



ANNO TRICESIMO NONO

ELIZABETHAE II REGINAE

A.D. 1990

No. 76 of 1990

An Act to amend the Correctional Services Act, 1982.

[Assented to 20 December 1990]

The Parliament of South Australia enacts as follows:

Short title

- 1. (1) This Act may be cited as the *Correctional Services Act Amendment Act (No. 2), 1990*.
- (2) The *Correctional Services Act, 1982*, is referred to in this Act as “the principal Act”.

Commencement

- 2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

- 3. Section 4 of the principal Act is amended—

- (a) by inserting before the definition of “the Advisory Council” the following definitions:

- “Aboriginal people” means the people who inhabited Australia before European colonization:

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

and

- (b) by striking out the definition of “designated part”.

Community service committees

- 4. Section 17c of the principal Act is amended by inserting in paragraph (a) of subsection (2) “or justice of the peace” after “magistrate”.

Correctional institutions to be under the control of the Minister

- 5. Section 19 of the principal Act is amended by striking out subsection (2).

Correctional institutions must be inspected on a regular basis

6. Section 20 of the principal Act is amended—

(a) by striking out “justices of the peace as”;

and

(b) by inserting after subsection (2) the following subsection:

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

(a) is a person who has retired from judicial or magisterial office;

(b) is a legal practitioner;

or

(c) is a justice of the peace.

Assignment of prisoners to particular correctional institutions

7. Section 22 of the principal Act is amended—

(a) by striking out from subsection (1) “and, where relevant, in such designated part of the institution,”;

and

(b) by striking out from subsection (2) “and, where relevant, in such designated part of the institution,”.

Initial and periodic assessment of prisoners

8. Section 23 of the principal Act is amended—

(a) by striking out from subsection (1) “to some other designated part of the prison or”;

(b) by striking out from paragraph (g) of subsection (3) “or part of a prison”.

Chief Executive Officer has custody of prisoners

9. Section 24 of the principal Act is amended by inserting after its present contents (now to be designated subsection (1)) the following subsection:

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

(a) to place any particular prisoner or prisoner of a particular class in such part of the correctional institution;

and

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

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

Transfer of prisoners

10. Section 25 of the principal Act is amended—

(a) by striking out from subsection (1) “, or that the prisoner be transferred from one designated part of a correctional institution to another”;

and

(b) by striking out from subsection (2) “, or designated part of the correctional institution,”.

Leave of absence from prison

11. Section 27 of the principal Act is amended by inserting after subsection (5) the following subsection:

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

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

12. Section 28 of the principal Act is amended by inserting after subsection (3) the following subsection:

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

Prison work

13. Section 29 of the principal Act is amended by inserting in subsection (1) “, while in a correctional institution,” after “is”.

Allowances paid to prisoners

14. Section 31 of the principal Act is amended by inserting in subsection (1) “, while in a correctional institution,” after “is”.

Prisoners' rights to have visitors

15. Section 34 of the principal Act is amended by inserting in subsection (1) “, while in a correctional institution,” after “is”.

Substitution of s. 36

16. Section 36 of the principal Act is repealed and the following section is substituted:

Power to keep a prisoner apart from all other prisoners

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

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

(a) in the interests of the proper administration of justice where an investigation is to be conducted into an offence alleged to have been committed by the prisoner;

(b) in the interests of the safety or welfare of the prisoner;

(c) in the interests of protecting other prisoners;

or

(d) in the interests of security or good order within the correctional institution.

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

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

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

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

(a) must be in writing;

and

(b) may be revoked at any time by the Chief Executive Officer.

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

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

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

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

Search of prisoners

17. Section 37 of the principal Act is amended by striking out from paragraph (b) of subsection (1) “possession of” and substituting “in his or her possession in the correctional institution”.

Chief Executive Officer may release certain prisoners on home detention

18. Section 37a of the principal Act is amended—

(a) by striking out from subsection (1) “subsection (2)” and substituting “this section”;

(b) by inserting after subsection (1) the following subsection:

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

(c) by striking out paragraphs (a) and (b) of subsection (2) and substituting the following paragraph:

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

(d) by striking out from paragraph (a) of subsection (3) “calculated pursuant to subsection (4)”;

(e) by striking out subsection (4) and substituting the following subsection:

(4) A prisoner released under this Division will, unless the release is earlier revoked, remain on home detention—

(a) in the case of a prisoner subject to a non-parole period—until he or she is released on parole;

(b) in the case of any other prisoner—until the time at which he or she would, but for this Division, have been released from prison pursuant to this Act, assuming, where relevant, that the prisoner had earned throughout the period of home detention the maximum number of days of remission each month.;

and

(f) by inserting after subsection (5) the following subsection:

(6) In this section, “the prisoner’s residence” includes, if the prisoner is an Aborigine who resides on tribal lands or an Aboriginal reserve, such area of land as the Chief Executive Officer may specify in the instrument of release.

Revocation of release

19. Section 37c of the principal Act is amended by striking out from subsection (4) “term of imprisonment” and substituting “non-parole period or the term of imprisonment (as the case may require)”.

Substitution of s. 37d

20. Section 37d of the principal Act is repealed and the following section is substituted:

Crown not liable to maintain prisoners on home detention

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

Release of prisoner from prison or home detention

21. Section 38 of the principal Act is amended by inserting after its present contents (now to be designated subsection (1)) the following subsection:

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

Time of release from prison

22. Section 39 of the principal Act is amended by striking out subsection (2).

Delivery of property and money to prisoner on release

23. Section 39a of the principal Act is amended by inserting “home detention or” after “released from prison on”.

Appeals against orders of Visiting Tribunals

24. Section 47 of the principal Act is amended—

(a) by striking out from subsection (1) “to a District Court”;

(b) by inserting after subsection (1) the following subsection:

(1a) An appeal under this section lies—

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

and

(b) to a court of summary jurisdiction if the order was made by a Visiting Tribunal constituted of a justice, or justices, of the peace.;

(c) by inserting after subsection (2) the following subsection:

(2a) The notice of appeal must specify the grounds on which the appeal is made.;

(d) by striking out from subsection (4) “District Court” and substituting “court”;

(e) by striking out paragraph (c) of subsection (4) and substituting the following paragraph:

(c) quash the order of the Visiting Tribunal and make any order that the court thinks should have been made by the Visiting Tribunal in the first instance;;

and

(f) strike out from subsection (5) "District Court" and substitute "court".

Board must order release on parole at end of non-parole period

25. Section 66 of the principal Act is amended—

(a) by inserting in subsection (1) "or home detention" after "from prison";

(b) by inserting in subsection (1) "or on home detention" after "served in prison";

and

(c) by inserting after subsection (1) the following subsection:

(1a) In calculating the release date under subsection (1) for a prisoner who is serving a period of home detention, it will be assumed that the prisoner has been credited throughout the period of home detention with the maximum number of days of remission each month.

Insertion of s. 88b

26. The following section is inserted after section 88a of the principal Act:

Evidentiary provision

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

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor