

Corrections Bill

EXPLANATORY MEMORANDUM

This Bill consolidates the law relating to correctional administration in this State. It combines provisions relating to the administration of custodial and non-custodial dispositions for the first time, and clearly provides for the progress of offenders from custodial to non-custodial supervision.

The Bill clearly provides the situations in which a person is in custody or supervision and the conditions applicable to that custody or supervision.

Prisoner rights are clearly stated. Prisoner discipline is covered in detail to guarantee prisoners just and expeditious handling of disciplinary matters.

Access to prisons is dealt with in detail and provision made for the appointment of official visitors. These sections balance the need to maintain security in prisons and the need for prisoners to maintain family and community ties.

To further support the community ties and prisoner welfare new provisions relating to leave of absence have been included in this Bill. The provisions balance the requirements of flexibility and due regard to public safety.

Two major Parole Board programmes are available to prisoners, parole and pre-release. Both programmes have their source in the *Community Welfare Services Act 1970* but have been revised in this Bill to emphasise their community corrections links.

The Part of the Bill dealing with Community Corrections supports both the Parole Board programmes and the community based order provisions of the *Penalties and Sentences Act 1985*. They are principally administrative provisions.

The Bill substantially eliminates the uncertainties, difficulties and anomalies existing in current corrections legislation.

Notes On Clauses

PART 1—PRELIMINARY

Clause 1 sets out the purpose of the Bill.

Clause 2 is the commencement provision.

Clause 3 defines significant terms used in the Bill.

Clause 4 defines the class of persons subject to the custody of the Director-General and the classes of persons who are excluded from that custody.

Clause 5 provides that the Act will bind the Crown.

Clause 6 provides for repeals and amendments by the commencement of an item in Schedule 1.

PART 2—ADMINISTRATION

Clause 7 provides that the Office of Corrections has the functions given to it by Order in Council under the *Public Service Act 1974*.

Clause 8 empowers the Director-General to delegate any of the functions or powers of the Director-General (with the exclusion of the power of delegation and the Director-General's powers under Division 3 of Part 8) to any officer as described by this clause.

Clause 9 empowers the Director-General to delegate any of his powers under Division 3 of Part 8 to a Governor.

PART 3—PRISONS AND POLICE GAOLS

Clause 10 provides for the appointment of prisons for the detention of adults by the Governor in Council, and for prisons appointed under the *Community Welfare Services Act 1970* to be deemed to be prisons under this clause and known by the names listed in column 2 of Schedule 2.

Clause 11 provides for the appointment of police gaols for the temporary detention of adults by the Governor in Council and for police gaols appointed under section 115 of the *Community Welfare Services Act 1970* to be deemed to be police gaols appointed under this clause. Further the clause provides that an adult detained in custody in a police gaol is deemed to be in the custody of the Chief Commissioner of Police.

PART 4—OFFICERS

Clause 12 enables the appointment of Governors, prison officers, Regional Managers, community corrections officers and other officers and employees as necessary for the purposes of the Act. The clause also provides that persons who held positions of secretary to the Adult Parole Board, Governor or prison officer under the *Community Welfare Services Act 1970* continue to hold that position subject to the *Public Service Act 1974*. Further the clause provides for persons who held the positions of superintendent of an attendance centre or officer or employee for the purposes of the *Penalties and Sentences Act 1981*; of stipendiary parole officer under the *Community Welfare Services Act 1970*; or of stipendiary probation officer under the *Crimes Act 1958* prior to the commencement of the section to be deemed to be appointed as community corrections officers under this clause.

Clause 13 provides for the authorization and registration of volunteers to work in an unpaid capacity for prison purposes or at a location.

PART 5—PRISON OFFICERS AND OTHER OFFICERS WORKING IN PRISONS

Division 1—General

Clause 14 defines “Officer” for the purposes of this Part.

Division 2—Work

Clause 15 provides for the authorization by the Director-General of police officers to exercise all or any of the powers of prison officers.

Clause 16 enables the Director-General to authorize a legally qualified medical practitioner to act as medical officer where there is no medical officer appointed to the prison or the medical officer is absent.

Clause 17 empowers the Director-General to exercise all or any of the powers or functions of the Governor or of a prison officer.

Clause 18 provides that an officer attending a training institution is subject to the direction of the principal of that institution and defines “training institution” for the purposes of this clause.

Clause 19 makes prison officers subject to the directions of the Governor of the prison to which he is assigned and all officers subject to the directions of the Governor.

Clause 20 requires officers in charge of a prison or part of a prison to take reasonable steps for the security of the prison and officers in charge of prisoners to take reasonable

steps for the safety and welfare of prisoners. This clause further provides that officers must not jeopardize the security of the prison and must make returns and reports and keep records as required.

Clause 21 makes the Governor of a prison responsible for prison management and security and prisoner welfare and custody. It imposes a duty on the Governor to ensure that officers working at the prison are informed of their powers and duties and the provisions of the Act and subordinate legislation under the Act. Further it requires the Governor to issue directions to officers to ensure that the provisions of the Act and regulations are complied with.

Clause 22 requires officers to immediately report to the Governor anything which might jeopardize prison security or prisoner welfare and an escape or suspected escape.

Clause 23 empowers officers to give orders to prisoners necessary for prison order or security or for the safety or welfare of prisoners or other persons, and empowers prison officers to use reasonable force to compel compliance with orders. The use of force must be reported and a prison officer who uses force in accordance with this clause will not be liable for injury or damage.

PART 6—MANAGEMENT AND ADMINISTRATION OF PRISONS

Division 1—Management and Security of Prisons

Clause 24 enables the Governor to delegate to any officer or officers any of the powers and functions of Governor under the Act with the exception of the power of delegation and any other powers prescribed in the regulations.

Clause 25 provides that the Director-General may nominate a prison officer to act as Governor in the absence of the Governor or vacancy of the position.

Clause 26 enables the Governor to nominate a prison officer to act as Governor during the temporary absence of the Governor. Should the Governor not nominate a prison officer and the Governor be absent temporarily the most senior ranking officer on duty is in charge of the prison and has the functions powers and duties of the Governor.

Clause 27 authorizes the use of approved dogs by prison officers for specific security and management purposes. A prison officer will not be liable for injury or damage caused through the use of a dog in accordance with this clause.

Clause 28 empowers the photographing and fingerprinting of prisoners on reception and the photographing of prisoners at any time for identification purposes.

Clause 29 requires prisoners to submit to medical tests on a prisoner's reception and at any time thereafter. The nature of the test will be determined by the principal medical officer having regard to the safety and welfare of other prisoners in the prison and will be used to assess the prisoner's physical and mental health.

Clause 30 restricts the recording, disclosure, communication or use of information gained by any person whilst holding or having held a position as defined and provides a penalty for so doing.

Clause 31 enables the Governor to permit a prisoner's child to live with a prisoner in prison where it is in the best interests of the child to do so and where the management, good order or security of the prison will not be threatened. The Governor may cause a child to be removed where prison security or good order or the child's safety are threatened. A prisoner who has a child living in the prison with him or her is responsible for that child's safety and care.

Clause 32 creates offences against prison security and the penalties for committing those offences. It further provides the powers of prison officers to deal with persons who are committing an offence under this clause.

Division 2—Access to Prisons

Clause 33 defines “Official visitor” and “Visitor” for the purposes of this Division.

Clause 34 empowers judges of the Supreme and County Courts and magistrates and members of the Victorian Prison Industries Commission to visit a prison at any time and to make reports on the visit to the Minister.

Clause 35 empowers the Minister to appoint official visitors on the terms and conditions stated in their appointment.

Clause 36 restricts the disclosure or use of information gained by a person as an official visitor by that person whilst an official visitor or at any time thereafter except where necessary to perform official duties, where required in evidence in criminal proceedings under the Act or where required by the Minister.

Clause 37 deals with visits by a prisoner’s relatives or friends. Visitors may enter a prison and visit a prisoner if permitted by the Governor. Visits will be non-contact visits unless part of a contact or residential visiting programme. Visitors are subject to the Governor’s orders in respect of the management and good order and security of the prison and commit an offence if an order is disobeyed.

Clause 38 enables the Director-General to approve contact visiting programmes and residential visiting programmes.

Clause 39 empowers the Governor to refuse or terminate visits by a prisoner’s family or friends for security reasons.

Clause 40 provides for visits to prisoners by lawyers and persons authorized by a lawyer to act on the lawyer’s behalf.

Clause 41 provides for visits to prisoners by police and the rights of prisoners to refuse to see police and to have a prison officer present at or observe a visit between police and prisoner.

Clause 42 requires visitors to give prescribed information before entering the prison. A visitor who gives false information commits an offence. A visitor who refuses to give information may be refused entry, or if they have entered they may be ordered to leave. Reasonable force may be used to compel a visitor to leave under this clause.

Clause 43 empowers the Governor to refuse or terminate any visit where the security of the prison or safety of a visitor is threatened.

Division 3—Search and Seizure

Clause 44 requires any visitor to submit to a formal search if asked. Refusal to submit to a formal search as defined by this clause may result in the visitor being refused entry or being asked to leave.

Clause 45 empowers the Governor of a prison to order searches where necessary for the security or good order of the prison, or place where prisoners are, or the prisoners. The power to search is extended to the Governor of a prison outside the metropolitan area to the search or examination of persons or things outside of the prison where the Governor believes that, by reason of any activity outside but near the area where prisoners are, security or prisoner order is threatened.

Clause 46 empowers the seizure of specified things found during a search and that anything seized is to be dealt with in the prescribed manner.

Division 4—Prisoners Rights

Clause 47 describes the rights of every prisoner.

PART 7—PRISON DISCIPLINE

Clause 48 defines significant terms for the purposes of this Part.

Clause 49 empowers the Director-General to nominate a chief prison officer for the purposes of this Part.

Clause 50 provides the procedure for dealing with prison offences by prisoners. Following a proper investigation of the matter the chief prison officer may, if satisfied that the prisoner has committed the offence, reprimand the prisoner or withdraw one of the prisoner's privileges or enter the offence in the register of offences. Alternatively the chief prison officer may charge the prisoner with the offence or refer the matter to be dealt with under the criminal law. Charges must be in writing and given to the prisoner and Governor as soon as possible. Where three prison offences are entered in the register in respect of any one prisoner in any 30 day period, that prisoner loses one day of remission to which the prisoner is entitled.

Clause 51 provides that a charge for a prison offence is to be heard by the Governor unless he believes that it should be dealt with by the chief prison officer and refers it back to him, or he believes that he has an interest which would prejudice a fair hearing and consequently refers the matter to another Governor, or he refers the matter to the police.

Clause 52 provides that at any time before a Governor's hearing a prisoner may request the matter be heard by another Governor. The Director-General shall consider the request and give notice of his decision to the Governor of the prison concerned.

Clause 53 provides that at least 72 hours notice must be given to a prisoner of the time date and place of hearing under this Part. The Governor must allow the prisoner to call and cross examine relevant witnesses and may approve representation for the prisoner by another prisoner. Where the prisoner admits the truth of the charge or the Governor finds the prisoner guilty he may reprimand the prisoner, impose a fine not exceeding one penalty unit, withdraw one or more of the prisoner's privileges for a period not exceeding 14 days per offence and 30 days in total; or order that the prisoner lose up to 10 days remission to which the prisoner is entitled for each prison offence but not more than 30 days for all offences arising from any one incident.

Clause 54 provides that a decision by a Governor that a prisoner loses 8 days or more of a period of remission will take effect 14 days after the prisoner has been notified of the decision or where an appeal is made, the decision is confirmed on appeal.

The prisoner may appeal to a Magistrates' Court against the decision made by the Governor within 14 days of being notified. The Magistrates' Court must rehear the matter and its decision is final.

PART 8—TEMPORARY ABSENCE FROM PRISON AND EARLY RELEASE

Division 1—Definitions

Clause 55 defines terms of significance for the purposes of this Part.

Division 2—Transfer of Prisoners

Clause 56 provides for transfers by the Director-General to other institutions and from place to place within institutions and clarifies the time at which a transfer is completed.

Division 3—Leave of Absence

Clause 57 empowers the Director-General to authorize a prisoner to be absent from prison for a specified purpose and duration.

Clause 58 provides that instruments authorizing a prisoner's absence may be conditional and not exceeding 3 days and that the prisoner continues in the custody of the Director-General whilst absent.

Division 4—Remission

Clause 59 excludes certain persons from the operation of this Division.

Clause 60 provides that every prisoner not excluded by clause 59 is entitled to remission calculated under the regulations including prisoners serving a sentence of imprisonment and in custody at the commencement of this clause.

