

(4) An employee of the Department is not eligible to be appointed as a member of the Board.

Term of office of members

56. (1) The presiding member of the Board will be appointed for a term, not exceeding five years, determined by the Governor and specified in the instrument of appointment.

(2) A member of the Board other than the presiding member will be appointed for such term, not exceeding three years, as the Governor determines and specifies in the instrument of appointment.

(3) On the expiration of the term of office of a member of the Board, the member is eligible for reappointment.

Allowances and expenses

57. A member of the Board is entitled to receive such allowances and expenses as the Governor may from time to time determine.

Removal from and vacancies of office

58. (1) The Governor may remove a member of the Board from office on the ground of—

- (a) mental or physical incapacity to carry out satisfactorily the duties of office; or
- (b) dishonourable conduct; or
- (c) neglect of duty.

(2) The office of a member of the Board becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office; or
- (c) resigns by giving notice in writing to the Minister; or
- (d) is removed from office by the Governor pursuant to subsection (1).

(3) On the office of a member of the Board becoming vacant, a person must be appointed to that office in accordance with this Act.

Deputies

59. (1) The Governor—

- (a) must appoint one of the members of the Board to be the deputy presiding member of the Board; and
- (b) may appoint a suitable person to be the deputy of a member of the Board other than the presiding member or the deputy presiding member.

(2) Where a member is for any reason absent or unable to act as a member of the Board, the member's deputy may act as a member of the Board.

Proceedings of the Board

60. (1) Subject to this section, the Board will sit as a full board.

(2) If the presiding member thinks it necessary or desirable for the purpose of expediting the determination of proceedings before the Board, the Board may sit in separate divisions.

(3) The presiding member or deputy presiding member and any other two members of the Board constitute a division of the Board.

(4) Where the Board sits as a full board, the following provisions apply:

- (a) the presiding member or, in the presiding member's absence, the deputy presiding member will preside and, in the absence of both the presiding member and the deputy presiding member, a member chosen from amongst their own number by the members present will preside; and
- (b) four members constitute a quorum and the Board cannot proceed with the hearing or determination of any matter unless a quorum is present; and
- (c) a question arising for decision by the Board will be decided by a majority of the votes cast by the members present; and

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(d) each member present is entitled to one vote and, in the event of an equality of votes, the person presiding is entitled to a second or casting vote.

(5) Where the Board sits in separate divisions, the following provisions apply:

(a) the presiding member will preside at proceedings before the division of which he or she is a member and the deputy presiding member will preside at proceedings before the division of which he or she is a member; and

(b) a division of the Board cannot proceed with the hearing or determination of any matter unless all members of the division are present; and

(c) a decision in which all the members of a division of the Board concur is a decision of the Board; and

(d) the two divisions of the Board may sit concurrently for the purpose of hearing and determining separate proceedings.

(6) Where the members of a division of the Board are unable to concur in a decision in any proceedings before that division, the person presiding over that division must refer the proceedings to the Board sitting as a full board for fresh hearing and determination.

(7) Subject to this Act, the Board, or a division of the Board, may conduct its proceedings as it thinks fit.

Validity of acts of the Board and immunity of its members

60A. (1) No act or proceeding of the Board is invalid by reason of a vacancy in its membership or a defect in the appointment of a member.

(2) No liability attaches to a member of the Board for an act or omission by the member, or by the Board, in good faith and in the exercise or purported exercise of powers or functions, or in the discharge or purported discharge of duties, under this Act.

(3) A liability that would, but for subsection (2), attach to a member of the Board lies against the Crown.

Judicial notice of Board documents

61. (1) Where a document purports to bear the signature of a member of the Board, it will be presumed in any proceedings before a court, in the absence of proof to the contrary, that the document had been duly signed by that member.

(2) An apparently genuine document purporting to be a record of any determination, decision or finding of the Board and purporting to be signed by the secretary to the Board is, in the absence of proof to the contrary, proof that the determination, decision or finding was made by the Board.

Appointment of secretary to the Board

62. (1) There will be a secretary to the Board who will be a Public Service employee.

(2) The position of secretary to the Board may be held in conjunction with any other position in the Public Service of the State.

Powers of the Board

63. (1) For the purposes of proceedings before the Board under this Act or any other Act, the Board may—

- (a) by summons signed on behalf of the Board by a member of the Board, require any person to attend before the Board; or
- (b) by summons signed on behalf of the Board by a member of the Board, require any person to produce any document relating to any matter before the Board; or
- (c) require any person to furnish the Board with a written report or written information in relation to any aspect of a matter before the Board; or
- (d) require any person appearing before the Board to answer on oath or affirmation any questions put by the Board that are relevant to any matter before the Board; or
- (e) require any written report or information to be verified by statutory declaration.

(2) A person who—

- (a) having been duly served with a summons, fails to attend before the Board, or fails to produce documents, as required by the summons; or
- (b) wilfully insults the Board or any member of the Board; or
- (c) misbehaves before the Board; or
- (d) interrupts the proceedings of the Board; or
- (e) refuses to be sworn or to affirm, or refuses to answer any question that the person would be compellable to answer before a court,

is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for 3 months.

(3) The Board may (and must, if a prisoner of a prescribed class so requests) interview a prisoner at any time and, if such an interview is to be conducted outside the prison, may request the manager of the prison to cause the prisoner to be brought before the Board at a specified time and place.

(4) The Board is not obliged to interview a prisoner pursuant to the prisoner's request more than once in any year.

(5) For the purposes of this section, a prisoner is of a prescribed class if the prisoner is serving—

- (a) a sentence of life imprisonment; or
- (b) a sentence of indeterminate duration; or
- (c) a sentence of imprisonment for a term of more than one year in respect of which a non-parole period has not been fixed.

Reports by the Board

64. (1) The Board must, not later than 31 October in each year, report to the Minister on—

- (a) the number of prisoners released on parole during the previous financial year; and

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* * * * *

- (d) the number of persons returned to prison in the previous financial year on cancellation of parole, and the reasons for each such cancellation; and
- (e) the work of the Board generally in the previous financial year; and
- (f) such other matters as the Board thinks fit, or as the Minister may direct.

(2) The Board must at least once in each year review the progress and circumstances of, and report to the Minister on, each prisoner serving a sentence of life imprisonment or any sentence of indeterminate duration and each prisoner serving a sentence for a term of more than one year in respect of whom a non-parole period has not been fixed.

(3) The Board must, at any time at the request of the Minister, report to the Minister—

- (a) on any prisoner serving a sentence of life imprisonment or any sentence of indeterminate duration; or
- (b) on any other matter relating to the administration of this Part.

* * * * *

(4) The Board may, in a report furnished under subsection (2) or (3)(a) in respect of a prisoner, include such recommendations as to the release of the prisoner as the Board is empowered to make pursuant to this Act or any other Act.

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DIVISION 3—RELEASE ON PAROLE

Release on parole—prisoners imprisoned for less than five years

66. The Board must order that a prisoner who is liable to serve a total period of imprisonment of less than five years and for whom a non-parole period has been fixed be released from prison or home detention on parole on a day specified by the Board, being a day—

- (a) where, because the commencement of the non-parole period has been back dated, the non-parole period expires prior to the date on which it is fixed, not later than 30 days after the day on which it is fixed; or
- (b) in any other case, not later than 30 days after the day on which the non-parole period expires.

Release on parole—prisoners imprisoned for five years or more

67. (1) Where a prisoner is serving a sentence of life imprisonment or is liable to serve a total period of imprisonment of five years or more and a non-parole period has been fixed in respect of the sentence or sentences—

- (a) the prisoner; or
- (b) the Chief Executive Officer, or any employee of the Department authorised by the Chief Executive Officer,

may apply in the prescribed manner to the Board for the prisoner's release on parole.

(2) This section does not apply to a person who is serving a sentence of indeterminate duration.

(3) An application cannot be made under subsection (1) more than six months before the expiration of the non-parole period fixed in respect of the prisoner's sentence.

(4) In determining an application under this section for the release of a prisoner on parole, the Board must have regard to the following matters:

- (a) any relevant remarks made by the court in passing sentence; and
- (b) the likelihood of the prisoner complying with the conditions of parole; and
- (c) where the prisoner was imprisoned for an offence or offences involving violence, the circumstances and gravity of the offence, or offences, for which the prisoner was sentenced to imprisonment but only insofar as it may assist the Board to determine how the prisoner is likely to behave should the prisoner be released on parole; and
- (d) the behaviour of the prisoner while in prison or on home detention; and
- (e) the behaviour of the prisoner during any previous release on parole; and
- (f) any reports tendered to the Board on the social background, the medical, psychological or psychiatric condition of the prisoner, or any other matter relating to the prisoner; and
- (g) the probable circumstances of the prisoner after release from prison or home detention; and
- (h) any other matters that the Board thinks are relevant.

(5) The Board may, on an application under this section, order that a prisoner (not being a prisoner who is serving a sentence of life imprisonment) be released from prison on parole on a day specified in the order.

(6) The Board may, on an application under this section in respect of a prisoner who is serving a sentence of life imprisonment, recommend to the Governor that the prisoner be released from prison on parole and, if the Board so recommends, the Board—

- (a) must recommend to the Governor—
 - (i) a day on which the prisoner is to be released on parole; and
 - (ii) a period of not less than three years or more than ten years, for which the prisoner should continue on parole; and
- (b) must forward a copy of its recommendations to the Governor for approval.

(7) The Governor may, on receiving the Board's recommendations, order that the prisoner be released from prison on parole on a day and for a period specified in the order, being not less than three years and not more than ten years.

(8) The Board or the Governor cannot specify a release date under this section that is earlier than the day on which the prisoner's non-parole period expires.

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(9) The Board must, not more than 30 days after refusing an application by a prisoner for release on parole, notify the prisoner in writing of—

- (a) its refusal; and
- (b) the reasons for its refusal and of any matters that might assist the prisoner in making any further application for parole; and
- (c) a date, not less than six months or more than one year after the date on which the Board refuses the application, before which the Board will not accept any further application by the prisoner for release on parole.

(10) The Board is not obliged to (but may, if in its opinion good reason exists for doing so) accept a further application by a prisoner for release on parole before the date notified by the Board under subsection (9).

Conditions of release on parole

68. (1) The release of a prisoner on parole—

- (a) must be subject to the conditions—
 - (i) that the prisoner not commit any offence; and
 - (ii) that the prisoner not possess an offensive weapon unless the prisoner has first obtained the permission of the Board to do so and complies with the terms and conditions of that permission; and
 - (iii) that the prisoner—
 - (A) be under supervision of a community corrections officer; and
 - (B) obey the reasonable directions of the community corrections officer,until the expiration of the period of parole or such earlier date as is specified by the Board; and
- (b) may be subject to any other condition fixed by the Board or, in the case of a prisoner serving a sentence of life imprisonment, recommended by the Board and approved by the Governor, to be effective until the expiration of the period of parole, or for such lesser period as may be specified in the order.

(1a) If the prisoner was sentenced to imprisonment for a child sexual offence, the Board must consider imposing the following conditions on the release of the prisoner:

- (a) a condition preventing the prisoner from loitering, without reasonable excuse, at or in the vicinity of a school, public toilet or place at which children are regularly present while children are present at the school, toilet or place;
- (b) a condition preventing the prisoner from engaging in remunerative or voluntary work with children or at a place used for the education, care or recreation of children;
- (c) a condition preventing the prisoner from providing or offering to provide accommodation to a child who is not related to the prisoner by blood or marriage or of whom the prisoner does not have lawful custody.

(2) In fixing or recommending conditions to which the release of a prisoner on parole will be subject, the Board must have regard to the following matters:

- (a) any remarks made by the court in passing sentence; and
- (b) the likelihood of the prisoner complying with the conditions; and
- (c) the circumstances and gravity of the offence, or offences, for which the prisoner was sentenced to imprisonment; and
- (d) the behaviour of the prisoner while in prison or on home detention; and
- (e) the behaviour of the prisoner during any previous release on parole; and
- (f) any reports tendered to the Board on the social background, the medical, psychological or psychiatric condition of the prisoner, or any other matter relating to the prisoner; and
- (g) the probable circumstances of the prisoner after release from prison or home detention; and
- (h) any other matters that the Board thinks are relevant.

(3) In fixing or recommending conditions to which the release on parole of a prisoner will be subject, the Board may designate any condition as a condition that, if breached, will result in automatic cancellation of parole.

(4) Notwithstanding any other provision of this Division, a prisoner must not be released on parole unless he or she has accepted in writing the conditions to which the parole will be subject.

(5) If a prisoner who is to be released under section 66 does not accept the conditions of parole, the Board—

- (a) must review the circumstances of the prisoner at intervals of not less than 3 months or more than 12; and
- (b) may, on such a review, if the prisoner will now accept the parole conditions, order the release of the prisoner on his or her written acceptance of those conditions.

Duration of parole in relation to prisoners other than life prisoners

69. A prisoner (not being a prisoner serving a sentence of life imprisonment) who is released on parole will, unless the release is cancelled or suspended, the parole order is discharged or the sentence is extinguished, remain on parole until the expiry of the term, or terms, of imprisonment to which the prisoner was sentenced.

Duration of parole for life prisoners

70. (1) A prisoner serving a sentence of life imprisonment who is released on parole will, unless the release is cancelled or suspended, or the sentence is extinguished, remain on parole—

- (a) in the case of a prisoner released on parole prior to the commencement of the *Prisons Act Amendment Act 1981*—for the remainder of the sentence unless the Governor, on the recommendation of the Board, approves a day on which the parole of the prisoner is to expire, in which case the parole of the prisoner expires on that day; and
- (b) in any other case—for the period recommended by the Board and approved by the Governor.

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(2) On the expiry of the parole of a person pursuant to subsection (1), the sentence of imprisonment will, subject to this Part, be taken to have been wholly satisfied.

Variation or revocation of parole conditions

71. (1) Where a person has been released on parole from a sentence other than a sentence of life imprisonment, the Board may, on the application of that person or of its own motion, vary or revoke a condition to which the parole is subject.

(2) Where a person has been released on parole from a sentence of life imprisonment, the Board may, on the application of that person or of its own motion, recommend to the Governor that a condition to which the parole is subject be varied or revoked, and the Governor may, on receiving such a recommendation, order accordingly.

