



TASMANIA

CORRECTIONS ACT 1997

No. 51 of 1997

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CORRECTIONS ACT 1997

No. 51 of 1997

An Act to provide for the establishment, management and security of prisons and the welfare of prisoners and detainees, to provide for the granting of parole to prisoners, to provide for the administration of services related to community correction and to provide for related matters

[Royal Assent 11 December 1997]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Corrections Act 1997*.

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2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

In this Act, unless the contrary intention appears –

adult means a person who has attained the age of 18 years;

appropriate treatment, in relation to a sex offender prisoner, means a professional intervention to address the underlying causes of offending behaviour;

approved organisation means an organisation approved by the Director under section 13;

Board means the Parole Board established under section 62;

Chief Forensic Psychiatrist has the same meaning as in the *Mental Health Act 2013*;

correctional officer means a person appointed as a correctional officer pursuant to section 5;

Custodial Inspector means the Custodial Inspector appointed under section 5 of the *Custodial Inspector Act 2016*;

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custodian means a person referred to in section 42(4)(a), (b) or (c) (other than the Director);

detainee means a person, other than a prisoner, who is subject to an order of a court by which he or she is remanded or otherwise committed to prison;

Director means the Director of Corrective Services appointed under section 5;

disciplinary officer means a correctional officer –

- (a) nominated by the Director under section 57 to be a disciplinary officer; or
- (b) belonging to a class of correctional officers nominated by the Director under section 57 to be disciplinary officers;

eligible persons register means the register kept under section 87A;

hospital means a place approved as a hospital under section 35;

immediate family, in respect of a deceased victim, includes –

- (a) the spouse of the deceased victim; and
- (ab) the person who was in a significant relationship, within

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the meaning of the *Relationships Act 2003*, with the deceased victim at the time of the victim's death; and

- (b) a parent, guardian or step-parent of the deceased victim; and
- (c) a child or stepchild of the deceased victim; and
- (d) a brother, sister, stepbrother or stepsister of the deceased victim;

imprisonment means imprisonment imposed as a result of a lawful sentence;

institution means a place approved as an institution under section 35;

leave permit means a leave permit in force under section 42;

legal member means the member of the Board referred to in section 62(2)(a);

legal practitioner means an Australian legal practitioner;

life prisoner means a prisoner who is serving a sentence for the term of his or her natural life;

medical officer means a medical practitioner who is engaged to examine, treat or care for a prisoner or detainee;

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Mental Health Tribunal means the Mental Health Tribunal established under the *Mental Health Act 2013*;

migration detainee – see section 83D;

non-parole period, in relation to a sentence of imprisonment, means –

- (a) in a case to which section 17(2)(a), 17(3A) or 18(1)(a) of the *Sentencing Act 1997* applies, the whole of the period of the sentence; or
- (b) in a case to which section 17(2)(b) or 18(1)(b) of the *Sentencing Act 1997* applies, the period specified in the order made under that section; or
- (c) in any other case, the non-parole period specified in section 68(1);

officer of the Inspector means a person who is appointed or employed under section 11 of the *Custodial Inspector Act 2016*;

officer of the Ombudsman means a person who is appointed or employed pursuant to section 9 of the *Ombudsman Act 1978*;

official visitor means a person appointed as an official visitor to a prison under section 10;

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operative sentence means such part of a sentence of imprisonment as has not been suspended;

parole order means a parole order under section 72;

Poisons List has the same meaning as in the *Poisons Act 1971*;

prison includes a place of detention irrespective of the title by which it is known, and includes the whole area, whether or not walled or fenced, established as a prison;

prisoner means a person who is subject to an order of a court by which he or she is sentenced to a term of imprisonment and includes a person declared as a dangerous criminal under section 19 of the *Sentencing Act 1997*;

prison offence means an offence specified in Schedule 1;

probation officer means a person appointed as a probation officer pursuant to section 5 and includes an honorary probation officer appointed under that section;

regulations means the regulations in force under this Act;

Secretary means the Secretary of the Department;

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secure mental health unit has the same meaning as in the *Mental Health Act 2013*;

sentence includes a sentence imposed by way of resentencing under section 9(1) of the *Criminal Code Amendment (Life Prisoners and Dangerous Criminals) Act 1994*;

sex offender prisoner means a prisoner whose sentence of imprisonment was –

- (a) imposed on the prisoner as an adult; and
- (b) imposed, either wholly or partially, for a sexual offence;

sexual offence means –

- (a) an offence under section 72, 72A, 73, 73A, 74 or 74A of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*; or
- (b) a crime under section 122, 124, 125, 125A, 125B, 125C, 125D, 126, 127, 127A, 129, 130, 130A, 130B, 130C, 130D, 133, 137, 138, 185 or 186 of the *Criminal Code*; or
- (c) a crime under section 298, 299 or 300 of the *Criminal Code* relating to a crime referred to in

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paragraph (b) of this definition;
or

- (d) an offence under section 8(1A), 13A, 13B, 13C, 21 or 35(3) of the *Police Offences Act 1935*; or
- (e) an offence under section 4, 5, 7, 8 or 9 of the *Sex Industry Offences Act 2005*; or
- (f) a crime or other offence prescribed by the regulations; or
- (g) an offence against the law of a jurisdiction other than Tasmania which is of substantially the same nature as a crime or offence referred to in another paragraph of this definition;

standing orders means the standing orders made under section 6(3);

State Service corrections employee means a person, other than a correctional officer or probation officer, appointed or employed pursuant to section 5(2);

supervisor means a person appointed as a supervisor pursuant to section 5 and includes an honorary supervisor appointed under that section;

victim, in respect of an offence, means –

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- (a) a person who has suffered injury, loss or damage as a direct consequence of the offence; and
- (b) a member of the immediate family of a deceased victim of the offence.

4. Guiding principles

The powers conferred by this Act are to be exercised with proper regard to the following principles:

- (a) the community is entitled to an appropriate level of protection from illegal behaviour by people subject to this Act;
- (b) people who are subject to this Act retain their normal rights and responsibilities as citizens, except as these are limited in accordance with law;
- (c) services and procedures should be fair, equitable and have due regard to personal dignity and individuality, as far as is consistent with the need for appropriate levels of security and control;
- (d) individuals are capable of change;
- (e) people subject to this Act continue to be members of the community and should be assisted to become socially responsible. Whilst their liberty is

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restricted to various degrees, demonstrated social responsibility should lead to less intrusive control and intervention.

4A. Inconsistency with *Mental Health Act 2013*

Where there is an inconsistency between this Act and the *Mental Health Act 2013*, this Act prevails to the extent of that inconsistency.

PART 2 – ADMINISTRATION

5. Appointment of Director and other persons

- (1) The Governor may appoint a State Service officer or State Service employee to be Director of Corrective Services and the officer or employee holds office in conjunction with State Service employment.
- (2) Subject to and in accordance with the *State Service Act 2000*, correctional officers, probation officers and such other persons as are required for the purposes of this Act may be appointed or employed.
- (3) The Secretary may appoint a person to be a supervisor for the purposes of this Act.
- (4) A person appointed as a supervisor is to be appointed on such terms as the Secretary determines.
- (5) The Secretary may appoint a person to be an honorary probation officer or honorary supervisor.
- (6) All police officers are correctional officers.

5A. Appointment of interstate correctional officers and probation officers

- (1) The Secretary, with the consent of the employer of a correctional officer or a probation officer employed in another State or a Territory

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(however described in that State or Territory) may appoint such a correctional officer or probation officer to be a correctional officer or a probation officer for the purposes of this Act if the Secretary considers it is necessary to do so.

- (2) An appointment under subsection (1) is to be –
- (a) for such period not exceeding 90 days as may be determined by the Secretary; and
 - (b) on such terms and conditions as are specified in the instrument of appointment.

6. Powers and duties of Director

- (1) The Director is responsible to the Secretary –
- (a) for the care and direction of all prisons, prisoners and detainees and the control of all prisons; and
 - (b) for the order and control of all prisoners and detainees.
- (2) The Director has the powers, functions and duties vested in or conferred or imposed on him or her by this Act, the *Sentencing Act 1997* and the *Mental Health Act 2013*.
- (3) The Director may make standing orders for the management and security of prisons and for the welfare, protection and discipline of prisoners and detainees.

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- (4) A person who is a correctional officer or State Service corrections employee must comply with the standing orders made by the Director in so far as they apply to such an officer or employee.
- (5) The obligation under subsection (4) is, for correctional officers and State Service corrections employees, taken to be a conduct requirement under section 9 of the *State Service Act 2000*.

7. Delegation

The Director may delegate any of the Director's functions or powers under this or any other Act other than this power of delegation.

8. Confidentiality

- (1) In this section –

confidential information means –

- (a) information relating to the classification of a prisoner given to the Director or to the classification committee established under the regulations; or
- (b) information given to the Board that is not disclosed in a decision of the Board or in any reasons given by the Board for a decision of the Board; or

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- (c) information given to an official visitor as an official visitor; or
- (ca) information given to the Custodial Inspector for the purposes of the *Custodial Inspector Act 2016*; or
- (d) information relating to the personal affairs of a prisoner or detainee; or
- (e) information concerning procedures or plans to be adopted or followed in a prison in the event of an emergency; or
- (f) information concerning the management of, or the operation of security measures in, or in relation to, a prison; or
- (g) information concerning the investigation of a breach or possible breach of the law by a prisoner, a correctional officer or a State Service corrections employee; or
- (h) information contained in a report given to a court that is not disclosed in a decision of the court or in any reasons given by the court for a decision of the court;

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information includes photographs, fingerprints, samples and results of tests;

position means any of the following:

- (a) a position as a correctional officer, a probation officer or a person appointed or employed for the purposes of this Act;
 - (b) a delegate of the Director;
 - (c) a person authorised to perform or exercise the functions or powers of a correctional officer.
- (2) A person who holds or has held a position must not, except to the extent necessary to perform the official duties, powers or functions of that position, record, disclose, communicate or make use of confidential information.

Penalty: Fine not exceeding 5 penalty units.

- (3) Subsection (2) does not prevent a person from –
- (a) giving evidence or producing a document to a court in the course of criminal proceedings or proceedings under this Act, even though the evidence or document contains confidential information; or
 - (b) disclosing or communicating confidential information in accordance with the written authority of the Minister or the

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person to whom the information relates;
or

- (c) disclosing or communicating confidential information to the Ombudsman or an officer of the Ombudsman; or
- (d) disclosing confidential information that is a photograph to a person who holds a position or is a police officer, if the disclosure is made to assist the person to perform official duties; or
- (e) disclosing confidential information to the extent specifically authorised by another Act; or
- (f) disclosing information approved by the Director to a victim of crime.

8A. Surrender of prison service equipment, &c.

(1) In this section –

item of identification includes –

- (a) an access pass; and
- (b) a security pass; and
- (c) a tag;

prescribed period means –

- (a) in respect of an item of identification, equipment, clothing or insignia, the 7-day

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period immediately following the day on which the relevant person ceases to be a correctional officer or State Service corrections employee, or such longer period as the Director, by notice in writing given before or during that 7-day period, may allow the person; and

- (b) in respect of a firearm or ammunition, the 24-hour period immediately after the relevant person ceases to be a correctional officer or State Service corrections employee.
- (2) This section applies to a person who ceases for any reason to hold an appointment or employment as a correctional officer or State Service corrections employee.
 - (3) The person must surrender to the Director, within the prescribed period –
 - (a) all firearms and ammunition; and
 - (b) all items of identification, equipment, clothing and insignia –

that were on issue to that person as a correctional officer or State Service corrections employee immediately before he or she ceased to hold that appointment or employment.

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Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 3 months.

- (4) However, subsection (3) does not apply to the person in respect of an item of identification, equipment, clothing or insignia if it is an item of a kind that, under the standing orders in force at the relevant time, the person may retain on ceasing to hold the relevant appointment or employment.
- (5) If the person fails to surrender an item of identification, equipment, clothing or insignia as required by subsection (3), the Director, as soon as practicable after the prescribed period, is to give the person a notice requiring that the item be surrendered to the Director forthwith or within such time as he or she considers reasonable in the circumstances and specifies in the notice.
- (6) The notice under subsection (5) is to be given by registered post addressed to the person's place of residence last known to the Director.
- (7) The Commissioner of Police, at the written request of the Director, may apply to a justice for a warrant to enter and search any place and do either or both of the following:
 - (a) seize any firearm or ammunition found in the place that ought to have been surrendered to the Director pursuant to subsection (3) but has not been so surrendered;

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- (b) seize any item of identification, equipment, clothing or insignia found in the place that ought to have been surrendered to the Director pursuant to subsections (3) and (5) but has not been so surrendered.
- (8) A justice may issue a warrant if satisfied that there are reasonable grounds for believing that there is on or in any place either or both of the following:
 - (a) a firearm or ammunition, or both, that ought to have been surrendered to the Director pursuant to subsection (3) but has not been so surrendered;
 - (b) an item of identification, equipment, clothing or insignia that ought to have been surrendered to the Director pursuant to subsections (3) and (5) but has not been so surrendered.
- (9) A warrant is to authorise a police officer to –
 - (a) enter and search the place specified in the warrant; and
 - (b) seize any thing that the police officer reasonably believes is required to be surrendered to the Director under this section.
- (10) A warrant is to specify the date on which, and time by which, the warrant ceases to have effect.

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- (11) If the occupier of the place is not present or refuses permission, the police officer may –
- (a) proceed to execute the warrant using any reasonable force necessary; and
 - (b) do anything reasonably required to execute the warrant.

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Part 3 – Establishment and control of prisons

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PART 3 – ESTABLISHMENT AND CONTROL OF PRISONS

Division 1 – Establishment of prisons

9. Establishment of prisons

- (1) The Governor, by proclamation, may declare any premises or place or any part of any premises or place to be a prison.
- (2) The Governor, by proclamation, may declare that a prison is to be available for use for the detention in lawful custody of persons other than prisoners or detainees.
- (3) Nothing in this Act is to apply to or in relation to the detention of persons other than prisoners or detainees in a prison referred to in subsection (2).

Division 2 – Access to prison

10. Official visitors

- (1) The Minister may appoint persons as official visitors in accordance with this section.
- (1A) A person appointed as an official visitor is to be –
 - (a) appointed for a term, not exceeding 3 years, specified in his or her instrument of appointment; and

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- (b) appointed on terms and conditions specified in his or her instrument of appointment; and
 - (c) paid such remuneration and allowances as the Minister may determine.
- (2) A person may be appointed as an official visitor to all prisons in the State.
- (3) The Minister may appoint a Coordinator of the Official Visitors Scheme.
- (3A) The Coordinator of the Official Visitors Scheme is to ensure that each prison is visited at least once a month by an official visitor and, for that purpose, may establish a system for the coordination of visits to prisons by official visitors.
- (4) An official visitor is to –
 - (a) visit, either alone or with another visitor, any prison once a month or at any other time; and
 - (b) inquire into the treatment, behaviour and conditions of the prisoners and detainees in that prison; and
 - (c) receive and investigate any complaint of a prisoner or detainee.
- (5) While an official visitor is visiting a prison, the official visitor is not to directly interfere with, or give instructions with regard to, the management or disciplining of a correctional officer, a

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prisoner or detainee or a State Service corrections employee.

