

Public Correctional Services Authority Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

- Clause 1 sets out the main purposes of the Bill.
- Clause 2 provides for the commencement of sections 1 and 21 of the Act on the day of Royal Assent. The remaining provisions are to commence on a day or days to be proclaimed on or 1 January 1999, whichever first occurs.
- Clause 3 defines various terms used within the Bill.

PART 2—PUBLIC CORRECTIONAL SERVICES AUTHORITY

- Clause 4 provides for the establishment of the Authority.
- Clause 5 provides that the Authority does not represent the Crown.
- Clause 6 sets out the objectives of the Authority.
- Clause 7 sets out the functions of the Authority.
- Clause 8 Clause 8(1) provides that the Authority has the power to do anything that is necessary or convenient to be done in order to carry out its functions. Without limiting the generality of that clause, clause 8(2) sets out specific powers that the Authority has to enter into agreements to receive goods and services or (with the Minister's consent) provide goods or services, to take and hold indemnities, to purchase, lease or acquire real or personal property and to sell, exchange or dispose of any property.
- Clause 9 applies Schedule 1 to the Authority.
- Clause 10 provides that the Authority may delegate any of its powers or functions to specified persons.

- Clause 11 provides that the Authority has the powers conferred on it by the **Borrowing and Investments Powers Act 1987**. See clause 42 below.
- Clause 12 sets out the duties of the Directors of the Authority.
- Clause 13 provides that the Authority or the Minister on behalf of the Authority may bring legal proceedings against any person who contravenes clause 12.

PART 3—CORPORATE PLANS AND REPORTS

- Clause 14 requires the Authority to prepare a corporate plan for each financial year and sets out the contents of, the procedure for and time frames in which a corporate plan must be completed.
- Clause 15 provides for certain information to be specified in the Authority's statement of corporate intent.
- Clause 16 requires the Authority to act only in accordance with its corporate plan unless it obtains Ministerial approval to do otherwise.
- Clause 17 provides that the Authority's failure to comply with sections 14, 15 or 16 does not render any of its actions void or unenforceable.
- Clause 18 requires the Authority to notify the Minister immediately when the board of the Authority considers matters have arisen that may prevent or impair it achieving its objectives or targets under the plan.
- Clause 19 provides that the Authority's annual report under Part 7 of the **Financial Management Act 1994** must include a copy of any Order made under section 9I of the **Corrections Act 1986** and any Ministerial direction under section 9J of the **Corrections Act 1986** and the Authority's response to that direction. See clause 31 below.
- Clause 20 requires the Secretary to the Department of Justice to cause a review of the performance and operation of the Authority to be undertaken and reported to the Minister on or before 30 June 2001.

PART 4—TRANSITIONAL

- Clause 21 requires the Minister responsible for administering the **Corrections Act 1986** to designate in writing the public service officers and employees who are to be transferred to the employment of the Authority.
- Clause 22 provides that public service officers and employees designated under section 21 are deemed to have been employed by the Authority. The terms and conditions of transferred employees are required to be no less favourable than those the employees enjoyed immediately prior to transfer to the Authority's employment. All existing and accrued entitlements of transferred employees, including superannuation entitlements, are preserved. The transferred employees cease to be public servants.
- Clause 23 provides that, notwithstanding section 22, transferred employees' terms and conditions can be altered after the transfer under any law, award or agreement, and transferred employees may also resign or be dismissed on the basis of their then applicable terms and conditions.
- Clause 24 provides that transferred employees, who were previously Governors, prison officers, Regional managers or community corrections officers, will be deemed to be authorised under section 9M of the **Corrections Act 1986** to exercise the same powers or functions they possessed prior to being transferred. The Secretary to the Department of Justice will still be able to revoke these deemed authorisations in accordance with section 9M(6) or (7) of the **Corrections Act 1986**. See clause 31 below.
- Clause 25 provides that, despite the requirement in section 9N(1) of the **Corrections Act 1986**, the Secretary is not required to request a police report prior to authorising any of the transferred employees. See clause 31 below.