(3) The Board cannot exercise its powers under this section of its own motion in relation to a person released on parole unless it has given reasonable notice of its intention to do so to that person and has considered any submissions made by the person on the matter.

(4) The Board cannot make an order or recommendation 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 that community corrections officer.

Discharge from parole of prisoners other than life prisoners

72. (1) The Board may, on the application of a person who has been released on parole (not being a person serving a sentence of life imprisonment), make an order discharging the person from parole.

(2) 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 that community corrections officer.

(3) Where a person has been discharged from parole pursuant to this section, the sentence, or sentences, of imprisonment will, subject to this Part, be taken to have been wholly satisfied.

Automatic cancellation of parole for breach of designated conditions

73. (1) Where the Board finds that a person who has been released on parole has, while on parole, breached a designated condition, the person is, subject to this Part, liable to serve in prison the balance of the sentence, or sentences, of imprisonment in respect of which the person was on parole, being the balance unexpired as at the day on which the breach was committed.

(2) Subsection (1) applies notwithstanding that, at the time of finding the breach proved, the parole has expired or been discharged.

(3) Where a person referred to in subsection (1) is, at the time of finding the breach proved, still on parole, the parole is, by virtue of this section, cancelled.

Cancellation of release on parole by Board for breach of conditions other than designated conditions

74. (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 (not being a designated condition), the Board may, by order, direct that the person serve in prison the sentence, or sentences, of imprisonment in respect of which he or she was on parole for such further period as the Board thinks appropriate, but not exceeding—

- (a) the period between the day on which the breach occurred and the date of expiry of the parole; or

(b) six months,

whichever is the lesser.

(1a) Subsection (1) applies notwithstanding that, at the time of finding the breach proved, the parole has expired or been discharged.

(1b) Where the Board makes an order under subsection (1) in respect of a person who is still on parole, the Board must order that the person's release on parole be cancelled.

(2) 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 that community corrections officer.

(3) Where the release of a person was cancelled for breach of parole conditions before the commencement of the *Prisons Act Amendment Act (No. 2) 1983* the person is (subject to any non-parole period that may have been fixed) liable to serve in prison the balance of the sentence, or sentences, unexpired as at the day on which the breach was committed.

(4) Subject to subsections (4a) and (4b), a person who is returned to prison for breach of a parole condition (not being a designated condition) after the commencement of the *Prisons Act Amendment Act (No. 2) 1983* will, unless the person has, by instrument in writing, elected to remain in prison to serve the balance of sentence then remaining, be released from prison on parole when the period for which the person was returned has been served.

(4a) 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.

(4b) The release of a person under subsection (4) is not release on parole if the period of parole has expired.

(5) The release of a prisoner on parole under subsection (4) will be taken to be pursuant to the order of the Board in force immediately prior to the return of the prisoner to prison.

Board may impose community service for breach of non-designated conditions

74AA. (1) If the Board is satisfied that a person who is still on parole has, while on parole, breached a condition of the parole (not being a designated condition), the Board may, instead of exercising its powers under section 74, impose a further condition on the parole requiring the person to serve a specified number of hours of community service.

(2) The Board cannot exercise its powers under subsection (1) if the parole is already subject to a condition requiring performance of community service.

(3) The Board cannot exercise its powers under subsection (1) in relation to a person who is under the supervision of a community corrections officer unless it has obtained and considered a report from that community corrections officer.

(4) If the Board imposes a parole condition requiring performance of community service pursuant to this section, the following provisions apply:

(a) the number of hours of community service to be performed cannot be less than 40 or more than 200;

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- (b) the Board may impose ancillary conditions on the parole requiring the person—
 - (i) to perform the community service within a specified period;
 - (ii) to report to a specified place not later than two working days after the date of the hearing unless, within that period, the person receives a notice from the Chief Executive Officer to the contrary;
 - (iii) to obey the lawful directions of the community corrections officer to whom the person is assigned;
 - (iv) to do, or refrain from doing, such other things as the Board thinks necessary for ensuring proper performance of the community service;
 - (c) the person is required to perform the community service for not less than 4 or more than 24 hours in any week and on such day, or days, as the community corrections officer to whom the person is assigned may direct;
 - (d) the person cannot, except in circumstances approved by the Minister, be required to perform the community service for a continuous period exceeding 8 hours;
 - (e) one hour of any period of community service exceeding 4 hours is to be a meal break;
 - (f) the person cannot be required to perform community service at a time that would interfere with his or her remunerated employment or with a course of training or instruction relating to, or likely to assist in him or her obtaining, such employment, or that would cause unreasonable disruption of the person's commitments in caring for his or her children;
 - (g) the person cannot be required to perform community service at a time that would cause him or her to offend against a rule of a religion that he or she practises;
 - (h) the attendance of the person at any educational or recreational course of instruction approved by the Minister will be taken to be performance of community service;
 - (i) the person will not be remunerated for the performance of the community service.
- (5) A community corrections officer to whom a person is assigned—
- (a) may give reasonable directions to the person requiring the person—
 - (i) to report to a community service centre or other place at certain times; or
 - (ii) to notify the officer of any change in the person's place of residence or employment; or
 - (iii) to obtain the officer's written permission before leaving the State for any reason; or
 - (iv) to carry out certain projects or tasks as community service; or
 - (v) to undertake, or participate in, courses of instruction at a community service centre or other place; or
 - (vi) to behave in a particular manner while undertaking community service; and

- (b) may give the person other directions of a kind authorised by the Minister, either generally or in relation to that person.

(6) If a person who is subject to a parole condition requiring performance of community service is sentenced to imprisonment for an offence (whenever committed) or for non-payment of a pecuniary sum or is returned to prison pursuant to this Division, the parole condition will be taken to have been revoked.

Suspension of parole while serving imprisonment for offence committed before release on parole

74A. Where a person who has been released on parole is sentenced to imprisonment for an offence committed before release on parole or for non-payment of a pecuniary sum—

- (a) the parole is suspended for the duration of the imprisonment actually served in prison in pursuance of the subsequent sentence; and
- (b) on release from prison—
 - (i) the person will continue on parole in respect of the sentence that was first imposed for the balance of the period of parole remaining as at the date of the commencement of the subsequent sentence; and
 - (ii) if released on parole from the subsequent sentence, the person will on release also be on parole in respect of that sentence for the period of that parole.

Automatic cancellation of parole upon imprisonment for offence committed while on parole

75. (1) Where—

- (a) a person is sentenced to imprisonment for an offence committed while on parole and the sentence is not suspended; or
- (b) the suspension of a sentence of imprisonment imposed for an offence committed by a person while on parole is revoked,

the person is liable to serve in prison the balance of the sentence, or sentences, of imprisonment in respect of which he or she was on parole, being the balance unexpired as at the day on which the offence was committed.

(1a) Subsection (1) applies notwithstanding that, at the time of conviction of the person or of the revocation of the suspended sentence, the parole may have expired or been discharged.

(2) Where a person referred to in subsection (1) is, at the time of conviction or revocation of the suspended sentence, still on parole, the parole is, by virtue of this subsection, cancelled.

* * * * *

Apprehension, etc., of parolees

76. (1) Where a member of the Board suspects on reasonable grounds that a person released on parole may have breached a condition of parole, the member may—

- (a) summon the person to appear before the Board; or
- (ab) with the concurrence of a second member of the Board—issue a warrant for the apprehension of the person, for the purpose of bringing the person before the Board; or

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(b) apply to a justice for a warrant for the apprehension of the person, for the purpose of bringing the person before the Board.

(2) Where a person fails to attend before the Board in pursuance of a summons issued under subsection (1), the Board—

(a) may proceed to deal with the matter in the person's absence; or

(b) may—

(i) issue a warrant for the apprehension of the person; or

(ii) direct a member of the Board to apply to a justice for a warrant for the apprehension of the person,

for the purpose of bringing the person before the Board.

(2a) A warrant issued under subsection (1) or (2) authorises the detention of the person in custody pending attendance before the Board.

(3) A member of the Board may apply to a justice for a warrant for the apprehension and return to prison of a person whose release on parole has been cancelled.

(3a) A justice must, on application under this section, issue a warrant for the apprehension of a person or for the apprehension and return to prison of a person, as the case may require, unless it is apparent, on the face of the application, that no reasonable grounds exist for the issue of the warrant.

(4) If it thinks good reason exists for doing so, the Board may, by order, cancel a warrant issued pursuant to this section that has not been executed.

Proceedings before the Board

77. (1) On receiving an application made under this Part, the Board must notify the prisoner, the Chief Executive Officer and the Commissioner for Police and, where an offence for which the prisoner is imprisoned is an offence under Part 3 of the *Criminal Law Consolidation Act 1935* or any other offence involving violence, may notify a victim of the offence—

(a) of the receipt of the application; and

(b) of the day and time fixed for the hearing of the application.

(2) For the purposes of any proceedings under this Part—

(a) the Chief Executive Officer, or any employee of the Department authorised by the Chief Executive Officer for the purpose, may make such submissions to the Board in writing as he or she thinks fit; and

(b) the Commissioner of Police, or any member of the police force authorised by the Commissioner for the purpose, may make such submissions to the Board in writing as he or she thinks fit; and

(ba) if an offence for which the prisoner is imprisoned was an offence under Part 3 of the *Criminal Law Consolidation Act 1935* or any other offence involving violence, any victim of the offence may make such submissions to the Board in writing as he or she thinks fit; and

(c) the person to whom the proceedings relate may make such submissions to the Board in writing as he or she thinks fit.

(3) The person to whom any proceedings before the Board relate is entitled to be represented in those proceedings by a legal practitioner.

(4) The Board may, on written request, give details of the orders made by the Board in any proceedings relating to a prisoner or parolee to—

(a) a person who made submissions to the Board in the proceedings; or

(b) a member of the prisoner's or parolee's family or a close associate of the prisoner or parolee; or

(c) a legal practitioner who represents the prisoner or parolee; or

(d) any other person who the Board thinks has a proper interest in the release of such information.

(5) The Board's decision to release or not to release information under subsection (4) is final and is not reviewable by a court.

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**PART 8
MISCELLANEOUS**

Managers may make rules

83. (1) The manager of a correctional institution may, with the approval of the Chief Executive Officer, make rules relating to the management of the institution.

(2) A manager may, with the approval of the Chief Executive Officer, vary or revoke any rules made under subsection (1).

(3) The *Subordinate Legislation Act 1978* does not apply to rules made under this section.

(4) The Minister must cause rules made under this section to be published for the benefit of prisoners in such manner as the Minister thinks fit and, in giving effect to this section, must ensure, as far as is reasonably practicable, that the rules are made known to any prisoner who is illiterate or whose principal language is not the English language.

Managers to comply with the execution of process

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

Execution of warrants

85. An employee of the Department authorised by the Chief Executive Officer for the purpose may, on behalf of the Commissioner of Police, execute on a prisoner any warrant of a court or justice or other duly issued warrant.

Manager of correctional institution may refuse entry to or cause the eviction of certain persons

85A. Notwithstanding any other provision of this Act, if the manager of a correctional institution believes, on reasonable grounds, that a volunteer who is engaged in any activity within the institution, or a person who visits a prisoner pursuant to section 34, is interfering with, or is likely to interfere with, the good order or security of the correctional institution, the manager may refuse that person entry to the institution or may cause the person to be removed from the institution.

Power of search and arrest

85B. (1) The manager of a correctional institution may cause any person who enters the correctional institution to be detained and searched for the presence of items prohibited by the regulations, if there are reasonable grounds for suspecting that the person is in possession of such an item without the permission of the manager.

(2) The manager of a correctional institution may cause any vehicle that enters the institution to be detained and searched for the presence of items prohibited by the regulations, if there are reasonable grounds for suspecting that such an item is being carried on or in the vehicle without the permission of the manager.

(3) The following provisions apply to a search carried out under subsection (1):

(a) for the purposes of the search the person cannot be required to remove his or her clothing but may be required—

(i) to open his or her mouth; or

- (ii) to adopt certain postures; or
- (iii) to submit to being frisked; or
- (iv) to do anything else reasonably necessary for the purposes of the search,
and if the person does not comply with such a requirement, reasonable force may be applied to secure compliance with the requirement;
- (b) force cannot be applied to open the person's mouth except by or under the supervision of a medical practitioner;
- (c) nothing may be introduced into an orifice (including the mouth) of the person's body;
- (d) at least 2 persons, apart from the person being searched, must be present at all times during the search;
- (e) the search must be carried out expeditiously and undue humiliation of the person must be avoided.

(4) For the purposes of a search of a vehicle under subsection (2), the driver of the vehicle may be required to do anything reasonably necessary for the purposes of the search, and if the driver does not comply with such a requirement, reasonable force may be used to secure compliance with the requirement.

(5) If an item prohibited by the regulations is found on a person or on or in a vehicle as a result of a search carried out under this section and the prior permission of the manager to be in possession of or to carry the item does not appear to have been obtained—

- (a) the manager may cause the person or driver to be further detained and handed over into the custody of a member of the police force as soon as reasonably practicable; and
- (b) the item may be kept as evidence of an offence or otherwise dealt with in the same manner as a prohibited item may be dealt with under section 33A.

(6) If no item prohibited by the regulations is found on a person as a result of a search carried out under this section but the officer who carried out the search suspects on reasonable grounds that such an item may be concealed on or in the person's body, the manager may cause the person to be further detained and handed over into the custody of a member of the police force as soon as reasonably practicable.

(7) If a person is detained pursuant to subsection (5) or (6), the manager must forthwith cause a member of the police force to be notified of that fact.

(8) The annual report to be submitted under this Act by the Chief Executive Officer in respect of each financial year must include the following information:

- (a) the number of persons detained under subsection (5) in consequence of searches carried out under this section during the relevant year; and
- (b) the number of persons detained under subsection (6) in consequence of such a search; and
- (c) the duration of all detentions effected under those subsections.

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Confidentiality

85C. A person must not divulge information relating to a prisoner, probationer or parolee, being information obtained (whether by the person or some other person) in the administration or enforcement of this Act, except—

- (a) as required or authorised by this Act or any other Act or law; or
- (b) as reasonably required in connection with the administration or enforcement of this Act or any other prescribed Act; or
- (c) for the purposes of legal proceedings arising out of the administration or enforcement of this Act; or
- (d) to a government agency or instrumentality of this State, the Commonwealth or another State or Territory of the Commonwealth for the purposes of the proper performance of its functions; or
- (e) with the consent of the prisoner, probationer or parolee to whom the information relates.