- (6) An official visitor may report to the Director or Minister on –
- (a) the management or disciplining of a prisoner or detainee, or the conduct of correctional officers or State Service corrections employees, at a prison visited by the official visitor; or
 - (b) any matter relating to the treatment or condition of prisoners or detainees at that prison; or
 - (c) the state of the prison.
- (7) The Coordinator of the Official Visitors Scheme, as soon as practicable after 31 December in each year, is to give the Minister a report –
- (a) on the inquiries or investigations made under subsection (4); and
 - (b) on the visits to prisons by official visitors; and
 - (c) on the activities of official visitors at prisons –

in that year.

- (7A) The Minister may, at any time, request the Coordinator of the Official Visitors Scheme to give the Minister a report –

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- (a) on the inquiries or investigations made under subsection (4); or
 - (b) on the visits to prisons by official visitors; or
 - (c) on the activities of official visitors at prisons; or
 - (d) on any other matter relating to official visits that the Minister requires.
- (8) A correctional officer and a State Service corrections employee is to give full assistance and cooperation to an official visitor.

11. Visits by judges, magistrates, &c.

- (1) Any of the following persons may visit a prison at any reasonable time:
- (a) a judge;
 - (b) a magistrate;
 - (c) the Ombudsman or an officer of the Ombudsman;
 - (ca) the Custodial Inspector or an officer of the Inspector;
 - (d) a person authorised in writing by the Minister.
- (2) A correctional officer and a State Service corrections employee must give full assistance to a person referred to in subsection (1).

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12. Visits

- (1) A person may enter a prison and visit a prisoner or detainee in accordance with procedures determined by the Director.
- (2) The Director may give to a visitor under this section such orders as are necessary for the management, good order and security of the prison.
- (3) A visitor who disobeys a Director's order is guilty of an offence.

Penalty: Fine not exceeding 5 penalty units.

13. Power of Director to approve certain organisations

The Director may, for the purposes of this Act, approve an organisation which has amongst its objects the welfare and rehabilitation of prisoners.

14. Visits by members of approved organisations

A member of an approved organisation may visit a prisoner or detainee in accordance with procedures determined by the Director.

15. Exclusion of visitors for security reasons

- (1) The Director, by order, may prohibit a person wishing to visit a prisoner or detainee from entering or remaining in the prison if the Director suspects on reasonable grounds that the

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person's entry into the prison or visit to the prisoner or detainee might endanger the good order or security of the prison or the safety of the prisoners or detainees.

- (2) The Director may order a person visiting the prison to leave the prison if the Director suspects on reasonable grounds that –
 - (a) the person has contravened the regulations; or
 - (b) the person has disobeyed an order of the Director given under this Division.
- (3) A person who disobeys an order under this section is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units.

16. Visits by legal practitioners and their assistants

- (1) A legal practitioner acting in the course of his or her practice may enter a prison and visit a prisoner or detainee in accordance with procedures determined by the Director.
- (2) With the Director's permission, a person authorised by a legal practitioner to act on the legal practitioner's behalf in connection with the legal practitioner's practice may enter a prison and visit a prisoner or detainee.

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17. Visits by police

- (1) A police officer may enter a prison and visit a prisoner or detainee in accordance with procedures determined by the Director.
- (2) A prisoner or detainee may refuse a visit from a police officer under this section.
- (3) A prisoner or detainee is not required to answer questions asked by a police officer during a visit under this section.
- (4) A prisoner or detainee may request a correctional officer or any other person appointed or employed for the purposes of this Act to be present at, or to observe but not hear, any part of an interview between the prisoner or detainee and a police officer visiting the prison.
- (5) If a police officer proposes to visit a prisoner or detainee who is in a prison, the Director is to ensure that the prisoner or detainee is advised of his or her rights under this section.

18. Visitors to give prescribed information

- (1) A person who wishes to enter or has entered a prison as a visitor must, if asked by a correctional officer or a State Service corrections employee, give to the correctional officer or a State Service corrections employee proof of the person's identity and information as to the person's address, occupation, age, relationship (if any) to the prisoner or detainee and as to the purpose of the person's visit.

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- (2) A person who wishes to enter or has entered a prison as a visitor and who knowingly gives to a correctional officer or a State Service corrections employee information that is false or misleading is guilty of an offence.

Penalty: Fine not exceeding 5 penalty units.

- (3) If, when asked, a person does not give proof of the person's identity and the information specified in subsection (1) to a correctional officer or a State Service corrections employee or gives information to a correctional officer or a State Service corrections employee that is false or misleading, the correctional officer or a State Service corrections employee may –
- (a) if the person has not entered the prison, by order prohibit the person from entering the prison; or
 - (b) if the person has entered the prison, order the person to leave the prison immediately.

- (4) A person who disobeys an order under this section is guilty of an offence.

Penalty: Fine not exceeding 5 penalty units.

- (5) A person ordered to leave a prison under this section may only re-enter the prison with the Director's permission.

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19. Director may refuse or terminate visits for security reasons

- (1) If the Director believes on reasonable grounds that the security of a prison or the safety of a visitor at a prison is threatened, the Director may –
 - (a) by order prohibit a person from entering the prison as a visitor; or
 - (b) order the visitor to leave the prison immediately.
- (2) A person who disobeys a Director's order under this section is guilty of an offence.

Penalty: Fine not exceeding 5 penalty units.

20. Formal searches

- (1) In this section,

formal search means a search to detect the presence of drugs, weapons or metal articles.
- (2) A person who wishes to enter or remain in a prison as a visitor must, if asked by a correctional officer, submit to a formal search.
- (3) If, when asked, a person does not submit to a formal search, a correctional officer may prohibit the person from entering the prison or, if the person is in the prison, order the person to leave the prison immediately.

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- (4) In carrying out a formal search, a correctional officer may employ –
- (a) such assistance as he or she believes on reasonable grounds to be necessary for the purpose; and
 - (b) such means as he or she believes on reasonable grounds to be necessary for the purpose including, but not limited to, scanning devices and detection devices.

21. Removal of persons from prison

- (1) If a person disobeys an order to leave a prison under section 15, 19, 20 or 22(2), a correctional officer may, if necessary, use reasonable force to compel the person to leave the prison.
- (2) A correctional officer who uses force to compel a visitor to leave a prison is, as soon as practicable, to report the fact to the Director.

22. Searches and examinations

- (1) The Director may, for the security or good order of the prison or the prisoners or detainees, at any time order a correctional officer or State Service corrections employee to –
 - (a) search or examine, or search and examine, any part of the prison; or
 - (b) search or examine, or search and examine, any vehicle, equipment, container or other thing in the prison; or

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- (c) conduct any search or examination, or search and examination, under this subsection at random.
- (1A) The Director may, for the security or good order of the prison or the prisoners or detainees, at any time order a correctional officer to –
- (a) search or examine, or search and examine, a prisoner or detainee, a visitor to the prison, a correctional officer or any person appointed or employed for the purposes of this Act or any other person in the prison; or
 - (b) instead of or as well as a formal search required under section 20, require a person wishing to enter the prison to submit to a search or examination, or search and examination, of the person and of anything in the person's possession or under the person's control; or
 - (c) conduct any search or examination, or search and examination, under this subsection at random.
- (2) If a person other than a prisoner, detainee, correctional officer or State Service corrections employee refuses to submit to a search or examination, or search and examination, under this section while inside the prison, the Director may order the person to leave the prison immediately.

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- (3) A person who disobeys a Director's order under subsection (2) is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units.

- (4) A search or examination, or search and examination, of a female visitor under this section is to be made by a female officer and in the presence of females only.

- (5) In carrying out a search or examination, or search and examination, pursuant to an order of the Director given under this section, a correctional officer or State Service corrections employee may employ –

- (a) such assistance as he or she believes on reasonable grounds to be necessary for the purpose; and
- (b) such means as he or she believes on reasonable grounds to be necessary for the purpose including, but not limited to, scanning devices and detection devices.

22A. Use of detector dogs

- (1) In this section –

detector dog means a dog that has been, or is being, trained by a State or Commonwealth law enforcement agency to detect particular substances or items;

detector dog handler means a person whose duties, whether as a police officer,

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correctional officer or otherwise, include the handling of a detector dog;

search means –

- (a) a formal search carried out by a correctional officer under section 20; or
 - (b) a search or examination, or search and examination, carried out by a correctional officer or State Service corrections employee pursuant to an order of the Director given under section 22.
- (2) A correctional officer or State Service corrections employee who is carrying out a search may be accompanied and assisted by –
- (a) a detector dog; and
 - (b) whether or not the officer or employee is a detector dog handler, a detector dog handler.
- (3) If subsection (2) applies, the detector dog may be used in such manner as the persons carrying out or assisting with the search think fit having regard to the nature of the search and the specific capabilities of the detector dog.
- (4) A person must not, without lawful excuse, do anything that is likely to impede or interfere with the effective use of a detector dog in a search.

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Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 12 months.

- (5) To avoid doubt, it is immaterial for the purposes of subsection (4) whether the impeding or interference occurs during the relevant search or at any time before the relevant search.
- (6) A person must not, without lawful excuse, strike, injure, maim or kill a detector dog that accompanies and assists a correctional officer or State Service corrections employee in carrying out a search.

Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 12 months.

- (7) To avoid doubt, it is immaterial for the purposes of subsection (6) whether the striking, injuring, maiming or killing occurs during the relevant search or immediately before or immediately after the relevant search.
- (8) Neither the Crown nor any correctional officer, State Service corrections employee or detector dog handler is liable to any action, liability, claim or demand merely because a detector dog –
 - (a) entered or was present at a prison; or
 - (b) initiated or inadvertently made contact with a prisoner, detainee, visitor or other person; or

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- (c) initiated or inadvertently made contact with anything in a prisoner's, detainee's, visitor's or other person's possession.

23. Seizure

- (1) In carrying out a formal search pursuant to section 20 or a search or examination, or search and examination, pursuant to an order of the Director given under section 22(1) or (1A), a correctional officer may seize any one or more of the following:
 - (a) any thing found in the prison, whether in a person's possession or not, which the correctional officer believes on reasonable grounds jeopardises or is likely to jeopardise the security or good order of the prison or the safety of persons in the prison;
 - (b) any thing found on the prisoner or detainee or in a prisoner's or detainee's possession, other than a thing which the prisoner is authorised to wear or to possess under section 29, the regulations or a direction of the Director;
 - (c) any thing which a prisoner or detainee is authorised to wear or to possess under section 29, the regulations or a direction of the Director which the correctional officer believes on reasonable grounds jeopardises or is likely to jeopardise the security of the prison or the safety of persons in the prison.

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- (1A) In carrying out a search or examination, or search and examination, pursuant to an order of the Director given under section 22(1), a State Service corrections employee may seize any thing found in the course of the search or examination or search and examination which the State Service corrections employee believes on reasonable grounds jeopardises or is likely to jeopardise the security or good order of the prison or the safety of persons in the prison.
- (2) A correctional officer or State Service corrections employee who seizes any thing pursuant to subsection (1) or (1A) is to immediately inform the Director.
- (3) The Director is to deal, in accordance with the regulations, with any thing which is not a drug of dependence and is seized pursuant to this section.

24. Prohibition against bringing unauthorised articles and things into prisons

- (1) A person who brings into a prison an article or thing that the Director has not authorised to be brought into the prison is guilty of an offence.

Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 12 months.

- (2) A correctional officer who finds a person contravening subsection (1) may detain that person pending the arrival of a police officer.

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- (3) A police officer may arrest without warrant a person who the police officer reasonably believes has contravened subsection (1).
- (4) A person arrested under subsection (3) is to be brought before a court as soon as practicable.
- (5) In addition to any other penalty that may be imposed on a correctional officer or a State Service corrections employee, a correctional officer or a State Service corrections employee who is convicted of an offence against this section forfeits office.

25. Children

- (1) At the request of a prisoner who is a child's parent or guardian, the Director may permit the prisoner's child to live with the prisoner in the prison if the Director is satisfied that –
 - (a) it is in the best interests of the child to live with his or her parent or guardian in the prison; and
 - (b) the management, good order or security of the prison will not be threatened by the child living in the prison.
- (2) The prisoner is responsible for the safety and care of the prisoner's child while the child lives in the prison.
- (3) If the Director considers that the child's behaviour is threatening the security or good order of the prison or the child's safety is

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threatened, the Director may cause the child to be removed from the prison.

25A. Power of arrest

A police officer may arrest a person without warrant if the police officer believes on reasonable grounds that the person has committed an offence under section 12(3), section 15(3), section 18(2), section 18(4), section 19(2), section 22(3), section 22A(4) or section 22A(6).

**PART 4 – CUSTODY AND TREATMENT OF
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26. Circumstances in which prisoners, &c., are in custody of Director, &c.

- (1) A prisoner or detainee is taken to be in the custody of the Director in the following circumstances:
 - (a) if the prisoner or detainee is being taken to or from prison;
 - (b) if the prisoner or detainee is working outside the precincts of a prison;
 - (c) if the prisoner or detainee is outside the precincts of a prison in accordance with an authorisation under section 41, a leave permit under section 42 or an interstate leave permit under section 49.
- (2) If a police officer has custody of a prisoner or detainee in a prison in respect of which a proclamation has been made under section 9(2), the police officer is taken to be a correctional officer and the prisoner or detainee is taken to be in the custody of the Director.
- (3) If a correctional officer has custody of a person in lawful custody, other than a prisoner or detainee, in a prison in respect of which a proclamation has been made under section 9(2), the correctional officer is taken to be a police officer and the person in lawful custody is taken to be in the custody of a police officer.

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27. Removal of prisoners and detainees into control of Director

- (1) Subject to subsection (3) and to any order of a court to the contrary, a correctional officer or police officer who is present when an order is made resulting in a person being made a prisoner or detainee is to, immediately after the making of the order, take the prisoner or detainee into custody and control and remove the prisoner or detainee as soon as practicable into the custody and control of the Director.
- (2) A police officer who has the custody and control of a prisoner or detainee referred to in subsection (1) is to assist in removing the prisoner or detainee into the custody or control of the Director.
- (3) If it is impracticable to remove a prisoner or detainee immediately to a prison, the correctional officer, police officer or other person having the custody and control of the prisoner or detainee may temporarily keep the prisoner or detainee at some other suitable place.

28. Random testing and searching of prisoners and detainees

- (1) If the appropriate correctional officer as specified in the standing orders considers it necessary to do so in the interests of the management and good order of a prison, the correctional officer may order a prisoner or detainee at any time to undergo a test or search for the use or possession of any of the following:

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- (a) alcohol;
 - (b) a drug which has not been prescribed by a medical practitioner for the use of the prisoner or detainee;
 - (c) a controlled substance within the meaning of the *Misuse of Drugs Act 2001*;
 - (d) a substance included in Schedule 2, 3, 4 or 8 of the Poisons List;
 - (e) a substance included in the Australian Register of Therapeutic Goods established under the *Therapeutic Goods Act 1989* of the Commonwealth;
 - (f) a metabolite of a substance mentioned in paragraph (b), (c), (d) or (e).
- (2) A test may include the taking of a urine, blood or breath sample.
- (3) A test –
- (a) in the case of a blood sample, is to be carried out by a medical officer; and
 - (b) in the case of a urine or breath sample, may be carried out by a correctional officer or a medical officer.
- (4) A correctional officer is to order a prisoner or detainee to undergo a test or search under this section as and when required by the standing orders.

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29. Rights of prisoners and detainees

- (1) Every prisoner and detainee has the following rights:
 - (a) if not ordinarily engaged in outdoor work, the right to be in the open air for at least an hour each day if the facilities of the prison are suitable for allowing the prisoner or detainee to be in the open air;
 - (b) the right to be provided with food that is adequate to maintain the health and well-being of the prisoner or detainee;
 - (c) the right to be provided with special dietary food where the Director is satisfied that such food is necessary for medical reasons or on account of the prisoner's or detainee's religious beliefs or because the prisoner or detainee is a vegetarian;
 - (d) the right to be provided with clothing that is suitable for the climate and for any work which the prisoner or detainee is required to do and adequate to maintain the health of the prisoner or detainee;
 - (e) if not serving a sentence of imprisonment, the right to wear suitable clothing owned by the detainee when appearing in court;
 - (f) the right to have access to reasonable medical care and treatment necessary for the preservation of health;

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- (g) if intellectually disabled or mentally ill, the right to have reasonable access within the prison or, with the Director's approval, outside the prison to such special care and treatment as a medical officer considers necessary or desirable in the circumstances;
- (h) the right to have access to reasonable dental treatment necessary for the preservation of dental health;
- (i) the right to practise a religion of the prisoner's choice and, if consistent with prison security and good prison management, to join with other prisoners or detainees in practising that religion and to possess such articles as are necessary for the practice of that religion;
- (j) in the case of a prisoner, the right to receive at least one visit each week of at least 30 minutes duration and such other visits as the Director determines;
- (k) in the case of a detainee, the right to receive at least 3 visits each week and such other visits as the Director determines;
- (l) the right to send letters to, and receive letters from, the Minister, the Director, an official visitor, the Ombudsman or an officer of the Ombudsman or the Custodial Inspector or an officer of the

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- Inspector without those letters being opened by prison staff;
- (m) the right to send and receive other letters uncensored by prison staff;
 - (n) the right to advise next of kin, or a person with whom the prisoner or detainee has had a longstanding relationship, of imprisonment as soon as possible after the prisoner or detainee is admitted to prison;
 - (o) the right to have access to legal advice or to apply for legal aid;
 - (p) the right to be provided with information about the rules and conditions which will govern the prisoner's or detainee's behaviour in custody.
- (2) Despite subsection (1)(m), if the Director reasonably believes that any letter sent or received by a prisoner or detainee is a threat to prison security or may be of a threatening or harassing nature, the Director may –
- (a) if the belief concerns the whole letter, stop the letter from being sent or received by the prisoner; or
 - (b) if the belief concerns only part of the letter, cause the relevant part of the letter to be censored.
- (3) For the purposes of subsection (1)(n), the question of whether a person has had a

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longstanding relationship with a prisoner or detainee is to be determined by the Director.

30. Medical tests for HIV, &c.

- (1) The Director may require a prisoner or detainee to undergo a test for HIV or other blood-borne diseases by a medical officer or a registered nurse –
 - (a) as soon as practicable on admission to a prison; and
 - (b) at such regular intervals as the Director may consider appropriate or necessary in the circumstances.
- (2) If a prisoner or detainee refuses to undergo a test, a medical officer, or a registered nurse, who is nominated by the Director for the purpose is to counsel the prisoner or detainee in respect of the necessity or desirability of undergoing the test.
- (3)

31. Treatment of sex offender prisoners

- (1) This section applies if the Director is satisfied on reasonable grounds that appropriate treatment is available for a sex offender prisoner.
- (2) The Director is to give the sex offender prisoner a reasonable opportunity to participate in the appropriate treatment unless satisfied on reasonable grounds that –

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- (a) the prisoner is medically or psychologically unfit to participate in the treatment; or
 - (b) the prisoner is not cognitively capable of participating in the treatment; or
 - (c) there is insufficient time for the prisoner to complete the treatment; or
 - (d) the prisoner's participation in the treatment could compromise the safety, security or good order of the prison.
- (3) The Director, on giving the sex offender prisoner the opportunity to participate in the appropriate treatment, is to inform the prisoner that –
- (a) non-participation or unsatisfactory participation will prevent the prisoner from being granted a remission of sentence in respect of the relevant sexual offence; and
 - (b) participation, non-participation or unsatisfactory participation will, if the prisoner becomes eligible for parole, be factors taken into consideration by the Board in determining whether the prisoner should be released on parole.
- (4) If the sex offender prisoner chooses to participate in the appropriate treatment, the Director is to –
- (a) monitor the participation; and

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-
- (b) prepare a written assessment of the participation, with particular reference to –
- (i) the prisoner’s attendance and compliance; and
 - (ii) the prisoner’s attitude, behaviour and responsiveness during treatment; and
 - (iii) whether the treatment is completed and, if it is not completed, the reasons for non-completion; and
 - (iv) whether any action is taken under subsection (5).
- (5) If the sex offender prisoner chooses to participate in the appropriate treatment, the Director may cease or suspend the participation at any time if satisfied on reasonable grounds that –
- (a) the participation is unsatisfactory; or
 - (b) the treatment is no longer available, practicable or appropriate; or
 - (c) there are other valid grounds for the cessation or suspension.
- (6) If the sex offender prisoner chooses to participate in the appropriate treatment and subsequently becomes eligible for parole, the

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Director is to give the Board notice of the prisoner's choice, and –

- (a) a copy of the assessment prepared under subsection (4)(b); or
 - (b) if the participation is on-going, a written assessment, in substantially the same terms as those required by subsection (4)(b), of the participation up to the time of the prisoner's eligibility for parole.
- (7) If the sex offender prisoner chooses not to participate in the appropriate treatment and subsequently becomes eligible for parole, the Director is to give the Board notice of the prisoner's choice together with relevant particulars, including particulars of the treatment.
- (8) To avoid doubt –
- (a) a sex offender prisoner may be offered more than one opportunity to participate in appropriate treatment pursuant to this section; but
 - (b) the Director is not obliged by subsection (2) to give a sex offender prisoner repeated opportunities to participate in appropriate treatment pursuant to this section, particularly if the prisoner has persistently chosen not to participate in such treatment or has a history of unsatisfactory participation in such treatment.

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(9) For the purposes of forming opinions under this section, the Director –

- (a) may seek and have regard to such professional medical advice and other information as he or she thinks fit; and
- (b) is to take advice from the treatment providers responsible for the delivery and assessment of appropriate treatment.

(10) In this section –

unsatisfactory participation, of a sex offender prisoner in appropriate treatment, means participation that, for reasons assessed by the Director as being within the prisoner’s control, is incomplete or non-compliant.

32.

33. Work

- (1) Subject to this section, the Director may direct a prisoner to be set to some work that is considered suitable to the prisoner’s physical and intellectual capacity.
- (2) A prisoner must comply with a direction of the Director under subsection (1).
- (3) A prisoner may, with the approval of the Director, be set to work outside the precincts of the prison in which the prisoner is detained.

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- (4) A detainee may volunteer to perform work.

34. Payment for prisoners' work, &c.

- (1) A prisoner who performs work pursuant to section 33 is entitled to be paid such amount for that work as is determined from time to time by the Director.
- (1A) A prisoner or detainee who performs work for which the prisoner or detainee volunteered is entitled to be paid for that work.
- (2) The Director is to hold on behalf of a prisoner the money that the prisoner is entitled to be paid for work performed and is to pay that money to the prisoner on the prisoner's release or as otherwise provided by the regulations.
- (3) Notwithstanding subsection (2), a court of competent jurisdiction may order, before a prisoner is released from prison, that the whole or any part of the money that the prisoner is entitled to be paid is to be paid towards the maintenance of the prisoner's dependants or in settlement of a judgment debt of that court.
- (4) The Director is not liable for any costs associated with the performance by a prisoner of work for which the prisoner volunteered outside the precincts of the prison for a person other than the State.

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34AA. Hire of extra equipment

- (1) The Director may, on request, allow a prisoner or detainee to hire equipment and items additional to the standard equipment and items with which the prisoner or detainee is issued.
- (2) The additional equipment or items may be hired on such conditions and for such hiring fee as the Director determines.
- (3) The hiring fee –
 - (a) is not to exceed the reasonable cost of providing and, if applicable, operating the additional equipment or items; and
 - (b) may be a nominal fee.
- (4) The Director may recover the hiring fee from moneys that the Director holds on the prisoner's or detainee's behalf.

34AB. Business activities

- (1) In this section –

conduct a business includes making preparations to conduct a business.
- (2) A prisoner must not conduct a business in or from prison without the consent of the Director, given specifically for that business.
- (3) In determining whether to give consent for a prisoner to conduct a business in or from prison, the Director may have regard to such matters as

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he or she thinks fit in the circumstances, including –

- (a) whether the conduct of the business could reasonably be expected to excite adverse community reaction, particularly from victims of crime; and
 - (b) whether there is any risk that any person could use the business for unlawful ends; and
 - (c) whether the conduct of the business could disrupt prison routine or compromise its management, good order or security; and
 - (d) whether the business is one that would be reasonably practicable and manageable to conduct in a prison environment; and
 - (e) the regulatory requirements of conducting the business, and associated compliance and legal capacity issues; and
 - (f) whether conducting a business of a like kind was the basis for, or a relevant factor in, previous unlawful conduct of the prisoner; and
 - (g) whether there could be rehabilitative benefits for the prisoner.
- (4) The Director, if in his or her absolute discretion he or she considers it appropriate to do so, may withdraw a consent given under this section at any time.

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- (5) No liability attaches to the Director or the Crown in respect of any consent given by the Director in good faith to a prisoner under this section or the withdrawal by the Director of any such consent.

34AC. Change of name

- (1) In this section –

change of name application means an application to a Registrar for the registration of a change of a prisoner's or detainee's name;

make an application, includes causing or allowing the application to be made on one's behalf;

Register means the Tasmanian Register or the equivalent Register of another State or a Territory;

Registrar means –

- (a) the Tasmanian Registrar; or
- (b) an authority responsible, under a law of another State or a Territory, for the registration of births, deaths and marriages;

Tasmanian Register means the Register of Births, Deaths and Marriages under the *Births, Deaths and Marriages Registration Act 1999*;

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Tasmanian Registrar means the Registrar of Births, Deaths and Marriages appointed or employed under section 4 of the *Births, Deaths and Marriages Registration Act 1999*.

- (2) A prisoner or detainee must not make a change of name application without the consent of the Director, given specifically for that application.
- (3) In determining whether to give consent for a prisoner or detainee to make a change of name application, the Director may have regard to such matters as he or she thinks fit in the circumstances, including –
 - (a) whether the proposed change of name could reasonably be expected to excite adverse community reaction, particularly from victims of crime; and
 - (b) whether there is any risk that the proposed change of name could be used for unlawful or improper ends (including disguise or evasion); and
 - (c) whether the proposed change of name could disrupt prison routine or compromise its management, good order or security; and
 - (d) whether the prisoner or detainee has previously changed his or her name or has any history of using aliases; and
 - (e) whether, so far as the Director is aware, every complaint or information alleging

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an offence by the prisoner or detainee against the law of any State or Territory or the Commonwealth has been finally dealt with.

- (4) The Director is to notify the relevant prisoner or detainee of a consent or refusal of consent under subsection (2), and, in the latter case, the reasons for the refusal, as soon as practicable after that determination is made.
- (5) The Director is to notify the relevant Registrar and the secretary of the Board of a consent under subsection (2), together with relevant particulars, as soon as practicable after that determination is made.
- (6) The Tasmanian Registrar is not to register a change of name if he or she is aware that the applicant for the change is a prisoner or detainee and the Tasmanian Registrar has not received the requisite notification under subsection (5).
- (7) If a prisoner or detainee succeeds by any means in having a change of name registered in any State or Territory without being given the requisite consent under subsection (2), the Director may apply to the relevant Registrar to correct the relevant Register by cancelling the relevant entry.
- (8) On receipt of an application under subsection (7), the Tasmanian Registrar, unless prevented from so doing by an order of a court, is to correct the Tasmanian Register accordingly.

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- (9) In the event of any inconsistency between the provisions of this section and those of the *Births, Deaths and Marriages Registration Act 1999*, the provisions of this section prevail.

PART 4A – USE OF FORCE

34A. Managing use of force

- (1) The Director must ensure, as far as practicable, that the use of force in relation to the management of prisoners and detainees is always –
 - (a) a last resort; and
 - (b) in accordance with this Part.
- (2) The Director must make standing orders or an operating procedure in relation to the use of force, including provision in relation to the following:
 - (a) the circumstances in which, and by whom, force may be used;
 - (b) the kinds of force that may be used.
- (3) The power to make a standing order or an operating procedure includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors.

34B. Authorised use of force

- (1) A correctional officer may use force that is necessary and reasonable for this Act, including for any of the following:

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- (a) to compel compliance with a direction given in relation to a prisoner or detainee by the Director;
 - (ab) to carry out, in relation to a prisoner or detainee, a search or examination, or search and examination, pursuant to an order of the Director given under section 22;
 - (b) to act under section 28;
 - (c) to prevent or stop the commission of an offence or disciplinary breach;
 - (d) to prevent the escape of a prisoner or detainee;
 - (e) to prevent unlawful damage, destruction or interference with property;
 - (f) to defend the correctional officer or someone else;
 - (g) to prevent a prisoner or detainee from inflicting self-harm;
 - (h) any other thing prescribed by the regulations.
- (2) However, a correctional officer may use force only if the correctional officer believes, on reasonable grounds, that the purpose for which force may be used cannot be achieved in another way.

34C. Application of force

- (1) A correctional officer may use force under this Part only if the correctional officer –
 - (a) gives a clear warning of the intended use of force; and
 - (b) allows enough time for the warning to be observed; and
 - (c) uses no more force than is necessary and reasonable in the circumstances; and
 - (d) uses force, as far as practicable, in a way that reduces the risk of causing death or grievous bodily harm.
- (2) However, a correctional officer need not comply with subsection (1)(a) or (b) if, in urgent circumstances, the correctional officer believes, on reasonable grounds, that doing so would create a risk of injury to the correctional officer, the prisoner or detainee or any other person.

34D. Use of restraints or weapons

- (1) The use of force under this Part includes the use of restraints and weapons.
- (2) The Director must ensure, as far as practicable, that the use of force involving a restraint or weapon is proportionate to the circumstances, and in particular that –
 - (a) the circumstances are sufficiently serious to justify the use; and

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- (b) the kind of restraint or weapon is appropriate in the circumstances; and
 - (c) the restraint or weapon is used appropriately in the circumstances.
- (3) The Director must also ensure that restraints and weapons are only used under this Part –
 - (a) by correctional officers trained to use them; and
 - (b) in accordance with standing orders or an operating procedure that applies to their use.
- (4) The Director must take all steps to ensure that potentially lethal force is not used under this Part unless the actions of a prisoner or detainee or other person are likely to cause death or serious injury.
- (5) In applying force under this Part, a correctional officer may use a restraint or weapon, including any of the following:
 - (a) body contact, impact and restraint;
 - (b) a mechanical restraining device;
 - (c) a baton;
 - (d) riot control equipment;
 - (e) a chemical agent;
 - (f) an electro-muscular disruption device or a conducted electrical weapon;

- (g) a distraction device;
- (h) a firearm;
- (i) any other thing prescribed by the regulations.

34E. Medical examination after use of force

If force has been used under this Part, the Director must ensure that a prisoner or detainee affected by the use of force is examined as soon as practicable and that appropriate medical health care is available to the prisoner or detainee.

34F. Reporting use of force

- (1) The Director must keep a record of any incident involving the use of force under this Part that causes injury or death to anyone.
- (2) The record must contain details of the incident, including the circumstances, the reason for the decision to use force and the force used.
- (3) The Director must give a copy of the record to the Coordinator of the Official Visitors Scheme for the purpose of informing the official visitors as soon as practicable after the incident.

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Part 4B – Use of Mechanical Restraints not Requiring Force

**PART 4B – USE OF MECHANICAL RESTRAINTS NOT
REQUIRING FORCE**

34G. Application of Part

This Part applies when a mechanical restraint is used in circumstances where the prisoner does not object to, or resist, the use of the restraint.

34H. Managing the use of mechanical restraints

- (1) The Director must make a standing order or operating procedure in relation to the use of mechanical restraints, including provision in relation to the following:
 - (a) the circumstances in which, and by whom, mechanical restraints may be used;
 - (b) the kinds of mechanical restraints that may be used.
- (2) The power to make a standing order or operating procedure includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors.

34I. Authorised use of mechanical restraints

- (1) A correctional officer may use a mechanical restraint only in accordance with a standing order or operating procedure.

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- (2) A correctional officer may use a mechanical restraint on a prisoner or detainee for all or any of the following purposes:
 - (a) to prevent the commission of an offence or disciplinary breach;
 - (b) to prevent the escape of a prisoner or detainee;
 - (c) to prevent the prisoner or detainee from accessing an area to which they are not permitted access;
 - (d) to prevent unlawful damage, destruction or interference with property;
 - (e) to prevent a prisoner or detainee from inflicting self-harm;
 - (f) for any other purpose prescribed by the regulations.
- (3) A correctional officer may use mechanical restraints only if the correctional officer believes, on reasonable grounds, that no other less restrictive method of control is applicable or appropriate in the circumstances.
- (4) The health and wellbeing of a prisoner must be considered before a mechanical restraint is applied.
- (5) A correctional officer must remove a mechanical restraint from a prisoner as soon as the restraint is no longer required for any of the purposes set out in subsection (2).

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Part 4B – Use of Mechanical Restraints not Requiring Force

- (6) A mechanical restraint must not be used for the purpose of punishment.

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**PART 5 – TRANSFERS, REMOVALS AND
TEMPORARY ABSENCES FROM PRISON OF
PRISONERS AND DETAINEES**

35. Approval of hospitals and institutions

The Minister may approve a place as a hospital or an institution for the purposes of this Act.

36. Removal of prisoners and detainees to other prisons and to hospitals, &c.

- (1) The Director may direct a prisoner or detainee to be removed from a prison to another prison or to a hospital or an institution other than a secure mental health unit.
- (2) The Director may appoint a person to take charge of a prisoner or detainee while the prisoner or detainee is in a hospital or an institution pursuant to subsection (1).
- (3) A person appointed under subsection (2) has the powers of a correctional officer.

36A. Removal of prisoners and detainees to secure mental health units

- (1) In this section –

controlling authority has the same meaning as in the *Mental Health Act 2013*;

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removed to a secure mental
health unit; and

(b) the Chief Forensic Psychiatrist is
satisfied that –

(i) the prisoner or detainee is
suffering from a mental illness;
and

(ii) the admission of the prisoner or
detainee is necessary for his or
her care or treatment; and

(iii) adequate facilities and staff exist
at the secure mental health unit
for the appropriate care and
treatment of the prisoner or
detainee.

(3) The Director may direct that a prisoner or
detainee who has a disability be removed from a
prison, or a hospital or institution to which he or
she has been removed under section 36, to a
secure mental health unit if –

(a) the Director considers that it is necessary
to so remove the prisoner or detainee for
his or her own health, wellbeing or safety
or for the protection of other persons;
and

(b) the Director considers that appropriate
treatment, care, rehabilitation or other
services cannot be provided in the prison,
or a hospital or institution to which the

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- (6) A prisoner or detainee admitted to a secure mental health unit under a direction under subsection (3) may be detained in the secure mental health unit for no longer than the period specified in the direction or, if the Secretary of the responsible Department in relation to the *Mental Health Act 2013* has agreed on a review under subsection (4) to the making of the direction, no longer than the period specified in that agreement.
- (7) If at any time while a prisoner or detainee admitted to a secure mental health unit under a direction under subsection (2) or (3) is so detained in that unit the Chief Forensic Psychiatrist considers that the prisoner or detainee would no longer benefit from being in that unit, the Chief Forensic Psychiatrist may require the Director to remove the prisoner or detainee from that unit.
- (8) The Director is to comply with a requirement made under subsection (7).
- (9) While a prisoner is detained in a secure mental health unit following a direction under subsection (2) or (3), including while the prisoner is on authorised leave from that secure mental health unit, that prisoner is taken to be serving his or her sentence of imprisonment.
- (10) If a prisoner or detainee is moved to a secure mental health unit under this section, the Director is to notify the Mental Health Tribunal of that fact as soon as practicable.

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may, by written order, direct the Director to bring the prisoner or detainee before the court specified in the order or the judge or magistrate who is then present to be dealt with according to law.

- (2) A judge or magistrate may order the Director to bring a prisoner or detainee before the judge or magistrate to give evidence.
- (3) The Director is to comply with an order as soon as practicable.
- (4) Before making an order under subsection (2), a judge or magistrate may require an applicant to deposit sufficient money to pay all the expenses involved in bringing the prisoner or detainee before the court and maintaining the prisoner or detainee from the time the prisoner or detainee leaves until the time of return to prison or remand.

37A. Presence at taking of certain depositions

If a prisoner or detainee has received notice of an intention to take the deposition of a person dangerously ill and unable to travel, the Director, at the request of a judge or magistrate, may require the prisoner or detainee to be present at a specified place for the taking of the deposition.

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38. Removal of prisoners and detainees in aid of administration of justice

The Director may direct a prisoner or detainee to be removed temporarily from the prison or other place to which the prisoner or detainee has been removed pursuant to this Part to another place in this State for any purpose in aid of the administration of justice or for any other similar purpose that, in the opinion of the Director, requires that such a temporary removal should be made.

39. Effect of directions, requirements and orders under sections 36, 36A, 36B, 37, 37A and 38

- (1) A direction or order for the removal of a prisoner or detainee for the purposes of section 36, 36A, 36B, 37, 37A or 38 is sufficient authority –
 - (a) to every correctional officer, police officer or other person who is entrusted with the conveyance of the prisoner or detainee to keep and convey the prisoner or detainee accordingly; and
 - (b) to every correctional officer, police officer or other person to keep and detain the prisoner or detainee in the course of the removal from prison, hospital, an institution or a secure mental health unit and for as long as is required for the purpose for which the prisoner or detainee is so removed.

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- (2) A person, other than a correctional officer or a police officer, who is entrusted with the conveyance of a prisoner or detainee under this section has the same powers as a correctional officer.

40. Custody of prisoners and detainees removed pursuant to sections 36, 36A, 37, 37A and 38

- (1) A prisoner or detainee who is removed from a prison or secure mental health unit for the purposes of section 36, 37, 37A or 38 is taken to be in the legal custody of the Director during the time that the prisoner or detainee –
- (a) is being removed from the prison; or
 - (b) is in a court, a hospital, an institution or another place; or
 - (c) is being removed from a place referred to in paragraph (b) to a prison –

unless, during that time, the prisoner's sentence is completed or the detainee's detention has ceased.

- (1A) A prisoner or detainee who is removed to a secure mental health unit under section 36A –
- (a) is in the legal custody of the Director while being removed to the secure mental health unit or returned to a prison on discharge from the secure mental health unit; but

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Director at all times during which the prisoner or detainee is absent from a prison.

- (3) The authorisation of the Director for a person to be absent from a prison does not affect the sentence that the person is serving.

42. Leave permits

- (1) The Director may grant to a prisoner or detainee a leave permit authorising the prisoner or detainee to be absent from a prison for any of the following purposes:
- (a) to visit a near relative or a person with whom the prisoner or detainee has had a longstanding relationship if that relative or person is seriously ill or in acute personal need;
 - (b) to attend the funeral of a near relative or a person with whom the prisoner or detainee has had a longstanding relationship;
 - (c) to attend interviews and discussions in relation to the prisoner's or detainee's proposed employment;
 - (d) to attend a place of education or training in connection with a course of education or training;
 - (e) to perform unpaid community work;

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- (f) in the case of a prisoner or detainee who is an Aboriginal person, to attend events of special cultural significance to the Aboriginal community;
 - (g) to take part in a program approved by the Director that is designed to facilitate –
 - (i) the rehabilitation of the prisoner or detainee; or
 - (ii) the reintegration of the prisoner or detainee in the community; or
 - (iii) the preparation of the prisoner or detainee for release; or
 - (iv) the maintenance of the family ties of the prisoner or detainee;
 - (h) with the Minister’s approval, any other purpose which the Director considers appropriate.
- (2) For the purposes of subsection (1)(a) and (b), the question whether a person is a near relative of a prisoner or detainee and has had a longstanding relationship with the prisoner or detainee is to be determined by the Director.
- (3) A leave permit –
- (a) is to specify the period during which a prisoner or detainee may be absent from a prison in pursuance of the permit; and

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- (b) is subject to such conditions and restrictions as the Director considers appropriate and as are specified in the permit.
- (4) Without limiting the generality of subsection (3)(b), the conditions and restrictions to which a leave permit may be subject may include a condition that the prisoner or detainee to whom the permit is granted is, while absent from prison during the currency of the permit, to be in the custody of –
- (a) a correctional officer; or
 - (b) a probation officer; or
 - (c) any other person authorised by the Director for that purpose.
- (5) A leave permit may authorise the absence of –
- (a) a prisoner or detainee on one occasion or a number of occasions; or
 - (b) a prisoner or detainee for one purpose or a number of purposes; or
 - (c) a number of prisoners or detainees for the same purpose on one occasion or a number of occasions.
- (6) A leave permit may authorise a number of absences within the period of 60 days from its granting but no one absence is to be more than one week.

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- (7) As soon as possible after granting a leave permit, the Director is to cause a copy of the permit to be given to both the person to whom it is granted and the person's custodian (if any).
- (8) If the custodian of a person to whom a leave permit is granted is of the opinion that that person has failed to comply with a condition or restriction to which the permit is subject or that he or she is likely to so fail to comply, the custodian may return that person to a prison.
- (8A) If any correctional officer who is not a custodian of a person to whom a leave permit is granted believes on reasonable grounds that the person has failed to comply with a condition or restriction to which the permit is subject or that he or she is likely to so fail to comply, the correctional officer may return that person to a prison.
- (9) For the purposes of subsection (8) or (8A), a custodian or a correctional officer may request any person to give such assistance as the custodian or correctional officer may require.
- (10) A request made by a custodian or correctional officer to a person pursuant to subsection (9) is sufficient warrant to that person to assist the custodian or correctional officer in accordance with the terms of the request.

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43. Revocation of leave permits

- (1) The Director, in writing, may revoke a leave permit.
- (2) As soon as possible after revoking a leave permit, the Director is to give notice of the revocation to the custodian (if any) of the person to whom the permit was granted.
- (3) If the custodian of a person is given notice that the leave permit granted to that person has been revoked, the custodian is as soon as practicable to return that person to a prison.
- (4) For the purposes of facilitating compliance with subsection (3), a custodian may request any person to give such assistance as the custodian may require.
- (5) A request made by a custodian to a person pursuant to subsection (4) is sufficient warrant to that person to assist the custodian in accordance with the terms of the request.

44. Alteration of leave permits

- (1) The Director, in writing, may alter a leave permit –
 - (a) by extending the period for which the permit is to remain in force; or
 - (b) by varying the conditions or restrictions to which the permit is subject.

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- (4) A police officer may apprehend a person to whom a leave permit is granted if the police officer has reasonable grounds for believing that the person –
 - (a) has failed to return, in accordance with the terms of the permit, to the prison from which the person has been granted leave to be absent upon the expiry of the period of leave granted under the permit; or
 - (b) has failed to comply with a condition or restriction to which the permit is subject.
- (5) If a leave permit granted to a person is revoked or has otherwise ceased to be in force, a justice, on application being made by the Director, is to issue a warrant for the apprehension of that person and for the person's conveyance to the nearest prison.
- (6) A warrant under subsection (5) may be executed by a police officer according to its tenor.
- (7) If a person is apprehended under this section, whether pursuant to a warrant or otherwise, a police officer may return that person to a prison.

46. Arrangements with Commonwealth

- (1) If, under the *Mutual Assistance in Criminal Matters Act 1987* of the Commonwealth, the Commonwealth Attorney-General makes arrangements for the travel of a prisoner to a

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foreign country to give evidence at a proceeding or assistance in relation to an investigation relating to a criminal matter, the Director may, in writing, authorise the prisoner to be released from prison for the purpose of travelling to the foreign country to give evidence at the proceeding or assistance in relation to the investigation.

- (2) An authority given by the Director under subsection (1) may be subject to any conditions the Director thinks fit.

PART 6 – INTERSTATE LEAVE OF ABSENCE FOR PRISONERS

47. Interpretation: Part 6

In this Part –

corresponding Director, in relation to a participating State, means the officer responsible for the administration of prisons in that State;

interstate law means a law that, under an order in force under section 48, is declared to be an interstate law for the purposes of this Part;

interstate leave permit means an interstate leave permit issued under this Part;

participating State means any State in which an interstate law is in force;

State includes the Australian Capital Territory and the Northern Territory.

48. Interstate laws

- (1) Subject to subsection (2), the Governor may, by order, declare that a law of a State, other than Tasmania, is an interstate law for the purposes of this Part.
- (2) An order is not to be made under subsection (1) in respect of the law of another State unless the Governor is satisfied that the law –

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- (a) substantially corresponds to the provisions of this Part; and
- (b) contains provisions that are referred to in this Part as provisions of an interstate law that correspond to specified provisions of this Part.

49. Interstate leave permit

- (1) The Director may issue an interstate leave permit to a prisoner for leave to travel to a participating State –
 - (a) to visit a person with whom the prisoner has had a longstanding relationship if that person is seriously ill or in acute personal need; or
 - (b) to attend the funeral of a person with whom the prisoner had a longstanding relationship; or
 - (c) to undergo medical treatment; or
 - (d) for any purpose that the Director considers to be a compassionate purpose.
- (2) For the purposes of subsection (1)(a), the question of whether a person has had a longstanding relationship with a prisoner is to be determined by the Director.