PART 5—AMENDMENTS TO THE CORRECTIONS ACT 1986

- Clause 26 provides the **Corrections Act 1986** is the Principal Act.
- Clause 27 repeals the definitions of "community corrections officer", "Governor", "medical officer", "prison officer" and "Regional

Manager" in the Principal Act. The repeal of these terms arises from the substitution of section 12 of the Principal Act. See clause 32 below. This clause also substitutes a new definition for "principal medical officer" and inserts a definition of "registered medical practitioner".

- Clause 28 is a deeming provision. A reference to a Governor, or a prison officer, or a Regional Manager, or a community corrections officer in a provision of the Principal Act, or any other Act, is deemed to be a reference to a person authorised under section 9A or 9M of the Principal Act to exercise all or any of the functions or powers of that officer under that provision.
- Clause 29 extends the Secretary's ability to delegate any or all of his or her functions or powers to include any functions or powers under an Order made under Part 2B. See clause 31 below.
- Clause 30 repeals section 9C of the Principal Act.
- Clause 31 inserts a new Part 2B in the Principal Act which sets out the role of the Authority. The following references are to the new section numbers in Part 2B:
- 9H sets out definitions of "Authority" and "correctional services".
- 9I provides that the Governor in Council may make an Order requiring the Authority to provide specified correctional services and the conditions applying to those services. This new section also provides that the Order may leave any matter to be determined or approved by the Secretary or the Commissioner, and may prescribe the times and manner in which the Authority must report to the Secretary on its operations.
- 9J provides that the Minister may issue written directions to the Authority in relation to its functions or powers and the Authority must comply. See also clause 19.
- 9K provides that, in addition to any other functions the Authority may have, the Authority has the functions conferred on it by an Order under Part 2B.

9L provides that nothing in Part 2B prevents the Minister appointing the Authority as an administrator under section 8F of the Principal Act.

9M mirrors section 9A of the Principal Act. It empowers the Secretary to authorise, by instrument, the Authority or its employees to exercise all or any of the powers or functions of the Secretary or an officer within the meaning of Parts 5 or 9 of the Principal Act subject to any conditions or limitations stated in the authority. The Authority or its employees' exercise of any power or function is limited to the authorisation under which it is given. The provision also sets out the grounds on which the Secretary can refuse to grant an authority or, having given the authorised person a reasonable opportunity to be heard, revoke an authority.

9N mirrors section 9B(1) and (3) of the Principal Act. It requires the Secretary to request a report from the Chief Commissioner of Police into the employee's character, honesty and integrity before authorising the employee under section 9M. The Chief Commissioner is obliged to undertake appropriate enquiries and report the findings to the Secretary.

9O provides for the appointment of monitors to review, assess and report on the Authority's provision of correctional services. It mirrors section 9D of the Principal Act except for sub-sections (2A) and (3A), which relate to police gaols.

9P provides that the Secretary must set (and may vary) written minimum standards for the provision of correctional services by the Authority. It mirrors section 9E, which applies to setting standards for the provision of correctional services by contractors under Part 2A. It requires the Authority to comply with the standards.

Clause 32 has the effect of repealing section 12 of the Principal Act relating to the appointment of officers for the purposes of the Principal Act. It substitutes a new provision providing for the authorisation of a principal medical officer by the Secretary to the Department of Justice upon the nomination of the Secretary to the Department of Human Services. A principal medical officer is required to undertake functions under the Principal Act such as those in section 29 relating to medical tests of prisoners.

- Clause 33 repeals section 16 of the Principal Act.
- Clause 34 substitutes "prison officer" for "officer" in section 28 of the Principal Act.
- Clause 35 amends section 30 of the Principal Act by extending paragraph (g) in the definition of "confidential information" to cover both officers within the meaning of Part 5 and a person authorised under section 9A or 9M to exercise powers or functions. It also amends the definition of "position" by removing the reference to "medical officer" in paragraph (c) and including persons authorised to exercise powers or functions under section 9M, that is, the Authority's employees, under paragraph (d).
- Clause 36 amends section 45(1) of the Principal Act by substituting "officer within the meaning of Part 5 or person authorised to exercise powers or functions under sections 9A or 9M" for "officer". This amendment ensures that a Governor's powers to order a prison officer to search or examine (for the security or good order of the prison) any person other than a judge of the Supreme or County Courts or a magistrate will continue.
- Clause 37 amends section 47(1)(g) of the Principal Act by substituting "a registered medical practitioner" for "the medical officer". This amendment was necessitated by the abolition of medical officer appointments under section 12 and will preserve intellectually disabled and mentally ill prisoners' rights.
- Clause 38 amends section 50(1) of the Principal Act by inserting "within the meaning of Part 5" after "officer". This overcomes the difficulty of "officer" not being defined in the current provision. It also makes clear that it is the disciplinary officer's notice to which the alleged prison offences must come to under section 50(2).
- Clause 39 amends section 56(3) of the Principal Act by replacing "other officer" with "any other person". This amendment overcomes the fact that the escorting person may not be an officer in the sense of an appointed public official.
- Clause 40 inserts a new section 62A in the Principal Act. This provision allows for the appointment of the Secretary to the Adult Parole Board and the continuing employment of the existing incumbent