Maximum penalty: \$10 000.

Release of information to victims, etc.

85D. (1) An eligible person may apply in writing to the Chief Executive Officer for the release to him or her of any of the following information relating to a prisoner:

- (a) the name and address of the correctional institution in which the prisoner is for the time being imprisoned;
- (b) details of any transfer of the prisoner from one correctional institution to another;
- (c) details of the sentence or sentences of imprisonment that the prisoner is liable to serve;
- (d) the date on which and circumstances under which the prisoner was, is to be or is likely to be released from the correctional institution for any reason (for example, on bail, leave of absence, home detention, parole);
- (e) details of any escape from custody by the prisoner.

(2) A person is an eligible person if he or she is—

- (a) a victim of the offence, or one of the offences, for which the prisoner is being imprisoned and has registered as such with the Chief Executive Officer; or
- (b) a member of the prisoner's family or a close associate of the prisoner; or
- (c) a legal practitioner who represents the prisoner; or
- (d) any other person who the Chief Executive Officer thinks has a proper interest in the release of such information.

(3) The Chief Executive Officer has an absolute discretion to grant or refuse an application for release of information to an eligible person.

(4) A decision of the Chief Executive Officer as to whether a person is an eligible person or to grant or refuse an application under this section is final and is not reviewable by a court.

(5) The Chief Executive Officer must not release information relating to a prisoner's release on parole without the consent of the Parole Board (but the Board may waive this requirement in such circumstances as it thinks fit).

Prison officers may use reasonable force in certain cases

86. Subject to this Act, an officer of the Department or a member of the police force employed in a correctional institution may, for the purposes of exercising powers or discharging duties under this Act, use such force against any person as is reasonably necessary in the circumstances of the particular case.

Immunity from liability

86A. (1) An employee of the Department incurs no civil liability for an act or omission in good faith and in the exercise, or purported exercise, of powers vested in the employee by or under this Act or any other Act.

(2) A liability that would, but for subsection (1), lie against an employee lies against the Crown.

Certain persons may enter and inspect correctional institutions

87. Any judge of the Supreme Court, District Court judge or magistrate may, at any reasonable time, enter and inspect any correctional institution.

Minister may acquire land

88. The Minister may, for the purposes of this Act, acquire land in accordance with the *Land Acquisition Act 1969*.

Summary offences

88A. Offences against this Act (not being indictable offences) are summary offences.

Evidentiary provision

88B. In any proceedings against a prisoner for being unlawfully at large after expiry of leave of absence from prison, or for contravention of or failure to comply with a condition to which the leave was subject, a document purporting to be the order of the Chief Executive Officer (or his or her delegate) by which the leave of absence was granted or revoked or a condition was varied, will, in the absence of proof to the contrary, be taken to be proof of the order.

Regulations

89. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), regulations may be made—

- (a) providing for the treatment of remand prisoners; and
- (b) providing for the treatment of contempt prisoners; and
- (c) providing for the treatment of prisoners, or any particular class of prisoners, other than remand or contempt prisoners; and
- (d) prescribing a class of prisoners who may not be released from prison to serve a period of home detention; and

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- (e) regulating the conduct of prisoners, or of prisoners of a particular class; and
 - (ea) regulating the collection of urine specimens from prisoners for the purposes of analysis and, without limiting the generality of this paragraph—
 - (i) prescribing the directions that can be given to a prisoner for the purpose of collecting and authenticating a urine specimen;
 - (ii) prescribing higher maxima for the penalties prescribed by sections 43 and 44 where a prisoner breaches regulations under this paragraph, provided that those higher maxima do not exceed by more than three times the maxima prescribed in those sections; and
 - (f) prescribing the practice and procedure, and any powers, of Visiting Tribunals, or of persons constituting Visiting Tribunals; and
 - (g) prescribing the practice and procedure, and any powers, of the manager of a correctional institution in dealing with breaches of the regulations; and
 - (h) prescribing the duties of officers of the Department or members of the police force employed in correctional institutions; and
 - (ha) regulating the times at which and procedure by which persons may be admitted to correctional institutions for detention; and
 - (i) prescribing the weapons or any other thing that may be carried or used by officers of the Department or members of the police force employed in correctional institutions, and the purposes for which and the manner in which any such weapon or thing may, or may not, be used; and
 - (j) prohibiting or regulating the holding or investing of money or any other personal property by or on behalf of prisoners, or of prisoners of a particular class; and
- * * * * *
- (ka) prohibiting, restricting or regulating the entering into of contracts between prisoners; and
 - (l) prescribing directions that community corrections officers may give to persons under their supervision while on parole.



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APPENDIX

LEGISLATIVE HISTORY

Repeals

The *Correctional Services Act 1982* repealed the *Prisons Act 1936-1981*.

Transitional Provisions

(Transitional provisions from Statutes Amendment (Truth in Sentencing) Act 1994, ss. 20 and 21, as amended by Statutes Amendment (Correctional Services) Act 1995, s. 4)

Reduction of existing sentences and non-parole periods

20. (1) Subject to subsection (2), a sentence of imprisonment (including a suspended sentence) imposed before the commencement of this Act and a non-parole period imposed before the commencement of this Act are, on the commencement of this Act, reduced—

- (a) by the number of days of remission credited to the prisoner or youth; and
- (b) by the maximum number of days of remission that the prisoner or youth could have earned after the commencement of this Act had this Act not repealed Part 7 of the *Correctional Services Act 1982*.

(2) If a prisoner or youth becomes liable to serve the unexpired balance of a term of imprisonment imposed before the commencement of this Act, no reduction of that balance is to be made under this section.

(3) In subsection (1), the "maximum number of days of remission", in relation to a sentence of imprisonment (including a suspended sentence) in respect of which a non-parole period has been fixed, means the maximum number of days of remission that the prisoner or youth could have earned in respect of that non-parole period assuming that he or she was released in accordance with section 66(1) of the *Correctional Services Act 1982* (as in force before the commencement of this Act), whether or not he or she is in fact released at the end of the non-parole period (as reduced under this section).

Sentences imposed after commencement of this Act

21. (1) A court, in fixing the term of a sentence of imprisonment or in fixing or extending a non-parole period, must, when considering sentences imposed before the commencement of this Act (but after the commencement of the *Prisons Act Amendment Act (No. 2) 1983*) for comparable offences, take into account the abolition of the previous statutory scheme for remission of sentence.

(2) This section applies whether the offence to which the sentence or non-parole period relates was committed before or after the commencement of this Act.

(Transitional provision from Statutes Amendment (Correctional Services) Act 1995, s. 5)

5. Nothing in section 4 of this Act affects a decision or order of a court or the Parole Board made before the commencement of this Act.

Legislative History

Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 19 August 1985 and as at 19 June 1989. Schedules of these alterations were laid before Parliament on 1 August 1985 and 3 August 1989 respectively.

(entries in bold type indicate amendments incorporated since the last reprint)

Section 2: deleted in pursuance of the *Acts Republication Act 1967* as its function is now exhausted

Section 3: amended by 94, 1984, s. 3; repealed by 66, 1985, Sched.

Section 4:	redesignated as s. 4(1) by 34, 1992, s. 45 definition of "Aboriginal people" inserted by 76, 1990, s. 3(a) definition of "Aborigine" inserted by 76, 1990, s. 3(a) definition of "the Assessment Committee" repealed by 94, 1984, s. 4(a) definition of "child sexual offence" inserted by 51, 1995, s. 7 definition of "CIC levy" inserted by 60, 1998, s. 4 definition of "community corrections officer" inserted by 42, 1999, s. 25(a) definition of "conditional release" repealed by 94, 1984, s. 4(b) definition of "the Department" amended by 35, 1994, s. 16 (Sched.) definition of "designated condition" inserted by 69, 1986, s. 4 definition of "designated part" inserted by 94, 1984, s. 4(c); repealed by 76, 1990, s. 3(b) definition of "drug" inserted by 52, 1991, s. 3 definition of "Magistrate" amended by 94, 1984, s. 4(d) definition of "manager" inserted by 94, 1984, s. 4(e) definition of "parole officer" repealed by 42, 1999, s. 25(b) definition of "the Permanent Head" deleted and definition of "the Chief Executive Officer" inserted in its place in pursuance of the <i>Acts Republication Act 1967</i> definition of "prisoner" amended by 94, 1984, s. 4(f) definition of "the repealed Act" deleted in pursuance of the <i>Acts Republication Act 1967</i> as its function is now exhausted definition of "sentence of indeterminate duration" substituted by 51, 1988, s. 14 definition of "superintendent" repealed by 94, 1984, s. 4(g) definition of "victim" inserted by 35, 1994, s. 4(a) inserted by 34, 1992, s. 45; repealed by 35, 1994, s. 4(b)
Section 4(2):	
Section 5:	deleted in pursuance of the <i>Acts Republication Act 1967</i> as its function is now exhausted
Section 6:	deleted in pursuance of the <i>Acts Republication Act 1967</i> as its function is now exhausted
Section 7(1):	amended by 51, 1988, s. 15(a)
Section 7(2):	amended by 94, 1984, s. 5(a); 51, 1988, s. 15(b); 35, 1994, s. 16 (Sched.)
Section 7(2a):	inserted by 94, 1984, s. 5(b); amended by 35, 1994, s. 16 (Sched.)
Section 7(4):	amended by 35, 1994, s. 16 (Sched.)
Section 10(1):	substituted by 66, 1985, Sched.
Section 10(2):	amended by 35, 1994, s. 16 (Sched.)
Section 10(3):	amended by 94, 1984, s. 6
Section 11(1) and (2):	amended by 35, 1994, s. 16 (Sched.)
Section 14(1) and (2):	amended by 35, 1994, s. 16 (Sched.)
Section 17(2):	substituted by 94, 1984, s. 7
Section 17(3):	repealed by 94, 1984, s. 7
	Division 4 of Part 2 comprising ss. 17A - 17D and heading inserted by 51, 1988, s. 16
Section 17C(2):	amended by 76, 1990, s. 4
Section 17C(3):	amended by 35, 1994, s. 16 (Sched.)
Section 17D(1):	amended by 30, 1990, s. 3
Section 17D(2):	amended by 54, 1990, s. 3(1) (Sched. 1)
	Division 5 of Part 2 comprising s. 17E and heading inserted by 51, 1988, s. 16
Section 19:	redesignated as s. 19(1) by 94, 1984, s. 8
Section 19(2):	inserted by 94, 1984, s. 8; repealed by 76, 1990, s. 5

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Section 20:	substituted by 94, 1984, s. 9
Section 20(2):	amended by 76, 1990, s. 6(a)
Section 20(2a):	inserted by 76, 1990, s. 6(b)
Heading preceding section 21:	repealed by 51, 1988, s. 17
Section 21:	amended by 94, 1984, s. 10; 66, 1985, s. 3; repealed by 51, 1988, s. 17
Heading preceding section 21A:	inserted by 51, 1988, s. 18
Section 21A:	inserted by 94, 1984, s. 11; amended by 35, 1994, s. 16 (Sched.)
Heading preceding section 22:	repealed by 51, 1988, s. 19
Section 22(1):	amended by 94, 1984, s. 12(a); 76, 1990, s. 7(a)
Section 22(2):	amended by 94, 1984, s. 12(b); 76, 1990, s. 7(b)
Section 22(4):	inserted by 51, 1988, s. 20
Division 3 of Part 4 comprising s. 23 and heading substituted by 94, 1984, s. 13	
Section 23(1):	amended by 76, 1990, s. 8(a)
Section 23(3):	amended by 76, 1990, d. 8(b)
Section 24:	redesignated as s. 24(1) by 76, 1990, s. 9; amended by 35, 1994, s. 16 (Sched.)
Section 24(2):	inserted by 76, 1990, s. 9
Section 25(1):	amended by 94, 1984, s. 14(a); 76, 1990, s. 10(a)
Section 25(2):	amended by 94, 1984, s. 14(b); 76, 1990, s. 10(b)
Section 27(1):	amended by 12, 1996, s. 3(a)
Section 27(2):	amended by 35, 1994, s. 16 (Sched.)
Section 27(2a):	inserted by 12, 1996, s. 3(b); amended by 60, 1998, s. 5
Section 27(4):	amended by 35, 1994, s. 16 (Sched.)
Section 27(6):	inserted by 76, 1990, s. 11
Section 28(2):	amended by 94, 1984, s. 15
Section 28(3):	amended by 35, 1994, s. 16 (Sched.)
Section 28(4):	inserted by 76, 1990, s. 12
Section 29(1):	amended by 94, 1984, s. 16; 66, 1985, Sched.; 76, 1990, s. 13
Section 29(2) and (4):	amended by 94, 1984, s. 16
Section 31(1):	amended by 66, 1985, s. 4(a); 76, 1990, s. 4; 35, 1994, s. 16 (Sched.)
Section 31(2a):	inserted by 30, 1990, s. 4(a)
Section 31(3):	substituted by 65, 1993, s. 2(a)
Section 31(4):	amended by 30, 1990, s. 4(b)
Section 31(4a) and (4b):	inserted by 30, 1990, s. 4(c); amended by 35, 1994, s. 16 (Sched.)
Section 31(5a):	inserted by 65, 1993, s. 2(b)
Section 31(6):	inserted by 66, 1985, s. 4(b); amended by 35, 1994, s. 16 (Sched.)
Section 31(6a) - (6c):	inserted by 60, 1998, s. 6
Section 31(7):	inserted by 65, 1993, s. 2(c)
Section 32:	amended by 94, 1984, s. 17; 66, 1985, Sched.; 65, 1993, s. 3
Section 33(1):	amended by 4, 1994, s. 2(a); substituted by 12, 1996, s. 4(a)
Section 33(2):	amended by 94, 1984, s. 18(a); 4, 1994, s. 2(b); repealed by 12, 1996, s. 4(a)
Section 33(3):	amended by 94, 1984, s. 18(a); 4, 1994, s. 2(c)
Section 33(4):	amended by 94, 1984, s. 18(a); substituted by 4, 1994, s. 2(d); amended by 12, 1996, s. 4(b), (c)
Section 33(5):	amended by 94, 1984, s. 18(b), (c); repealed by 12, 1996, s. 4(d)
Section 33(7):	amended by 94, 1984, s. 18(d)
Section 33(7a):	inserted by 66, 1985, s. 5(a)
Section 33(8):	amended by 94, 1984, s. 18(e)
Section 33(9):	amended by 4, 1994, s. 2(e), (f); repealed by 12, 1996, s. 4(e)
Section 33(10):	amended by 94, 1984, s. 18(f); 4, 1994, s. 2(g), (h); 35, 1994, s. 16 (Sched.); 12, 1996, s. 4(f)
Section 33(11):	amended by 94, 1984, s. 18(f); 66, 1985, s. 5(b); 4, 1994, s. 2(i), (j); 35, 1994, s. 16 (Sched.); 12, 1996, s. 4(g)