50. Effect of interstate leave permit

- (1) An interstate leave permit issued to a prisoner –

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- (a) authorises the prisoner to be absent from the prison in the custody of a correctional officer for the purpose and for the period stated in the permit; and
 - (b) authorises the correctional officer appointed to escort the prisoner to take and keep custody of the prisoner for the purpose of escorting the prisoner to the participating State (whether or not across another State) and within the participating State for the purpose set out in the permit and returning the prisoner to the prison from which leave of absence was given; and
 - (c) is subject to any conditions set out in the regulations and any other conditions stated in the permit.
- (2) The period stated in an interstate leave permit must not exceed 7 days.
 - (3) The Director may, in writing, appoint a correctional officer to be an escort for the purposes of this Part.

51. Variation or revocation of interstate leave permit

- (1) The Director may, before a prisoner is allowed to be absent from the prison under an interstate leave permit or at any time during the period of the permit –

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- (a) vary or revoke any condition of the permit or impose any additional condition; or
 - (b) subject to section 50(2), vary the period of the permit; or
 - (c) revoke the permit.
- (2) The revocation of an interstate leave permit, the variation or revocation of a condition of the permit, the variation of the period of the permit, or the imposition of an additional condition, under this section takes effect immediately.

52. Breach of interstate leave permit

A prisoner who fails without reasonable excuse to comply with any conditions of an interstate leave permit is guilty of an offence and liable to imprisonment for a term not exceeding 6 months.

53. Notice to participating State and transit States

- (1) The Director is to give notice in writing to the corresponding Director and the chief officer of police of a participating State of the issue of an interstate leave permit permitting a prisoner to travel to that State and of the period of the permit.
- (2) The Director is to give notice in writing to the chief officer of police of any other State through which a prisoner is to travel by land to reach the participating State of the issue of an interstate

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leave permit permitting the prisoner to travel to the participating State and of the period of the permit.

54. Effect of permit issued under interstate law

If –

- (a) under an interstate law a permit is issued permitting a person imprisoned in a participating State to travel to Tasmania for a purpose similar to a purpose set out in section 49(1)(a), (b) or (c); and
- (b) pursuant to that permit an escort brings the person to Tasmania –

the escort, while in Tasmania, is authorised to hold, take and keep custody of the person for the purpose of escorting the person for the purposes set out in the permit and returning the person to the participating State.

55. Escape from custody of prisoner on leave of absence

- (1) A person in the custody of an escort pursuant to section 54 who escapes from that custody may be apprehended without warrant by the escort, a police officer or any other person.
- (2) If a person in custody pursuant to section 54 –
 - (a) has escaped and been apprehended; or
 - (b) has attempted to escape –

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that person may be taken before a court of summary jurisdiction which may, despite the terms of any permit issued under an interstate law, by warrant –

- (c) order the person to be returned to the participating State in which the permit was issued; and
 - (d) for that purpose, order the person to be delivered to an escort.
- (3) Subsections (1) and (2) do not apply to a person to whom section 47 of the *Crimes Act 1914* of the Commonwealth applies.
 - (4) A warrant under subsection (2) may be executed according to its tenor.
 - (5) A person who is the subject of a warrant issued under subsection (2) may be detained in the custody of the Director as a prisoner until he or she is delivered into the custody of an escort in accordance with the warrant or until the expiration of a period of 7 days from the issuing of the warrant, whichever first occurs.
 - (6) If a person who is the subject of a warrant issued under subsection (2) is not, in accordance with the warrant, delivered into the custody of an escort within a period of 7 days from the issuing of the warrant, the warrant has no further effect.
 - (7) A reference in subsection (2), (5) or (6) to an escort in relation to a person who was, at the time of his or her escape or attempted escape,

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being escorted under a permit issued in a participating State is a reference to –

- (a) the escort who had the custody of that person pursuant to that permit; or
- (b) a prison officer or a member of the police force of the participating State; or
- (c) a person appointed by the corresponding Director of the participating State in writing to be an escort for the purpose of escorting that person to the participating State –

or any 2 or more of them.

56. Escape from custody – penalty

- (1) Any person who, being in custody under an interstate leave permit, escapes or attempts to escape from that custody while he or she is not within Tasmania or the participating State to or from which he or she was being escorted under that permit is guilty of an indictable offence and is liable to imprisonment for a term not exceeding 7 years, to be served after the expiration of any term of imprisonment, penal servitude or detention to which he or she was subject at the time of his or her escape or attempt to escape.
- (2) Without limiting the generality of section 107 of the *Criminal Code*, that section applies to a person –

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- (a) who is in custody under an interstate leave permit; and
- (b) who escapes from that custody while he or she is not within Tasmania or the participating State to or from which he or she was being escorted under that permit –

in the same way as it applies to a person who escapes from lawful custody while undergoing a sentence of imprisonment in Tasmania.

- (3) Subsections (1) and (2) do not apply to a person to whom section 47 of the *Crimes Act 1914* of the Commonwealth applies.

PART 7 – PRISON DISCIPLINE

57. Disciplinary officers

The Director, in writing, may nominate –

- (a) a correctional officer to be a disciplinary officer and may specify the prison or part of the prison in which the correctional officer may perform the functions and exercise the powers of a disciplinary officer; and
- (b) correctional officers in a class of correctional officers to be disciplinary officers and may specify the prison in which the correctional officers in that class may perform the functions and exercise the powers of a disciplinary officer.

58. Prison offences

A prisoner or detainee must not commit a prison offence.

59. Procedure in dealing with allegations of commission of prison offences

- (1) If it is alleged by any person that a prison offence has been committed by a prisoner or detainee, a correctional officer or any other person employed in the administration of a prison is to provide a disciplinary officer with a written report.

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- (2) The disciplinary officer is to make a proper investigation of the alleged prison offences which come to the officer's notice and is to give the prisoner or detainee alleged to have committed the offence an opportunity of making an explanation.
- (3) If, after investigating an alleged prison offence, the disciplinary officer is satisfied that an offence has not been committed, the disciplinary officer is not to take any further action.
- (4) If, after investigating an alleged prison offence, the disciplinary officer is satisfied that an offence has been committed but is trivial, the disciplinary officer need not take any further action.
- (5) Subject to subsection (4), if after investigating an alleged prison offence the disciplinary officer is satisfied that the prisoner or detainee has committed the offence, the disciplinary officer is to record the offence in the register of offences and may, in addition, do one of the following:
 - (a) reprimand the prisoner or detainee;
 - (b) withdraw one of the prisoner's or detainee's privileges for less than 14 days;
 - (c) confine the prisoner or detainee to his or her cell for up to 48 hours;
 - (d) charge the prisoner or detainee with the prison offence;

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- (e) take steps to have the matter dealt with under criminal law.
- (6) If a prisoner or detainee is to be charged with a prison offence, the charge is to be by way of written complaint.
- (7) The written complaint is to be heard by a disciplinary officer other than the disciplinary officer who made the complaint.
- (8) The hearing of the written complaint by a disciplinary officer is to be held as soon as practicable after the prison offence is alleged to have occurred.
- (9) Notwithstanding subsection (8), if the hearing of the written complaint is not held within 14 days from the day on which the complaint is received by the disciplinary officer, the complaint lapses.
- (10) The prisoner or detainee is entitled to be present at the hearing of the written complaint and to view at that hearing all the evidence in support of the complaint and is to be given the opportunity to respond to the complaint.
- (11) If the prisoner or detainee refuses to attend the hearing of the written complaint, the disciplinary officer may hear and determine the proceedings in relation to the written complaint in the absence of the prisoner or detainee.
- (12) The prisoner or detainee is not entitled to be represented at the hearing by a legal practitioner.

- (13) At a hearing, the disciplinary officer is not bound by legal forms or technicalities and the rules of evidence but may inform himself or herself on any matter in such manner as he or she thinks fit.

60. Appeals against decision of disciplinary officer

- (1) A prisoner or detainee may appeal to the Director against the decision of a disciplinary officer by submitting a written request for an appeal to the disciplinary officer not later than 3 days from the day on which the decision was made.
- (2) An appeal by a prisoner or detainee may be against the finding of guilt or against the sentence imposed.
- (3) At the hearing of an appeal under this section the Director may –
- (a) dismiss the appeal and affirm the decision of the disciplinary officer; or
 - (b) revoke the decision of the disciplinary officer and make such decision as the Director considers appropriate.

61. Penalties which may be imposed on prisoner or detainee

If a prisoner or detainee is found guilty of the prison offence with which the prisoner or detainee is charged, the prisoner or detainee is liable to one or more of the following penalties:

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- (a) the withdrawal of one or more of the prisoner's or detainee's privileges for a period not exceeding 90 days in the case of contact visits and 30 days in any other case;
- (b) a period of separation from other prisoners not exceeding 30 days;
- (c) the deduction from any prison allowance paid to the prisoner or detainee of an amount to repair any damage caused by the prisoner or detainee to property owned by the State or to recover the cost of any property owned by the State that is lost by the prisoner or detainee;
- (d) loss of remission.

PART 8 – PAROLE

Division 1 – Parole Board

62. Establishment of Parole Board

- (1) The Parole Board is established.
- (2) The Board consists of 3 persons appointed by the Governor, of whom –
 - (a) one is to be a person who is an Australian lawyer of at least 7 years' standing as an Australian legal practitioner and has never been suspended from practice, had his or her name removed from, or struck off, the roll of a Supreme Court or been disbarred; and
 - (b) one is to be a person who the Governor is satisfied is experienced in matters associated with sociology, criminology, penology or medicine or who possesses any other knowledge or experience that the Governor considers is appropriate for the purpose; and
 - (c) one is to be a person who –
 - (i) has knowledge and experience of victim of crime matters; and
 - (ii) is experienced in matters associated with sociology, criminology, penology or medicine.

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- (3) The chairperson of the Board is to be appointed by the Governor from among the members of the Board.
- (4) Schedule 2 has effect in respect of the membership and meetings of the Board.

63. Powers of Board

- (1) For the purposes of this Act, the Board may –
 - (a) by summons signed by the secretary of the Board, require any person to attend before the Board; and
 - (b) require any person to give oral or written answers to any questions relating to any matter before the Board; and
 - (c) by summons signed by the secretary of the Board, require any person to produce any document in the person's possession or control relating to any matter before the Board; and
 - (d) examine a witness on oath or affirmation which may be administered by any member of the Board; and
 - (e) require any information given to the Board to be verified by statutory declaration.
- (2) A person is guilty of an offence if the person –
 - (a) having been duly served with a summons to attend before the Board, neglects or

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fails to attend, without reasonable excuse, in answer to the summons; or

- (b) wilfully insults the Board or a member of the Board; or
- (c) misbehaves himself or herself before the Board; or
- (d) interrupts the proceedings of the Board; or
- (e) having been called or examined as a witness before the Board, refuses to be sworn or to affirm, refuses to answer any question that the person would be compellable to answer in a court or refuses to produce a document specified in a summons served on the person.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 6 months.

- (3) For the purposes of any business before it, the Board may –
 - (a) appoint a member of the Board to make an investigation or inquiry and may consider the report of that investigation or inquiry made by the member; and
 - (b) consider the report of an investigation or inquiry made by any other person who it is satisfied is competent to make that investigation or inquiry; and

- (c) rely on the knowledge of a member of the Board, however that knowledge is gained.

64. Reports

- (1) The Board is to, not later than 31 October after the end of each financial year, make a written report to the Minister of –
 - (a) the number of prisoners released on parole during that financial year and the number of prisoners returned to prison by reason of the revocation of their release on parole; and
 - (b) the general activities of the Board under this Act during that financial year and any matters affecting the operation of this Act that the Board thinks appropriate to include in the report.
- (2) The Minister, as soon as practicable, is to lay before each House of Parliament a copy of any report made under subsection (1).
- (3) The Board, whenever so required by the Minister, is to furnish the Minister with a report on any matter in connection with the administration of this Act on which the Minister has required the report.

65. Judicial notice

- (1) If a document purports to bear the signature of a member of the Board or the secretary of the

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Board, a court or a person acting judicially is to presume, in the absence of evidence to the contrary, that the signature of the member or secretary has been duly affixed to the document.

- (2) An apparently genuine document purporting to record a determination or decision of the Board and purporting to be signed by the secretary of the Board, in the absence of evidence to the contrary, is to be taken as proof that such a determination or decision has been duly made by the Board.

66. Secretary and other officers

- (1) The Board may make arrangements with the Secretary for a State Service officer or State Service employee employed in the Department to be appointed secretary of the Board, and that officer or employee may hold that office in conjunction with State Service employment.
- (2) The Board may make arrangements with the Secretary for such State Service officers and State Service employees employed in the Department as the Board may consider necessary to be made available to the Board to enable it to perform its functions, and those officers and employees may, in conjunction with State Service employment, serve the Board in any capacity.

67. Protection of members of Board and other persons

No liability attaches to a member of the Board, the secretary of the Board or a State Service officer or State Service employee whose services are used by the Board pursuant to section 66(2) for any act or omission by such a person or by the Board in good faith and in the exercise or purported exercise of the person's or the Board's powers or functions, or in the discharge or purported discharge of the person's or the Board's duties, under this Act.

Division 2 – Eligibility for parole

68. Statutory non-parole period

- (1) The non-parole period in respect of a sentence of imprisonment is a period equal to one-half of the period of the operative sentence.
- (2) Subsection (1) does not apply in relation to –
 - (a) a sentence of imprisonment for the term of the natural life of the prisoner; or
 - (b) detention in accordance with an order under section 19 of the *Sentencing Act 1997*.

69. Prisoner not to be released on parole in certain circumstances

- (1) A prisoner who has been sentenced to a term of imprisonment is not to be released on parole in respect of that sentence if –

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- (a) the court has ordered that the prisoner is ineligible for parole pursuant to section 17 or 18 of the *Sentencing Act 1997*; or
 - (b) the prisoner is ineligible for parole by operation of section 17(3A) of that Act.
- (2) If a prisoner is made the subject of a declaration under section 19 of the *Sentencing Act 1997*, the prisoner is not eligible to be released on parole until the declaration is discharged under that Act.

70. Where prisoner eligible for parole

Subject to section 71, a prisoner is not to be released on parole before the completion of –

- (a) the non-parole period applicable to the prisoner’s sentence; or
- (b) a continuous period of imprisonment of 6 months –

whichever is the greater, unless, in the opinion of the Board, there are exceptional circumstances warranting the earlier release on parole of the prisoner.

71. Prisoner subject to more than one non-parole period or other minimum term

- (1) In this section –

designated sentence means –

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- (a) a sentence of imprisonment to which a non-parole period is applicable or in respect of which the prisoner is ineligible for parole by operation of section 17(3A) of the *Sentencing Act 1997*; or
- (b) a sentence of imprisonment to which an order under section 17(2)(a) of the *Sentencing Act 1997* is applicable;

minimum term, in relation to a designated sentence, means –

- (a) in the case of a sentence to which a non-parole period is applicable, that non-parole period; or
 - (b) in any other case, the sentence itself.
- (2) If, at any time, a person is subject to 2 or more designated sentences –
- (a) the minimum terms relating to those designated sentences, subject to subsections (3) and (4), are to be cumulative upon, or concurrent with, each other in like manner as the sentences to which they relate; and
 - (b) the completion by a person of the non-parole period applicable to a sentence to which the person is subject is not to be taken into account for the purposes of

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section 70 if, at the time of completion of that non-parole period, the person has not completed the minimum term relating to any other designated sentence to which the person is subject.