in Division 5 of Part 8 of the Principal Act relating to Parole. Its inclusion is necessitated by the repeal of section 12 of the Principal Act relating to appointment of public service officers, including the Secretary to the Adult Parole Board.

Clause 41 amends section 70 of the Principal Act. It removes an obsolete reference to "officers of the Office of Corrections" and transfers responsibility for assisting the Adult Parole Board to the Secretary. The Secretary will be able to delegate this function under section 8 of the Principal Act.

Clause 42 amends section 72(7) of the Principal Act. It removes an obsolete reference to "officers of the Office of Corrections" and substitutes "the Secretary or the Governor of a prison" whom the Minister may authorise to make a report to the Commonwealth Attorney-General on a Commonwealth prisoner, or exercise a power or function in relation to a Commonwealth prisoner that the Commonwealth Attorney-General has in relation to that prisoner.

PART 6—MISCELLANEOUS

Clause 43 amends Schedule 1 of the **Borrowing and Investment Powers Act 1987** by inserting the Authority and the sections of the Act that apply to the Authority.

SCHEDULE 1

PROVISIONS APPLYING TO THE AUTHORITY

Clause 1 provides for a board of between five to seven directors of the Authority, which is responsible for managing the affairs of the Authority and exercising the powers of the Authority.

Clause 2 provides that the board will be constituted by a chairperson, deputy chairperson and other directors.

Clause 3 sets out the necessary expertise for directors, provides for the appointment of directors by the Governor in Council and exempts the office of directors from the application of the **Public Sector Management Act 1992**.

- Clause 4 provides that a director shall be appointed for a term not longer than three years on the terms and conditions fixed by the Minister, and that a director is eligible for re-appointment.
- Clause 5 provides for the deputy chairperson to act as chairperson in the chairperson's absence, for the Minister to appoint a director to act as deputy chairperson and for the Governor in Council to appoint an acting director.
- Clause 6 provides that the Authority, with the Minister's approval, may appoint or remove a chief executive officer of the Authority. Subject to the board's directions, the chief executive officer is responsible for the day to day management of the Authority.
- Clause 7 enables the Authority to employ employees on such terms and conditions as the Authority determines in accordance with any guidelines issued by the Minister.
- Clause 8 sets out the circumstances in which a director's office becomes vacant, a director may resign or be removed from office by the Governor in Council.
- Clause 9 provides that an act or decision of the Authority is not invalid due to a defect or irregularity in the appointment of a director or vacancy in the membership of the board. Similarly, anything done by or in relation to a person purporting to act as chairperson, deputy chairperson or as a director is not invalid if any of the stated circumstances arise.
- Clause 10 sets out the proceedings of the board in terms of the minimum number of meetings required per annum, special meetings, which director presides at meetings, what constitutes a quorum, voting rights at meetings and the keeping of the minutes of meetings.
- Clause 11 outlines the procedure and protocol for the board to make an urgent resolution without formally meeting.
- Clause 12 requires the directors to disclose any potential conflicts of interest in a matter being considered or about to be considered by the board. It also requires that the disclosure of the interest be recorded in the minutes and any director making a disclosure absent himself or herself from the deliberations, and not

participate in any decision on the matter (unless the board or the Minister otherwise determines).

Clause 13 enables the Authority to establish Committees. It allows for the inclusion of persons other than directors on Committees and the payment of fees and travelling expenses to members of Committees.