Section 33(12):	amended by 94, 1984, s. 18(f); 4, 1994, s. 2(k)
Section 33(14):	definition of "authorised officer" amended by 94, 1984, s. 18(g); 12, 1996, s. 4(h)
Section 33A:	inserted by 4, 1994, s. 3
Section 34(1):	amended by 76, 1990, s. 15
Section 34(3):	amended by 94, 1984, s. 19
Section 36:	amended by 94, 1984, s. 20; 66, 1985, Sched.; 36, 1988, s. 2; 39, 1989, s. 3(1) (Sched. 1); substituted by 76, 1990, s. 16
Section 36(8):	amended by 35, 1994, s. 16 (Sched.)
Section 37:	amended by 94, 1984, s. 21; substituted by 22, 1987, s. 2
Section 37(1):	amended by 76, 1990, s. 17; 52, 1991, s. 4
Section 37AA:	inserted by 52, 1991, s. 5
Section 37AA(2a):	inserted by 21, 1995, s. 3(a)
Division 6A of Part 4 comprising ss. 37A - 37D and heading inserted by 98, 1986, s. 3	
Section 37A(1):	amended by 76, 1990, s. 18(a); 35, 1994, s. 5(a)
Section 37A(1a):	inserted by 76, 1990, s. 18(b)
Section 37A(2):	amended by 76, 1990, s. 18(c); 35, 1994, s. 5(b)
Section 37A(2)(b):	repealed by 76, 1990, s. 18(c)
Section 37A(3):	amended by 76, 1990, s. 18(d)
Section 37A(4):	substituted by 76, 1990, s. 18(e); amended by 35, 1994, s. 5(c)
Section 37A(6):	inserted by 76, 1990, s. 18(f); substituted by 12, 1996, s. 5
Section 37B(2):	amended by 35, 1994, s. 16 (Sched.)
Section 37B(5):	amended by 39, 1989, s. 3(1) (Sched. 1); 12, 1996, s. 9 (Sched.)
Section 37C(3):	amended by 35, 1994, s. 16 (Sched.)
Section 37C(4):	amended by 76, 1990, s. 19
Section 37C(6):	amended by 35, 1994, s. 16 (Sched.)
Section 37D:	substituted by 76, 1990, s. 20
Section 38:	redesignated as s. 38(1) by 76, 1990, s. 21
Section 38(2):	inserted by 76, 1990, s. 21; amended by 34, 1992, s. 46(a)
Section 38(3) and (4):	inserted by 34, 1992, s. 46(b)
Section 39(1):	amended by 66, 1985, Sched.
Section 39(2):	substituted by 94, 1984, s. 22; repealed by 76, 1990, s. 22
Section 39(3):	substituted by 94, 1984, s. 22
Section 39(4) and (5):	repealed by 94, 1984, s. 22
Section 39A:	inserted by 94, 1984, s. 23; amended by 66, 1985, s. 6; 76, 1990, s. 23; 42, 1999, s. 26
Sections 39B and 39C:	inserted by 94, 1984, s. 23
Heading preceding section 40:	amended by 94, 1984, s. 24
Section 40:	repealed by 94, 1984, s. 25
Section 41(2):	amended by 39, 1989, s. 3(1) (Sched. 1); 12, 1996, s. 9 (Sched.)
Section 42(1):	redesignated as s. 42 in pursuance of the <i>Acts Republication Act 1967</i>
Section 42(2):	repealed by 94, 1984, s. 26
Section 42A:	inserted by 35, 1994, s. 6
Section 43(1):	amended by 94, 1984, s. 27(a)
Section 43(2):	amended by 94, 1984, s. 27(b)-(e); 66, 1985, Sched.; 35, 1994, ss. 7, 16 (Sched.)
Section 43(3):	inserted by 94, 1984, s. 27(f)
Section 44(1):	amended by 94, 1984, s. 28(a); 35, 1994, s. 16 (Sched.)
Section 44(2):	amended by 67, 1983, s. 3; 94, 1984, s. 28(b)-(f); 66, 1985, Sched.; 35, 1994, ss. 8(b), 16 (Sched.)
Section 44(2)(a):	repealed by 94, 1984, s. 28(d)
Section 44(2)(b):	repealed by 35, 1994, s. 8(a)
Section 44(3):	repealed by 94, 1984, s. 28(g)
Section 44(4):	amended by 94, 1984, s. 28(h); 35, 1994, s. 8(c)
Section 44(5):	inserted by 94, 1984, s. 28(i)
Section 45:	amended by 94, 1984, s. 29; 66, 1985, s. 7; 35, 1994, s. 16 (Sched.)

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Section 46(1):	amended by 94, 1984, s. 30; 35, 1994, s. 16 (Sched.)
Section 46(3):	amended by 35, 1994, s. 16 (Sched.)
Section 46(4):	amended by 94, 1984, s. 30; 35, 1994, s. 16 (Sched.)
Section 46(5):	amended by 35, 1994, s. 16 (Sched.)
Section 47(1):	amended by 76, 1990, s. 24(a)
Section 47(1a):	inserted by 76, 1990, s. 24(b); amended by 35, 1994, s. 16 (Sched.)
Section 47(2a):	inserted by 76, 1990, s. 24(c)
Section 47(4):	amended by 76, 1990, s. 24(d), (e)
Section 47(5):	amended by 76, 1990, s. 24(f)
Section 48:	amended by 35, 1994, s. 16 (Sched.)
Section 49:	inserted by 35, 1994, s. 9

Division 3 of Part 5 comprising s. 49 and heading repealed by 94, 1984, s. 31

Heading preceding section 50:

Section 50(1):	substituted by 35, 1992, s. 11; amended by 57, 2000, s. 5 amended by 39, 1989, s. 3(1) (Sched. 1); substituted by 35, 1992, s. 12; repealed by 57, 2000, s. 6
Section 50(2):	substituted by 94, 1984, s. 32; repealed by 35, 1992, s. 12
Section 50A:	inserted by 94, 1984, s. 33
Section 50A(1):	amended by 39, 1989, s. 3(1) (Sched. 1); 12, 1996, s. 9 (Sched.)
Section 51:	amended by 39, 1989, s. 3(1) (Sched. 1); amended and redesignated as s. 51(1) by 12, 1996, s. 6
Section 51(2):	inserted by 12, 1996, s. 6(c)
Section 52(1):	substituted by 35, 1992, s. 13; amended by 35, 1994, s. 16 (Sched.)
Section 52(2):	amended by 35, 1994, s. 16 (Sched.)
Section 53:	amended by 39, 1989, s. 3(1) (Sched. 1); repealed by 35, 1992, s. 14
Section 54:	repealed by 98, 1986, s. 4
Section 55(2):	amended by 94, 1984, s. 34(a)-(c); 75, 1993, s. 7; 35, 1994, s. 16 (Sched.)
Section 55(3):	amended by 94, 1984, s. 34(d)
Section 55(3a):	inserted by 94, 1984, s. 34(e)
Section 55(4):	amended by 35, 1994, s. 16 (Sched.)
Section 56(1):	substituted by 35, 1994, s. 10
Section 56(2) and (3):	amended by 35, 1994, s. 16 (Sched.)
Section 58(3):	amended by 35, 1994, s. 16 (Sched.)
Section 59(1):	substituted by 94, 1984, s. 35; amended by 35, 1994, s. 16 (Sched.)
Section 60:	substituted by 94, 1984, s. 36
Section 60(2) - (5):	amended by 35, 1994, s. 16 (Sched.)
Section 60A:	inserted by 94, 1984, s. 36
Section 63(1):	amended by 66, 1985, Sched.; 30, 1990, s. 5
Section 63(2):	amended by 39, 1989, s. 3(1) (Sched. 1); 12, 1996, s. 9 (Sched.)
Section 63(3):	inserted by 69, 1986, s. 5; amended by 36, 1988, s. 3(a)
Section 63(4):	inserted by 69, 1986, s. 5
Section 63(5):	inserted by 36, 1988, s. 3(b)
Section 64(1):	amended by 94, 1984, s. 37(a)-(c); 35, 1994, s. 16 (Sched.)
Section 64(1)(b) and (c):	repealed by 94, 1984, s. 37(b)
Section 64(2):	amended by 94, 1984, s. 37(d); 35, 1994, s. 16 (Sched.)
Section 64(3a):	inserted by 94, 1984, s. 37(e); repealed by 69, 1986, s. 6
Section 64(4):	amended by 94, 1984, s. 37(f)
Section 64(5):	repealed by 51, 1988, s. 21

Division 2 of Part 6 comprising s. 65 and heading amended by 94, 1984, s. 38; 69, 1986, s. 7; repealed by 51, 1988, s. 22

Section 66:	substituted by 94, 1984, s. 39; amended by 69, 1986, s. 8; 76, 1990, s. 25; substituted by 35, 1994, s. 11
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Sections 67 and 68:	repealed by 94, 1984, s. 39; inserted by 35, 1994, s. 11
Section 68(1):	amended by 42, 1999, s. 27
Section 68(1a):	inserted by 51, 1995, s. 8
Section 68(4):	substituted by 21, 1995, s. 3(b)
Section 68(5):	inserted by 21, 1995, s. 3(b)
Section 69:	amended by 94, 1984, s. 40
Section 70(1):	substituted by 94, 1984, s. 41; amended by 35, 1994, s. 12
Section 70(2):	amended by 69, 1986, s. 9; 35, 1994, s. 16 (Sched.)
Section 71:	substituted by 94, 1984, s. 42
Section 71(1) and (2):	amended by 35, 1994, s. 16 (Sched.)
Section 71(4):	amended by 42, 1999, s. 28
Section 72(1):	amended by 35, 1994, s. 16 (Sched.)
Section 72(2):	amended by 42, 1999, s. 29
Section 72(3):	substituted by 94, 1984, s. 43; amended by 69, 1986, s. 10
Section 73:	repealed by 94, 1984, s. 44; inserted by 69, 1986, s. 11
Section 74(1):	amended by 94, 1984, s. 45(a); substituted by 69, 1986, s. 12(a); 30, 1990, s. 6
Section 74(1a) and (1b):	inserted by 69, 1986, s. 12(b)
Section 74(2):	amended by 42, 1999, s. 30
Section 74(3):	substituted by 94, 1984, s. 45(b)
Section 74(4):	inserted by 94, 1984, s. 45(b); substituted by 69, 1986, s. 12(c)
Section 74(4a) and (4b):	inserted by 69, 1986, s. 12(c)
Section 74(5):	inserted by 94, 1984, s. 45(b)
Section 74AA:	inserted by 30, 1990, s. 7
Section 74AA(3):	amended by 42, 1999, s. 31(a)
Section 74AA(4):	amended by 34, 1992, s. 47; 42, 1999, s. 31(b), (c)
Section 74AA(5):	amended by 42, 1999, s. 31(c)
Section 74A:	inserted by 94, 1984, s. 46; amended by 35, 1994, s. 16 (Sched.)
Section 75(1):	substituted by 94, 1984, s. 47(a); 30, 1990, s. 8(a)
Section 75(1a):	inserted by 94, 1984, s. 47(a); amended by 30, 1990, s. 8(b)
Section 75(2):	amended by 30, 1990, s. 8(c); 54, 1990, s. 3(1) (Sched. 1)
Section 75(3):	inserted by 94, 1984, s. 47(b); repealed by 69, 1986, s. 13
Section 76(1):	amended by 18, 2000, s. 4(a)
Section 76(2):	amended by 18, 2000, s. 4(b)
Section 76(2a):	inserted by 36, 1988, s. 4
Section 76(3a):	inserted by 18, 2000, s. 4(c)
Section 76(4):	inserted by 94, 1984, s. 48
Section 77(1):	repealed by 94, 1984, s. 49(a); inserted by 35, 1994, s. 13(a)
Section 77(2):	amended by 94, 1984, s. 49(b); 35, 1994, s. 13(b)
Section 77(3):	substituted by 94, 1984, s. 49(c); amended by 30, 1990, s. 9
Section 77(4) and (5):	inserted by 12, 1996, s. 7
Section 78:	repealed by 94, 1984, s. 50
Part 7 comprising ss. 79 - 82 and heading repealed and ss. 79 - 81 and heading inserted in its place by 94, 1984, s. 51; amended by 66, 1985, s. 8, Sched.; 69, 1986, ss. 14, 15; 34, 1992, s. 48; repealed by 35, 1994, s. 14	
Section 83(1) and (2):	amended by 94, 1984, s. 52(a)
Section 83(4):	inserted by 94, 1984, s. 52(b)
Section 84:	amended by 94, 1984, s. 53; substituted by 54, 1990, s. 3(1) (Sched. 1) amended by 34, 1992, s. 49
Section 85:	repealed by 94, 1984, s. 54; inserted by 21, 1995, s. 3(c)
Section 85A:	inserted by 94, 1984, s. 55
Section 85B:	inserted by 94, 1984, s. 55; amended by 39, 1989, s. 3(1) (Sched. 1); 35, 1994, s. 16 (Sched.); substituted by 12, 1996, s. 8
Sections 85C and 85D:	inserted by 12, 1996, s. 8
Section 86A:	inserted by 51, 1988, s. 23
Section 88A:	inserted by 98, 1986, s. 5
Section 88B:	inserted by 76, 1990, s. 26

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Section 89(2): amended by 94, 1984, s. 56; 30, 1990, s. 10; 52, 1991, s. 6;
35, 1994, s. 15; 42, 1999, s. 32

Section 89(2)(k): repealed by 65, 1993, s. 4