- (3) For the purposes of subsection (2), if, at any time, a person is subject to 2 or more sentences that are to be served concurrently, being sentences to each of which, but for this subsection, a non-parole period would be applicable under section 68, those sentences are to be taken to be collectively subject to a single non-parole period.
- (4) The single non-parole period referred to in subsection (3) is to be ascertained in accordance with section 68 as if the sentences to which the person is subject comprised a single sentence of imprisonment for a period equal to the total period of imprisonment to which the person is sentenced as a result of those sentences being served concurrently.
- (5) If, under subsection (2), the minimum term in relation to a designated sentence is cumulative upon the minimum term in relation to another such sentence, the later minimum term is to be taken to commence upon the expiration of the earlier minimum term, notwithstanding that the earlier sentence has not been completed.

72. Release on parole

- (1) If a prisoner is eligible to be released on parole, the Board is to consider whether the prisoner

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should be so released before the date on which the prisoner becomes eligible to be released on parole.

- (2) A prisoner whose release on parole is being considered under subsection (1) may be heard personally on the matter by the Board if the Board so determines.
- (2A) If the Board is to consider the release on parole of a prisoner, the Board is to request the Secretary, in writing, to search the eligible persons register and then advise the Board of the names of all victims listed in the register in respect of the prisoner specified in the request.
- (2AB) The Secretary may provide to the Board the name of the parent or guardian of a victim listed in the eligible persons register if the victim –
 - (a) has not attained the age of 18 years; or
 - (b) is mentally incapable of making representations on his or her own behalf.
- (2B) On receipt of a request under subsection (2A), the Secretary is to search the eligible persons register and, if a victim is listed in it in respect of the prisoner specified in the request, the Secretary is to notify each such victim or, if subsection (2AB) applies, the parent or guardian of the victim, in writing, that –
 - (a) the release of the prisoner on parole is to be considered by the Board; and

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- (b) the victim or, if subsection (2AB) applies, the parent or guardian of the victim may provide to the Board, within 30 days after receiving the notice, a written statement that –
 - (i) gives particulars of any injury, loss or damage suffered by the victim as a direct result of the offence; and
 - (ii) describes the effects on the victim of the commission of the offence.
- (2C) After notifying a victim or, if subsection (2AB) applies, the parent or guardian of the victim, under subsection (2B), the Secretary is to notify the Board, in writing, of –
 - (a) the name of that victim; and
 - (b) the date on which the notice was given under that subsection.
- (2D) If a search of the eligible persons register under subsection (2B) discloses that no victim is listed in the register, the Secretary is to notify the Board, in writing, of that fact.
- (2E) If the Board has received notice from the Secretary to the effect that the Secretary has notified one or more victims or, if subsection (2AB) applies, parents or guardians of the victim, under subsection (2B), the Board is not to consider whether the prisoner should be released on parole until the first of the following occurs:

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- (a) all persons so notified have provided the Board with written statements;
 - (b) the expiry of the period of 30 days in which the last person so notified may provide a statement under subsection (2B).
- (3) The Board may –
- (a) order that a prisoner be released on parole –
 - (i) at such time as is specified in the order; and
 - (ii) for such period as the Board considers appropriate and as is specified in the order; or
 - (b) defer making a decision on whether or not the prisoner should be released on parole; or
 - (c) refuse to release the prisoner on parole.
- (4) In determining whether or not a prisoner should be released on parole, the Board is to take into consideration –
- (a) the likelihood of the prisoner re-offending; and
 - (b) the protection of the public; and
 - (c) the rehabilitation of the prisoner; and

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- (d) any remarks made by the court in passing sentence; and
- (e) the likelihood of the prisoner complying with the conditions; and
- (f) the circumstances and gravity of the offence, or offences, for which the prisoner was sentenced to imprisonment; and
- (g) the behaviour of the prisoner while in prison and, if he or she has been in a secure mental health unit, while in that secure mental health unit; and
- (h) the behaviour of the prisoner during any previous release on parole; and
- (i) the behaviour of the prisoner while subject to any order of a court; and
- (j) any reports tendered to the Board on the social background of the prisoner, the medical, psychological or psychiatric condition of the prisoner or any other matter relating to the prisoner, including in the case of a prisoner who is or has been a forensic patient any report of the Chief Forensic Psychiatrist; and
- (k) the probable circumstances of the prisoner after release from prison; and
- (ka) any statement provided under subsection (2B) by a victim, or, if subsection (2AB) applies, the parent or

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- guardian of the victim, of an offence for which the prisoner has been sentenced to imprisonment; and
- (kb) if the prisoner is a sex offender prisoner, any notice or assessment given to the Board pursuant to section 31(6) or (7) concerning the prisoner's participation or non-participation in appropriate treatment; and
 - (l) any other matters that the Board thinks are relevant.
- (5) A parole order is subject to such terms and conditions as the Board considers necessary and as are specified in the order.
- (6) The Board may, at any time before the release of a prisoner under a parole order, revoke or amend the order.
- (7) If the Board makes an order under subsection (3)(a) –
- (a) it is to cause notice of the order to be given to the prisoner in such manner as it considers appropriate; and
 - (b) it is to publish its reasons for the order and is to give a copy of the reasons to any victim who has provided a statement under subsection (2B).
- (7A) Before publishing the reasons and giving a copy of them to a victim or, if subsection (2AB) applies, the parent or guardian of the victim, the

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Board may delete any material that relates to the privacy of the prisoner or of any other person if the Board is of the opinion that it is in the interests of the prisoner or any other person to do so.

- (8) If the Board defers making a decision on whether or not a prisoner should be released on parole or refuses to release a prisoner on parole, it is to cause notice of its decision in writing to be given to the prisoner and, where it refuses parole, its reasons for so refusing.
- (9) If the Board is of the opinion that it would be in the interest of the prisoner, any other person or the public to withhold from the prisoner any or all of the reasons referred to in subsection (8), the Board may withhold the reasons from the prisoner.
- (10) If the Board refuses to release a prisoner on parole, the Board may not further consider the release of the prisoner on parole until the expiration of 3 months from the date of the last refusal.
- (11) In this section –

forensic patient has the same meaning as in the *Mental Health Act 2013*;

restriction order means a restriction order made under the *Criminal Justice (Mental Impairment) Act 1999* or *Sentencing Act 1997*.

73. Orders and documents signed on behalf of Board

- (1) A member of the Board or the secretary of the Board may, on behalf of the Board, sign and issue all orders and documents relating to a matter determined by the Board.
- (2) An order or document signed by a member of the Board or the secretary of the Board has effect as if it were signed by all members of the Board.

74. Reports on prisoners eligible for parole

- (1) The Director may cause reports to be prepared on all prisoners eligible for parole.
- (2) The Board may request any person to provide and furnish it with a report.
- (3) Subject to subsection (5), a prisoner in respect of whom a report has been provided to the Board is entitled, on request, to see a copy of the report.
- (4) A person who prepared the report may request the Board to withhold a report or part of the report from the prisoner.
- (5) The Board may, after considering the request of a person who prepared a report or of its own motion, withhold the report or part of the report from the prisoner.

75. Period of parole

The period of parole ordered by the Board under section 72 applies to the release of a prisoner

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notwithstanding that the total of that period and the period of the sentence of imprisonment that he or she has already served at the time of his or her release exceeds the full term of that sentence.

76. Sentences for offences committed during release on parole

- (1) If a prisoner is sentenced to imprisonment for an offence committed during the period of his or her release on parole, that sentence is, subject to subsection (2), to be cumulative on the remainder of the sentence in respect of which the prisoner was released on parole.
- (2) If the court is of the opinion that special circumstances make it desirable to do so, it may order that the whole or part of the sentence of imprisonment for an offence committed during the period of a prisoner's release on parole is to be concurrent with the remainder of the sentence in respect of which the prisoner was released on parole.

77. Effect of parole orders

- (1) A parole order is sufficient authority to the Director and any person having the custody or control of the prisoner to whom the order applies to release the prisoner in accordance with the terms of the order.
- (2) A prisoner who is released under a parole order is, while on parole, under the supervision of a probation officer.

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- (3) A prisoner who is released under a parole order must, while on parole, comply with any terms and conditions to which the order is subject and with such requirements as may be made of the prisoner by the probation officer.
- (4) Notwithstanding subsection (2), the Board may –
 - (a) in circumstances that it considers exceptional, direct that a prisoner who is released under a parole order is not required to be under the supervision of a probation officer; or
 - (b) if it considers that it is unreasonable or unnecessary for a prisoner released under a parole order to be under the supervision of a probation officer for the whole of the period the prisoner is on parole, direct that the prisoner so released is required to be under the supervision of a probation officer only for such part of that period as the Board specifies in its direction.

78. Prisoner on parole taken to be still under sentence

- (1) During the period of parole granted to a prisoner under a parole order, the prisoner is taken as being still under sentence.
- (2) Subject to subsection (3) and sections 79(3) and 80, when the period of parole granted to a prisoner expires without the revocation of the prisoner's parole order, the sentence of the court on the prisoner is taken as having been wholly satisfied.

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- (3) Subsection (2) does not apply to –
- (a) a life prisoner; or
 - (b) a prisoner released on parole in respect of a partially suspended sentence of imprisonment.

79. Power of Board to revoke parole orders, &c.

- (1) Subject to subsection (2), the Board may, at any time, of its own motion or on receiving a report from a probation officer or any other person –
- (a) revoke a parole order; or
 - (b) vary, amend or confirm a parole order; or
 - (c) suspend a parole order on such terms as it thinks fit; or
 - (d) exercise in relation to a parole order more than one of its powers under paragraph (b).
- (2) Unless the Board considers it impracticable to do so, the Board is not to revoke or suspend a parole order granting parole to a prisoner unless it has first called on the prisoner to show cause why any of those powers should not be exercised.
- (3) If a person is sentenced to imprisonment for an offence committed during the period of his or her release on parole, the parole order is revoked whether or not, at the time of his or her

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conviction for that offence, the period of that release had expired.

- (4) Subsection (3) does not apply where the execution of the whole of a sentence referred to in that subsection is suspended under the *Sentencing Act 1997*.
- (5) If a prisoner's release on parole is revoked –
 - (a) in the case of a prisoner who is not a life prisoner, the prisoner is liable to serve the remainder of his or her sentence and the period of that release is not to be taken into account in determining how much of the term of his or her sentence remains to be served unless the Board otherwise directs; and
 - (b) in the case of a life prisoner, the prisoner is liable to be imprisoned for the remainder of his or her natural life.
- (6) Where the Board revokes a parole order applying to a prisoner after his or her release from prison, the Board may, by warrant signed by the chairperson of the Board or the secretary of the Board at the chairperson's direction, authorise a police officer to apprehend the prisoner and return the prisoner to prison.

80. Warrants for return of prisoners to prison

- (1) The Board may, by warrant signed by the chairperson of the Board or the secretary of the Board at the chairperson's direction, authorise a

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police officer to apprehend a prisoner who has been released on parole and return the prisoner to prison if at any time –

- (a) the Board has reasonable cause to suspect any act or omission on the part of the prisoner who has been released on parole that, in its opinion, may justify the revocation of the prisoner’s parole order; or
 - (b) for any other reason the Board considers it proper to do so.
- (2) The Board may exercise its powers under subsection (1) without holding a meeting.
 - (3) The chairperson of the Board, in the same circumstances as the Board may act under subsection (1) and if the chairperson considers that circumstances exist that require action to be taken urgently, may issue a warrant authorising a police officer to apprehend a prisoner and return the prisoner to prison.
 - (4) On the issue of a warrant under this section for the apprehension of a prisoner on parole, the prisoner’s parole is extended for a period equal to a period commencing on the day on which the warrant is issued and ending on the day on which it is executed.
 - (5) If a prisoner is returned to prison after the execution of a warrant against the prisoner under subsection (1), the following provisions apply:

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- (a) the Board, within 14 days after the prisoner is so returned to prison, is to give the prisoner an opportunity to be heard;
- (b) the Board may, after complying with paragraph (a), exercise in relation to the prisoner the powers conferred on it by subsection (1) of section 79 as if he or she were a prisoner to whom that subsection applies;
- (c) if the Board revokes the prisoner's release on parole pursuant to section 79(1), the provisions of section 79(5) apply to the prisoner accordingly.

81. Authority of warrant

A warrant issued under this Part authorises the police officer executing the warrant to –

- (a) arrest the prisoner to whom it relates and return that prisoner to prison; and
- (b) exercise the same powers as a police officer may exercise when arresting a person who the police officer believes on reasonable grounds has committed an offence.

82. Power of Board to release prisoner on parole after previous revocation

The Board may release a prisoner on parole notwithstanding that on any previous occasion the prisoner's release on parole has been revoked.

83. Board to determine its own procedures in relation to certain matters

The Board may determine its own procedures in relation to any act, matter or thing over which it has jurisdiction.

Division 3 – Miscellaneous

83A. Part 8 does not apply to youth serving period of detention

This Part does not apply in respect of a sentence of detention imposed under the *Youth Justice Act 1997* on a person who is serving that sentence, or part of that sentence, in a prison.

83B. Application of Part 8 to prisoner in detention centre

This Part applies in respect of a sentence of imprisonment which is being served, or part of which is being served, by a prisoner in a detention centre, within the meaning of the *Youth Justice Act 1997*.

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83BA. Application of Part 8 to person in secure mental health unit

This Part applies in respect of a sentence of imprisonment which is being served, or part of which is being served, in a secure mental health unit.

PART 9 – MISCELLANEOUS

83C. Treatment of prisoner in detention centre and youth in prison

(1) In this section –

detention centre has the same meaning as in the *Youth Justice Act 1997*;

prescribed detention centre means –

- (a) a detention centre that is not also a prison; and
- (b) a detention centre that is also a prison but whose primary use is as a detention centre for the purposes of detaining youths serving sentences of detention under the *Youth Justice Act 1997*;

prescribed prison means –

- (a) a prison that is not also a detention centre; and
 - (b) a prison that is also a detention centre but whose primary use is as a prison for the purposes of incarcerating prisoners serving sentences of imprisonment.
- (2) If a prisoner is serving a sentence of imprisonment, or part of a sentence of imprisonment, in a prescribed detention centre,

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section 146A(3) of the *Youth Justice Act 1997* applies.

- (3) If a person is serving a sentence of detention, or part of a sentence of detention, imposed under the *Youth Justice Act 1997* in a prescribed prison, this Act other than Part 8 applies as if the person were a prisoner serving a sentence of imprisonment unless, and except in so far as, the Director determines that the *Youth Justice Act 1997* is to apply to that person.

83D. Treatment of migration detainees

- (1) In this section –

migration detainee means a person who is –

- (a) not an Australian citizen within the meaning of the *Australian Citizenship Act 2007* of the Commonwealth; and
- (b) being detained under the *Migration Act 1958* of the Commonwealth; and
- (c) not, apart from his or her detention under the *Migration Act 1958* of the Commonwealth, subject to any order of a court by which he or she is remanded or otherwise committed to prison.
- (2) Except as provided by subsection (3) and as may be provided pursuant to subsection (4), the

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provisions of this Act have the same application to migration detainees as they have to detainees.

- (3) Paragraphs (c), (d), (e), (f) and (g) of section 42(1) do not apply to migration detainees.
- (4) Without affecting the generality of section 90(1), the regulations may provide that specified provisions of the regulations have qualified application or no application to migration detainees.