Division 5—Parole

Clause 61 establishes a Board known as the Adult Parole Board and deems that Board to be the same Board as the Adult Parole Board established under Division 4 of Part VIII. of the *Community Welfare Services Act 1970* and the Parole Board under Part IV. of the *Crimes Act 1958* in addition to other savings provisions.

Clause 62 provides for the appointment of deputy members of the Board by the Governor in Council and the powers duties and entitlements of any person so appointed.

Clause 63 provides the terms of office for members of the Board.

Clause 64 enables the Board to exercise its powers and functions in divisions of three members including a Judge as chairperson.

Clause 65 provides that the chairperson is to preside at meetings of the Board.

Clause 66 provides for the fixing of times and places of meetings and the procedure for determinations of the Board to be made.

Clause 67 rests power in the Secretary or a member of the Board to sign and issue all necessary orders and documents relating to a determination of the Board and further provides that a document so signed has effect as if signed by all members of the Board.

Clause 68 provides for judicial notice to be taken of the signature of a member of the Board or the Secretary of the Board and for a certificate signed by the Secretary of the Board as to the Board's decision or determination to be evidence of that decision or determination.

Clause 69 provides for the functions of the Board and excludes the operation of the rules of natural justice from the exercise by the Board of its functions.

Clause 70 requires officers in the Office of Corrections to assist the Board in the performance of its functions and in the supervision of persons released under parole orders and pre-release permits.

Clause 71 extends the operation of sections 17 to 21A of the *Evidence Act 1958* and the Rules and Orders made under section 20 (4) to the Board and its proceedings as if it were a body of persons to whom the Governor in Council has issued a commission under that Act.

Clause 72 requires the Board to provide reports to the Minister on specified matters and the Minister to cause the Board's Annual Report to be laid before both Houses of Parliament. In addition the clause provides that the person having authority to determine the place of detention of a person detained under sections 393, 420 or 473 of the *Crimes Act 1958* must give the Minister a report of any change in the place of detention within one month of such change. At the request of the Attorney-General for the Commonwealth, the Minister may authorize reports and recommendations concerning persons detained in Victorian prisons under Commonwealth law and other matters.

Clause 73 makes community corrections officers subject to the directions of the Board in relation to parole and pre-release orders.

Clause 74 empowers the Board to order the release of a prisoner serving a prison sentence in respect of which a minimum term has been fixed at the time stated in the order. The time stated in the order must be later than the date at which the minimum term expires. An order made under this section may be revoked or varied and notice of any revocation or cancellation is to be given to the prisoner. The conditions of a parole order are those set out in regulations subject to any variation by the Board.

Clause 75 enables the Director-General to apply to the court that ordered the detention of a person in a remand centre or youth training centre and who has been removed to a prison, or to the Supreme Court, for an order determining a sentence of imprisonment and minimum term for that person.

Clause 76 deems a person on parole to be under sentence until the parole order lapses or the prisoner is otherwise discharged from the prison sentence.

Clause 77 provides for the Board's powers to cancel a parole order and the effect of such cancellation.

Clause 78 enables the Board to release a prisoner on parole although the prisoner's parole has been cancelled on a previous occasion.

Clause 79 describes the powers of the Board in relation to persons released under section 498 of the *Crimes Act 1958*.

Division 6—Pre-release

Clause 80 provides the Board's powers to grant a pre-release permit.

Clause 81 provides that a pre-release permit authorizes the release of the person to whom the permit is granted from prison.

Clause 82 provides that a pre-release permit is subject to the conditions set out in the regulations unless varied by the Board and any other conditions set by the Board and stated on the permit. This clause also provides for the cancellation or variation of the permit by the Board on the application of the permit holder or the Director-General.

Clause 83 provides for the circumstances in which a permit is deemed to be cancelled and the powers of the Board and consequences of that cancellation.

Clause 84 provides that where a pre-release permit is issued subject to the condition that the permit holder attend a community corrections centre, then the requirements as to conduct and attendance which apply to a person on a community based order with a similar condition apply as if the permit was a community based order.

PART 9—COMMUNITY CORRECTIONS

Division 1—Definitions

Clause 85 defines terms of significance for the purposes of this Part.

Division 2—Establishment of Community Corrections Centres and Regional Centres

Clause 86 provides for the appointment of community corrections centres by the Governor in Council.