84. Proof that person is prisoner or detainee

- (1) If in any proceedings a question arises whether a person is, or was, at any particular time, a prisoner or detainee, it is sufficient for a party to the proceedings to prove that that person is, or was, at the time in question, a person in fact ordinarily dealt with as a prisoner or detainee under this Act without any other proof.
- (2) The onus of proving the contrary to what is mentioned in subsection (1) is on the other party to the proceedings.

85. Warrant of commitment not void by reason of formal defect

A warrant of commitment is not to be held void by reason of a formal defect in it.

86. Remissions

The Director may grant to a prisoner a remission of the whole or any part of the prisoner's sentence pursuant to regulations made under section 90(2)(d).

87. Special remissions

- (1) The Director may grant special remission to a prisoner in addition to the prisoner's entitlement to ordinary remissions on account of good behaviour while suffering disruption or deprivation –
 - (a) during an industrial dispute or emergency existing in the prison in which the sentence is being served; or
 - (b) in other circumstances of an unforeseen and special nature.
- (2) Subsection (1) applies to all sentences of imprisonment irrespective of whether the sentences were imposed before or after the commencement of this section.

87A. Eligible persons register

- (1) The Secretary must keep a register of persons who are eligible to receive information, under section 87B, about a prisoner who has been sentenced to a period of imprisonment for a violent offence, family violence offence or a sexual offence or about an adult forensic patient,

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within the meaning of the *Mental Health Act 2013*, who is subject to –

- (a) a restriction order; or
- (ab) a family violence order; or
- (b) a supervision order if the forensic patient has been apprehended under section 31 of the *Criminal Justice (Mental Impairment) Act 1999* –

in respect of a violent offence, family violence offence or a sexual offence.

- (2) The following persons may apply to be listed in the eligible persons register as an eligible person:
 - (a) a victim of the violent offence, family violence offence or sexual offence;
 - (b) the parent or guardian of a person referred to in paragraph (a) if that person –
 - (i) has not attained the age of 18 years; or
 - (ii) is mentally incapable of making representations on his or her behalf;
 - (c) another person who proves, to the satisfaction of the Secretary –

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- (i) that the prisoner or forensic patient has been violent towards that person; or
 - (ii) that the person's life or physical safety could reasonably be expected to be endangered because of a connection between the person and the offence that resulted in the sentence of imprisonment or the making of the restriction order or supervision order.
- (3) An application under this section is to be –
 - (a) in the form approved by the Secretary; and
 - (b) accompanied by proof, to the satisfaction of the Secretary, of the identity of the applicant.
- (4) The Secretary may accept or refuse an application under this Part and is to notify the applicant in writing of the acceptance or refusal.
- (5) The applicant may nominate to the Secretary a person or organisation to receive information under section 87B for, and on behalf of, the applicant.
- (6) The Secretary may accept or refuse a nomination under subsection (5) and is to notify the applicant in writing of the acceptance or refusal of the nomination.

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(7) In this section –

family violence offence means family violence offence within the meaning of the *Family Violence Act 2004*;

family violence order means the following orders:

- (a) an FVO within the meaning of the *Family Violence Act 2004*;
- (b) an interim FVO within the meaning of the *Family Violence Act 2004*;
- (c) an external family violence order within the meaning of the *Family Violence Act 2004*;
- (d) a PFVO within the meaning of the *Family Violence Act 2004*;

sexual offence has the same meaning as in the *Evidence Act 2001*;

violent offence means an offence in which the victim suffers actual or threatened violence.

87B. Releasing information

- (1) If the Secretary reasonably considers it appropriate, the Secretary may release information about a prisoner or forensic patient to a person listed in the eligible persons register in respect of the prisoner or forensic patient

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including, but not limited to, information about any one or more of the following:

- (a) the prisoner's or forensic patient's current location;
 - (b) the prisoner's or forensic patient's security classification;
 - (c) the prisoner's or forensic patient's transfer between prisons;
 - (d) the prisoner's or forensic patient's eligibility dates for discharge or release;
 - (e) the prisoner's or forensic patient's date of discharge or release;
 - (f) the results of the prisoner's or forensic patient's applications for parole orders;
 - (g) the death or escape of, or other exceptional events relating to, the prisoner or forensic patient.
- (2) If a nomination under section 87A(5) has been accepted under section 87A(6), the Secretary may give the information to the person or organisation accepted as nominee.

87C. Disclosure of critical health information by health officials

- (1) In this section –

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health information, concerning a prisoner or detainee, means information about his or her health or medical treatment;

health official means any of the following:

- (a) the Chief Forensic Psychiatrist;
 - (b) the chief executive officer of a Tasmanian Health Organisation within the meaning of the *Tasmanian Health Organisations Act 2011*;
 - (c) a person prescribed by the regulations;
 - (d) a member of a class of persons prescribed by the regulations.
- (2) A health official may disclose to the Director such health information about a prisoner or detainee as the Director reasonably requires for the treatment, care and rehabilitation of the prisoner or detainee.
- (3) A health official who discloses health information about a prisoner or detainee pursuant to subsection (2) –
- (a) does not, by reason of the disclosure, incur any criminal, civil or administrative liability; and
 - (b) is not, by reason of the disclosure –
 - (i) taken to have breached any rule of law or practice that would

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otherwise prohibit the person from making the disclosure; or

(ii) taken to have broken any professional or other oath, or breached any professional or other code, standard or guideline of ethics or etiquette that might otherwise bar the person from, or condemn the person for, making the disclosure; or

(iii) liable to condemnation or disciplinary action by any professional body or other person.

- (4) A health official may only disclose to the Director health information about a prisoner or detainee under subsection (2) if the health official has, where practicable, sought the agreement of the prisoner or detainee to the disclosure, but may disclose the information to the Director under that subsection whether or not such agreement has been obtained.
- (5) Subsection (3) has effect despite the *Personal Information Protection Act 2004* or any other law relating to the confidentiality or privacy of information.
- (6) The Director is not to use health information disclosed to him or her pursuant to subsection (2) except for the purposes of determining and managing the relevant

prisoner's or detainee's treatment, care and rehabilitation.

88. Community corrections programs

- (1) The Director may approve programs of activities as community corrections programs in which offenders may take part.
- (2) Community corrections programs may include, but are not limited to, any of the following:
 - (a) community, voluntary or charitable work;
 - (b) programs for the treatment of alcoholics or drug-dependent persons;
 - (c) counselling;
 - (d) work for the benefit of an organisation that does not seek to provide a pecuniary benefit for its members, a government department or instrumentality or a local authority;
 - (e) work to aid a person or group of persons disadvantaged through age, illness, incapacity or disability;
 - (f) work on Crown land;
 - (g) educational programs;
 - (h) personal development programs;
 - (i) services to victims of crime.

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(3) In this section,

offender means a person who is subject to a community service order or probation order, within the meaning of the *Sentencing Act 1997*, or a parole order.

89. Preservation of Royal prerogative of mercy

Nothing in this Act is to be construed so as to limit or affect in any way the exercise in relation to a prisoner of the Royal prerogative of mercy.

90. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to –
 - (a) the management, good order and security of prisons and discipline and welfare of prisoners and detainees, the privileges of prisoners and detainees and the procedures for hearing and dealing with prison offences and acts of misconduct by prisoners and detainees; and
 - (b) the regulation and control of prisoners and detainees and the preservation of order; and
 - (c) the manner of dealing with and disposing of any thing seized in searches or

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- examinations, or searches and examinations, carried out under sections 20 and 22; and
- (d) the mitigation or remission, conditional or otherwise, of the sentence of a prisoner as an incentive to, or reward for, good conduct while the prisoner is serving his or her sentence; and
 - (e) the recording of the name, age, height and weight of a prisoner or detainee, the photographing of a prisoner or detainee and the recording of the impressions of the fingers, palms and such other details as may be prescribed of a prisoner or detainee; and
 - (f) the administration of punishment authorised by this Act; and
 - (g) the payment of money to prisoners and detainees for work performed by them or for other prescribed reasons and the manner of holding and disbursing that money; and
 - (h) the classification and separation of prisoners and detainees; and
 - (i) the establishment of a classification committee for prisoners and detainees; and
 - (j) the retention in the custody of a person authorised by the Director of prisoners' and detainees' personal property and the

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- manner in which prisoners and detainees may deal with property so held in custody; and
- (k) correspondence by and with prisoners and detainees; and
 - (l) the mode of sale and disposal of the products of prisoners' and detainees' work and the disposal of the proceeds of those sales and disposals.
- (3) The regulations may incorporate, by reference, any standing orders made by the Director.
 - (4) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
 - (5) The regulations may –
 - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.
 - (6) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Secretary or the Director.

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- (7) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (8) A provision referred to in subsection (7) may take effect on and from the day on which this Act commences or a later day.

91. Repeal

The Acts specified in Schedule 3 are repealed.

92. Savings and transitional provisions

The provisions specified in Schedule 4 have effect for the purposes of the transition to the provisions of this Act from the law in force before the commencement of this Act.

93. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the Department responsible to the Minister for Justice in relation to the administration of this Act is the Department of Justice.

SCHEDULE 1 – PRISON OFFENCES

Section 3

PART 1 – PRELIMINARY

1. Interpretation

In this Schedule –

authorised means authorised in accordance with the standing orders or as otherwise authorised by the Director.

PART 2 – PRISON OFFENCES

1. Mutiny.
2. Open incitement to mutiny.
3. Assaulting a correctional officer.
4. Assaulting a person other than a correctional officer.
5. Engaging in riotous behaviour.
6. Instigating or encouraging another prisoner or detainee to engage in riotous behaviour.
7. Resisting or obstructing a correctional officer, or any other person who has authority in a prison, in the execution of his or her duties.
8. Committing a nuisance or engaging in disorderly conduct.

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9. Instigating or encouraging another prisoner or detainee to commit a nuisance or engage in disorderly conduct.
10. Maiming, injuring or tattooing himself or herself or any other prisoner or detainee.
11. Intentionally endangering the health of another person.
12. Committing any act contrary to the good order or maintenance of prison discipline or security.
13. Damaging, defacing or destroying any prison property or recklessly or carelessly losing any prison property.
14. Setting anything alight if not authorised.
15. Stealing, unlawfully receiving or embezzling anything.
16. Trafficking with another prisoner or detainee or any other person.
17. Giving or lending to, or borrowing from, another prisoner or detainee anything if not authorised.
18. Having in the prisoner's or detainee's possession anything that is not authorised.
19. Sending a letter that is threatening or harassing.
20. Sending an article of mail containing an item or substance that is not authorised.
21. Using a telephone in any way or for any purpose that is not authorised.
22. Refusing or failing to allow a sample to be taken under section 28 for the purpose of substance testing.

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23. Adulterating, substituting, or otherwise tampering or interfering with a sample taken under section 28.
24. Being in possession of, or consuming, alcohol or a drug if not authorised.
25. Being drunk or under the influence of an illegal drug.
26. Refusing to comply with a direction under section 33.
27. Being idle or negligent at work, or mismanaging any work.
28. Feigning illness.
29. Knowingly making a false or frivolous complaint.
30. Behaving disruptively or disrespectfully at or during a religious service or any other authorised meeting, gathering or event.
31. Failing to comply with any condition or restriction of leave under section 42.
32. Leaving or attempting to leave the place where the prisoner or detainee has been directed or authorised to be, or being in a place if not authorised.
33. Failing to obey an order lawfully given by a person having authority in the prison.
34. Cursing or swearing.
35. Using language or behaving in a manner that is indecent, insulting, insolent or threatening.
- 35A. Striking, injuring, maiming or killing, without lawful excuse, a detector dog.

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- 35B. Impeding, or interfering with, a detector dog without lawful excuse.
- 35C. Conducting a business in or from prison without the Director's consent.
- 35D. Making, or causing or allowing the making of, a change of name application without the Director's consent.
- 36. Breaching the regulations.
- 37. Attempting to commit a prison offence.

**SCHEDULE 2 – MEMBERSHIP AND MEETINGS OF
BOARD**

Section 62(4)

1. Interpretation

In this Schedule,

member means a member of the Board.

2. Term of office

A member is to be appointed for such period, not exceeding 3 years, as is specified in the member's instrument of appointment.

3. Holding other office

- (1) The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from –
 - (a) holding that office and the office of a member; or
 - (b) accepting any remuneration payable to a member.
- (2) A State Service officer or State Service employee may hold office as a member of the Board in conjunction with State Service employment.

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4. Conditions of appointment

A member holds office on such terms and conditions not provided for in this Act as are determined by the Governor.

5. Remuneration of members

- (1) Subject to subclause (2), the members are entitled to be paid such remuneration, allowances and expenses as the Governor determines.
- (2) A member who is a State Service officer or State Service employee is not entitled to be paid remuneration under subclause (1) unless the Head of the State Service Agency in which the officer or employee is employed has approved the payment.

6. Vacation of office

- (1) A member vacates office if the member –
 - (a) dies; or
 - (b) resigns; or
 - (c) is removed from office under subclause (2) or (3).
- (2) The Governor may remove a member from office if the Governor is satisfied that the member –

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- (a) has been absent from 3 or more consecutive meetings of the Board without the leave of the Board; or
 - (b) has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with the member's creditors or made an assignment of the member's remuneration or estate for their benefit; or
 - (c) has been convicted, whether in this State or elsewhere, of an offence of such a nature that, in the opinion of the Governor, renders it inappropriate for the member to continue to be a member; or
 - (d) in the case of the legal member, has, whether in this State or elsewhere –
 - (i) been suspended from practice; or
 - (ii) had the member's name removed from an Australian roll within the meaning of the *Legal Profession Act 2007*.
- (3) The Governor may remove a member from office if satisfied that the member –
- (a) is unable to perform adequately or competently the duties of office; or
 - (b) has misconducted himself or herself in the performance of the duties of office or

otherwise in relation to the member's profession or calling.

7. Deputy of chairperson of Board

- (1) The Minister may appoint a person to be the deputy of the chairperson of the Board and the deputy so appointed holds office for such period as the Minister determines.
- (2) If a member of the Board is absent from a meeting of the Board –
 - (a) the deputy of the chairperson is entitled to attend the meeting and, when so attending, is taken to be a member of the Board; and
 - (b) in the case where the chairperson of the Board is absent, the deputy of the chairperson is taken to be the chairperson.
- (3) During a vacancy in the office of the chairperson of the Board, the person who holds office as deputy of the chairperson is taken to be a member of, and the chairperson of, the Board.

8. Deputy members

- (1) The Minister may appoint persons to be deputy members of the Board, and a deputy member so appointed holds office for such period as the Minister determines.

- (2) A deputy member of the Board is entitled to attend a meeting of the Board if a member is absent from that meeting and, when so attending, is taken to be a member of the Board.
- (3) During a vacancy in the office of a member of the Board, the chairperson of the Board may nominate a deputy member to fill that vacancy and the deputy member is taken to be a member of the Board.

9. Convening of meetings

The Board is to meet at such times and at such places as the chairperson or the deputy of the chairperson decides.

10. Chairperson

- (1) The chairperson of the Board is to preside at all meetings of the Board at which the chairperson is present.
- (2) If the chairperson of the Board is not present at a meeting of the Board, the deputy of the chairperson is to preside at the meeting.

11. Procedure at meetings

- (1) Three members constitute a quorum at a meeting.
- (2) Any meeting of the Board at which a quorum is present is competent to conduct any business of the Board.

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- (3) Questions arising at a meeting of the Board are to be determined by a majority of the votes of the members present and voting.
- (4) The Board is not bound by the rules of evidence and may inform itself in any manner it thinks fit.

12. Minutes

The Board is to cause full and accurate minutes of its proceedings at meetings to be kept.

13. General procedure

Subject to this Schedule, the procedure for the calling of, and for the conduct of business at, meetings of the Board is to be determined by the Board.

14. Validity of proceedings

- (1) An act or proceeding of the Board or of a person acting under the direction of the Board is not invalid by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the membership of the Board.
- (2) An act or proceeding of the Board or of a person acting under the direction of the Board is valid even if –
 - (a) the appointment of a member or deputy member was defective; or

- (b) a person appointed as a member or deputy member was disqualified from acting as, or incapable of being, such a member or deputy member.

15. Presumptions

In any proceedings by or against the Board, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Board; or
- (b) any resolution of the Board; or
- (c) the appointment of any member; or
- (d) the presence of a quorum at any meeting of the Board.

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SCHEDULE 3 – ACTS REPEALED

Section 91

Parole Act 1975 (No. 73 of 1975)

Parole Amendment Act 1987 (No. 7 of 1987)

Parole Amendment Act 1989 (No. 49 of 1989)

Parole Amendment Act 1993 (No. 77 of 1993)

Parole Amendment Act 1994 (No. 97 of 1994)

Prison Act 1977 (No. 19 of 1977)

Prison Amendment Act 1985 (No. 4 of 1985)

Prison Amendment Act 1993 (No. 3 of 1993)

Prison Amendment Act 1994 (No. 4 of 1994)

Prison Amendment Act (No. 2) 1994 (No. 23 of 1994)

Probation of Offenders Act 1973 (No. 2 of 1973)

Probation of Offenders Amendment Act 1994 (No. 63 of 1994)

**SCHEDULE 4 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 92

1. Offices held under *Prison Act 1977*

A person who immediately before the commencement of this Act –

- (a) holds office as Director of Corrective Services is taken to hold office as Director under this Act; or
- (b) holds office as a prison officer under the *Prison Act 1977* is taken to hold office as a correctional officer; or
- (c) holds office as a probation officer under the *Probation of Offenders Act 1973* is taken to hold office as a probation officer under this Act; or
- (d) holds office as an official visitor under the *Prison Act 1977* is taken to hold office as an official visitor under this Act; or
- (e) holds office as an honorary probation officer under the *Probation of Offenders Act 1973* is taken to be an honorary probation officer under this Act; or
- (f) holds office as a supervisor under the *Probation of Offenders Act 1973* is taken to hold office as a supervisor under this Act.

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2. Prisons

- (1) A place of confinement that, immediately before the commencement of this Act, is a prison within the meaning of the *Prison Act 1977* is taken to be a prison within the meaning of this Act.
- (2) A prison in respect of which a proclamation under section 5(1A) of the *Prison Act 1977* is in force at the commencement of this Act is taken to be a prison in respect of which a proclamation has been made under section 9(2) of this Act.

3. Hospitals or institutions

A place approved as a hospital or an institution for the purposes of the *Prison Act 1977* is taken to be approved as a hospital or an institution for the purposes of this Act.

4. Directions, &c., for removal of prisoners, &c.

A direction or order for the removal of a prisoner or detainee for the purposes of section 20, 21 or 22 of the *Prison Act 1977* and in force immediately before the commencement of this Act is taken to be a direction or order under section 36, 37 or 38 of this Act.

5. Licences to be absent from State

A licence granted to a prisoner under the *Prison Act 1977* authorising the prisoner to be absent from the State to undergo medical treatment and in force immediately before the commencement

of this Act has effect as if it were an interstate leave permit issued under section 49 of this Act.

6. Leave permits

A leave permit granted to a prisoner or detainee under the *Prison Act 1977* authorising the prisoner or detainee to be absent from a prison and in force immediately before the commencement of this Act has effect as if it were a leave permit granted under section 42 of this Act.

7. Act to apply to prison sentences, &c., before commencement of Act

This Act applies to all prisoners, whether or not they were sentenced before or after the commencement of this Act and whether or not at the date of the commencement of this Act there is a parole order in force in relation to them.

8. Parole Board

(1) In this clause,

former Board means the Parole Board established under the *Parole Act 1975*.

(2) All acts, matters and things done or omitted to be done by, or done or suffered in relation to, the former Board before the commencement of this Act have the same force and effect, on and after that commencement, as if they had been done or

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omitted to be done by, or done or suffered in relation to, the Board established under this Act.

- (3) Any legal or other proceedings that might before the commencement of this Act have been continued or instituted by or against the former Board may, on and after that date, be continued or instituted by or against the Board established under this Act.

9. Applications to be released on parole

An application to be released on parole made by a prisoner under the *Parole Act 1975* and not finally determined at the commencement of this Act is to be dealt with as if it had been made under this Act.

10. Parole orders

A parole order granted in respect of a prisoner under the *Parole Act 1975* and in force immediately before the commencement of this Act has effect as if it had been granted under this Act.

11. Life prisoners

- (1) In this clause, “**existing life prisoner**” means a person who –
- (a) is under a sentence of imprisonment for the term of the person’s natural life; and

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- (b) was sentenced to that term of imprisonment before the commencement of the *Criminal Code Amendment (Life Prisoners and Dangerous Criminals) Act 1994*; and
 - (c) has not been resentenced under section 9(1) of the *Criminal Code Amendment (Life Prisoners and Dangerous Criminals) Act 1994*.
- (2) The eligibility of an existing life prisoner to be –
- (a) considered for release on parole; or
 - (b) released on parole –
- is to be determined in accordance with the *Parole Act 1975* as in force immediately before the commencement of the *Criminal Code Amendment (Life Prisoners and Dangerous Criminals) Act 1994*.
- (3) If an existing life prisoner –
- (a) was on release on parole immediately before the commencement of the *Criminal Code Amendment (Life Prisoners and Dangerous Criminals) Act 1994*; or
 - (b) is released on parole on or after the commencement of the *Criminal Code Amendment (Life Prisoners and Dangerous Criminals) Act 1994* –

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section 25(2) of the *Parole Act 1975*, as in force immediately before that commencement, applies to the revocation, variation, amendment or suspension of the parole order by which the prisoner was so released.

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NOTES

The foregoing text of the *Corrections Act 1997* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 December 2017 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Corrections Act 1997</i>	No. 51 of 1997	1.8.1998
<i>State Service (Consequential and Miscellaneous Amendments) Act 2000</i>	No. 86 of 2000	1.5.2001
<i>Legislation Publication Act 1996</i>	No. 17 of 1996	10.4.2002
<i>Misuse of Drugs (Consequential Amendments) Act 2001</i>	No. 95 of 2001	1.6.2002
<i>Evidence (Consequential Amendments) Act 2001</i>	No. 80 of 2001	1.7.2002
<i>Sentencing Amendment Act 2002</i>	No. 25 of 2002	1.9.2002 1.10.2002
<i>Youth Justice Amendment Act 2003</i>	No. 1 of 2003	16.4.2003
<i>Justice (Miscellaneous Amendments) Act 2003</i>	No. 69 of 2003	15.12.2003
<i>Relationships (Consequential Amendments) Act 2003</i>	No. 45 of 2003	1.1.2004
<i>Police Service (Consequential Amendments) Act 2003</i>	No. 76 of 2003	1.1.2004
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2004</i>	No. 44 of 2004	16.2.2005
<i>Mental Health Amendment (Secure Mental Health Unit) Act 2005</i>	No. 72 of 2005	20.2.2006
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2006</i>	No. 16 of 2006	1.11.2006
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008
<i>Justice and Related Legislation (Further Miscellaneous Amendments) Act 2009</i>	No. 76 of 2009	11.12.2009

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Act	Number and year	Date of commencement
<i>Health Practitioner Regulation National Law (Tasmania) (Consequential Amendments) Act 2010</i>	No. 3 of 2010	1.7.2010
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2012</i>	No. 13 of 2012	30.5.2012
<i>Poisons Amendment Act 2012</i>	No. 7 of 2012	1.7.2012
<i>Mental Health (Transitional and Consequential Provisions) Act 2013</i>	No. 69 of 2013	17.2.2014
<i>Corrections Amendment Act 2013</i>	No. 37 of 2013	1.5.2014
<i>Public Health (Miscellaneous Amendments) Act 2015</i>	No. 4 of 2015	1.7.2015
<i>Corrections Amendment (Parole Board) Act 2015</i>	No. 17 of 2015	1.8.2015
<i>Corrections Amendment (Treatment of Sex Offenders) Act 2016</i>	No. 3 of 2016	8.4.2016
<i>Custodial Inspector Act 2016</i>	No. 30 of 2016	16.11.2016
<i>Corrections (Miscellaneous Amendments) Act 2016</i>	No. 52 of 2016	21.12.2016
<i>Family Violence Reforms Act 2017</i>	No. 6 of 2017	28.4.2017
<i>Statutory Appointments (Miscellaneous Amendments) Act 2017</i>	No. 36 of 2017	19.9.2017
<i>Corrections (Miscellaneous Amendments) Act 2016</i>	No. 52 of 2016	1.12.2017

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 25 of 2002, s. 9, No. 45 of 2003, Sched. 1, No. 76 of 2003, Sched. 1, No. 72 of 2005, s. 80, No. 66 of 2007, Sched. 1, No. 76 of 2009, s. 5, No. 3 of 2010, Sched. 1, No. 7 of 2012, s. 16, No. 37 of 2013, s. 4, No. 69 of 2013, Sched. 1, No. 3 of 2016, s. 4, No. 30 of 2016, Sched. 2 and No. 52 of 2016, s. 4
Section 4A	Inserted by No. 69 of 2013, Sched. 1
Section 5	Amended by No. 86 of 2000, Sched. 1
Section 5A	Inserted by No. 37 of 2013, s. 5
Section 6	Amended by No. 17 of 1996, No. 69 of 2013, Sched. 1 and No. 52 of 2016, s. 7
Section 8	Amended by No. 16 of 2006, s. 15, No. 37 of 2013, s. 6 and No. 30 of 2016, Sched. 2
Section 8A	Inserted by No. 52 of 2016, s. 8
Section 10	Amended by No. 37 of 2013, s. 7
Section 11	Amended by No. 37 of 2013, s. 8 and No. 30 of 2016,

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Provision affected	How affected
	Sched. 2
Section 18	Amended by No. 37 of 2013, s. 9
Section 20	Amended by No. 52 of 2016, s. 9
Section 21	Amended by No. 52 of 2016, s. 10
Section 22	Amended by No. 69 of 2003, Sched. 1 and No. 52 of 2016, s. 11
Section 22A	Inserted by No. 52 of 2016, s. 12
Section 23	Amended by No. 52 of 2016, s. 13
Section 24	Amended by No. 37 of 2013, s. 10
Section 25A	Inserted by No. 52 of 2016, s. 14
Section 28	Amended by No. 95 of 2001, Sched. 2 and No. 7 of 2012, s. 17
Section 29	Amended by No. 37 of 2013, s. 11 and No. 30 of 2016, Sched. 2
Section 30	Amended by No. 3 of 2010, Sched. 1 and No. 4 of 2015, s. 4
Section 31	Amended by No. 3 of 2010, Sched. 1 Repealed by No. 4 of 2015, s. 5 Inserted by No. 3 of 2016, s. 5
Section 32	Amended by No. 3 of 2010, Sched. 1 Repealed by No. 4 of 2015, s. 5
Section 33	Amended by No. 37 of 2013, s. 12
Section 34	Amended by No. 37 of 2013, s. 13
Section 34AA	Inserted by No. 52 of 2016, s. 15
Section 34AB	Inserted by No. 52 of 2016, s. 15
Section 34AC	Inserted by No. 52 of 2016, s. 15
Section 34A	Inserted by No. 37 of 2013, s. 14
Section 34B	Inserted by No. 37 of 2013, s. 14 Amended by No. 52 of 2016, s. 16
Section 34C	Inserted by No. 37 of 2013, s. 14
Section 34D	Inserted by No. 37 of 2013, s. 14
Section 34E	Inserted by No. 37 of 2013, s. 14
Section 34F	Inserted by No. 37 of 2013, s. 14
Section 34G	Inserted by No. 37 of 2013, s. 14
Section 34H	Inserted by No. 37 of 2013, s. 14
Section 34I	Inserted by No. 37 of 2013, s. 14
Section 36	Amended by No. 72 of 2005, s. 81
Section 36A	Inserted by No. 72 of 2005, s. 82 Amended by No. 69 of 2013, Sched. 1
Section 36B	Inserted by No. 72 of 2005, s. 82 Substituted by No. 69 of 2013, Sched. 1
Section 37	Amended by No. 80 of 2001, Sched. 1
Section 37A	Inserted by No. 80 of 2001, Sched. 1
Section 39	Amended by No. 72 of 2005, s. 83
Section 40	Amended by No. 72 of 2005, s. 84 and No. 69 of 2013, Sched. 1
Section 42	Amended by No. 37 of 2013, s. 15 and No. 52 of 2016, s.

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Provision affected	How affected
Section 61	Amended by No. 37 of 2013, s. 16
Section 62	Amended by No. 66 of 2007, Sched. 1, No. 17 of 2015, s. 4 and No. 36 of 2017, s. 8
Section 66	Amended by No. 86 of 2000, Sched. 1
Section 67	Amended by No. 86 of 2000, Sched. 1
Section 69	Amended by No. 25 of 2002, s. 10
Section 71	Amended by No. 25 of 2002, s. 11
Section 72	Amended by No. 25 of 2002, s. 12, No. 72 of 2005, s. 85, No. 76 of 2009, s. 6, No. 69 of 2013, Sched. 1 and No. 3 of 2016, s. 6
Section 83A of Part 8	Inserted by No. 1 of 2003, s. 23
Section 83B of Part 8	Inserted by No. 1 of 2003, s. 23
Section 83BA	Inserted by No. 72 of 2005, s. 86
Section 83C	Inserted by No. 1 of 2003, s. 23
Section 83D	Inserted by No. 52 of 2016, s. 5
Section 87A	Inserted by No. 76 of 2009, s. 7 Amended by No. 13 of 2012, s. 22, No. 69 of 2013, Sched. 1 and No. 6 of 2017, s. 4
Section 87B	Inserted by No. 76 of 2009, s. 7 Amended by No. 13 of 2012, s. 23
Section 87C	Inserted by No. 52 of 2016, s. 18
Section 90	Amended by No. 52 of 2016, s. 19
Schedule 1 Part 1 of Schedule 1	Substituted by No. 44 of 2004, s. 24 Amended by No. 44 of 2004, s. 24
Part 2 of Schedule 1	Amended by No. 44 of 2004, s. 24, No. 37 of 2013, s. 17 and No. 52 of 2016, s. 20
Schedule 2	Amended by No. 86 of 2000, Sched. 1, No. 66 of 2007, Sched. 1 and No. 17 of 2015, s. 5