Clause 87 enables the Director-General to designate areas in Victoria as regions for the purposes of this Act.

Clause 88 vests power in the Governor in Council to appoint a community corrections centre to be a regional centre.

Division 3—Officers

Clause 89 makes officers subject to the directions of the Regional Manager.

Clause 90 defines the powers and duties of officers including the making of reports and keeping of records, taking care not to jeopardize security, and to take reasonable steps for the safety and welfare of offenders, and the power to use reasonable force where necessary to prevent death or serious injury to persons or serious injury to property.

Clause 91 restricts the disclosure of information to specific persons or bodies gained because of an officer's position.

Clause 92 describes the additional duties of a Regional Manager for the management and good order of locations, the provision of information or access to information to officers about their powers and duties, and to give necessary directions to ensure that the Act and regulations are complied with.

Division 4—Discipline of Offenders

Clause 93 empowers community corrections officers to give directions to offenders concerning the work an offender is to undertake, the times of attendance of an offender and reports to be made by an offender provided that the directions are not inconsistent with any correctional order and do not unreasonably interfere with the offender's employment, education or religious practices.

Clause 94 enables the Regional Manager after proper investigation to deal with any alleged acts of misconduct by an offender by caution, reprimand or direction that any period during which the offender has not worked satisfactorily not be regarded as a period of work in satisfaction of any order.

Division 5—Community Corrections Programmes

Clause 95 empowers the Director-General to approve programmes of activities as community corrections programmes in which offenders may be required to take part.

Division 6—Management and Administration of Locations

Clause 96 provides that an officer attending a training institution will be subject to the direction of the principal of that institution.

Clause 97 enables the Director-General to nominate a person to act as Regional Manager in the absence of the Regional Manager or vacancy of the position.

Clause 98 enables the Regional Manager to nominate an officer to have the powers and duties of the Regional Manager during his temporary absence.

Clause 99 authorizes the photographing of offenders at any time after reception.

Clause 100 empowers the Regional Manager to order the search of any location or offender or any other person in a community corrections centre if he believes that the search is necessary for the security or good order of the location or offenders.

A person other than an officer or offender who refuses to be searched may be ordered to leave the location. A community corrections officer may use reasonable force to compel the person to leave the location and is not liable for injury or damage caused while so doing.

Clause 101 provides that anything found during a search shall be dealt with in the prescribed manner.

Clause 102 empowers the Regional Manager to delegate functions or powers of the Regional Manager except the power of delegation and any other prescribed power, to an officer or class of officers.

Clause 103 provides that the Manager may authorize access to locations subject to conditions as determined by him. Any person who once authorized to enter commits an offence under this clause may be asked to leave.

Clause 104 describes the instances during which an offender is subject to the Director-General's directions and provides that the Director-General may direct an offender to attend a location or take part in a community corrections programme. An offender who disobeys directions by the Director-General commits an offence.

PART 10—GENERAL

Clause 105 provides that officers under Part 5 or 9 who are authorized by the Director-General may take proceedings for offences under this Act or the regulations.

Clause 106 requires judicial notice to be taken of signatures of persons required or authorized to sign a document under this Act or the *Community Welfare Services Act 1970*.

Clause 107 provides for the construction of references in other Acts, regulations or subordinate instruments to refer to the Director-General.

Clause 108 enables the Director-General to enter into contracts for the provision of correctional services where the consideration is not more than \$30 000.

Clause 109 enables the Minister to make grants to promote the welfare of prisoners or offenders.

Clause 110 provides for accident compensation to be paid to prisoners, offenders and volunteers.

Clause 111 provides that any function, power or duty of the sheriff in relation to prisons or prisoners is unaffected by this Act.

Clause 112 vests power in the Governor in Council to make regulations under this Act.

PART 11—TRANSITIONAL PROVISIONS

Clause 113 applies the Act to all prisoners whether sentenced before or after the commencement of the Act and an offender whether the correctional order to which the offender is subject is made before or after the commencement of this clause.

Clause 114 saves the operation of remission regulations to persons serving prison sentences until the operation of Schedule 1 Item 4.

SCHEDULES

Schedule 1 sets out consequential repeals and amendments to other legislation.

Schedule 2 lists existing prisons, the names by which they are presently known and the new names which are given to them under this legislation.