

PRISONS (AMENDMENT) ACT 1988 No. 46

NEW SOUTH WALES



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PRISONS (AMENDMENT) ACT 1988 No. 46

NEW SOUTH WALES



Act No. 46, 1988

An Act to amend the Prisons Act 1952 in respect of corrective services administration; to effect miscellaneous amendments to that Act; and for other purposes. [Assented to 9 August 1988]

Prisons (Amendment) 1988

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Prisons (Amendment) Act 1988.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Prisons Act 1952 No. 9

3. The Prisons Act 1952 is amended as set out in Schedules 1 and 2.

Amendment of Public Finance and Audit Act 1983 No. 152, Sch. 3 (Departments)

4. The Public Finance and Audit Act 1983 is amended by omitting from Schedule 3 the following words:

Corrective Services Commission Chairman of the Commission

and by inserting instead the following words:

Department of Corrective Services Director-General of Corrective Services

Amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No. 4), Sch. 2 (Public Offices)

5. The Statutory and Other Offices Remuneration Act 1975 is amended by omitting from Part 1 of Schedule 2 the following words:

Chairman, Deputy Chairman and other the person appointed as a full-time Commissioner under the Prisons Act, 1952.

and by inserting instead the following words:

Director-General of Corrective Services.
Deputy Director-General of Corrective Services.

SCHEDULE 1—AMENDMENTS RELATING TO CORRECTIVE SERVICES ADMINISTRATION

(Sec. 3)

(1) Section 4 (**Definitions**)—

(a) Section 4 (1), definitions of “Chairman”, “Commission”, “Commissioner”, “Council” and “Deputy Chairman”—

Omit the definitions.

(b) Section 4 (1)—

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 SCHEDULE 1—AMENDMENTS RELATING TO CORRECTIVE SERVICES ADMINISTRATION—*continued*

Before the definition of “governor of a prison”, insert:

“Deputy Director-General” means a Deputy Director-General of Corrective Services;

“Director-General” means the Director-General of Corrective Services;

(c) Section 4 (2)—

Omit the subsection, insert instead:

(2) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(2) Sections 6–7D—

Omit the sections, insert instead:

Director-General

6. (1) The Governor may appoint a Director-General of Corrective Services.

(2) The Director-General has, subject to the direction and control of the Minister, the functions conferred or imposed on the Director-General by or under this or any other Act.

(3) The Director-General has the care, direction, control and management of all prisons and prison complexes.

(4) The Director-General may, either alone or in conjunction with other persons or organisations, make provision for the training, welfare and aftercare of prisoners.

Deputy Directors-General

7. (1) The Governor may appoint one or more Deputy Directors-General of Corrective Services.

(2) A Deputy Director-General has the functions conferred or imposed on a Deputy Director-General by or under this or any other Act.

(3) A Deputy Director-General is responsible to the Director-General for the due exercise of the Deputy Director-General’s functions.

Provisions relating to appointment etc. of Director-General and Deputy Directors-General

7A. Schedule 3 has effect.

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SCHEDULE 1—AMENDMENTS RELATING TO CORRECTIVE
SERVICES ADMINISTRATION—*continued*

- (3) Sections 10 (3), 12 (2), 16 (1), 20, 22, 25 (5), 26F (2), 27, 28 (1), 29 (1)–(3), 31, 38A, 41, 48A, 50 (1B), 60 (1), 63, 64 and 65 (1)—
Omit “Commission” wherever occurring, insert instead “Director-General”.
- (4) Section 22 (**Segregation of prisoners**)—
Section 22 (1)—
Omit “it or he”, insert instead “the Director-General or the governor”.
- (5) Section 26D (**Payment of compensation by prisoner for damage to property etc.**)—
Section 26D (1)—
Omit “Commission”, insert instead “Crown”.
- (6) Section 29 (**Absence from prison in certain circumstances permitted**)—
Section 29 (4)—
Omit “a member of the Commission” wherever occurring, insert instead “the Director-General”.
- (7) Section 40B (**Evidence of imprisonment etc.**)—
Omit “a full-time Commissioner”, insert instead “the Director-General”.
- (8) Section 48D—
Omit the section, insert instead:
Delegation by Director-General
48D. The Director-General may delegate to a person any of the Director-General’s functions, other than this power of delegation.
- (9) Section 48E (**Oath or affirmation of office**)—
- (a) Section 48E (1)—
Omit “A Commissioner or”, insert instead “The Director-General, a Deputy Director-General or a”.
- (b) Section 48E (2)—
Omit “a Commissioner or”, insert instead “the Director-General, a Deputy Director-General or a”.
- (c) Section 48E (2) (a)—
Omit “a Commissioner”, insert instead “the Director-General or a Deputy Director-General”.
- (d) Section 48E (3)—

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SCHEDULE 1—AMENDMENTS RELATING TO CORRECTIVE
SERVICES ADMINISTRATION—*continued*

- Omit “Commissioner or” where firstly occurring.
- (e) Section 48E (3)—
Omit “as a Commissioner or” where secondly occurring.
- (f) Section 48E (3A)—
Omit “Commissioner or”.
- (g) Section 48E (5) (c)—
Omit “the Commission or such officer”, insert instead “the Minister or such person”.
- (10) Section 59 (**Constitution of Release on Licence Board**)—
Section 59 (8), definition of “Departmental officer”—
Omit “a Commissioner or”.
- (11) Section 64 (2) (**Number of days of remission to be granted**)—
Omit “it”, insert instead “the Director-General”.
- (12) Schedules 3, 4—
Omit the Schedules, insert instead:

**SCHEDULE 3—PROVISIONS RELATING TO THE
DIRECTOR-GENERAL AND DEPUTY
DIRECTORS-GENERAL**

(Sec. 7A)

Age of Director-General and Deputy Director-General

1. A person of or above the age of 65 years is not eligible to be appointed as the Director-General or as a Deputy Director-General or to act in the office of the Director-General or a Deputy Director-General.

Term of office

2. Subject to this Schedule, the Director-General or a Deputy Director-General shall hold office for such period not exceeding 7 years as may be specified in the Director-General’s or Deputy Director-General’s instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Acting Director-General

3. (1) The Governor may, from time to time, appoint a Deputy Director-General to act in the office of the Director-General during the illness or absence of the Director-General, and the Deputy Director-General, while so acting, has all the functions of (and shall be taken to be) the Director-General.

(2) The Governor may, from time to time, appoint a person to act in the office of a Deputy Director-General during the illness or absence of the Deputy Director-General, and the person, while so acting, has all the functions of (and shall be taken to be) a Deputy Director-General.

(3) The Governor may, at any time, remove a person from any office to which the person was appointed under this clause.

**SCHEDULE 1—AMENDMENTS RELATING TO CORRECTIVE
SERVICES ADMINISTRATION—*continued***

(4) A person while acting in the office of a Deputy Director-General is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause, a vacancy in the office of the Director-General or a Deputy Director-General shall be taken to be an absence from office of the Director-General or Deputy Director-General.

Director-General to hold office full-time

4. The Director-General shall devote the whole of his or her time to the duties of the office of the Director-General, except to the extent permitted by this Act or by the Minister.

Remuneration

5. The Director-General and a Deputy Director-General are entitled to be paid—

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Director-General or Deputy Director-General.

Vacancy in office of Director-General or Deputy Director-General

6. (1) The office of the Director-General or a Deputy Director-General becomes vacant if the Director-General or Deputy Director-General—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed or retired from office by the Governor under this clause; or
- (e) reaches the age of 65 years; or
- (f) is absent from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on leave granted by the Minister or unless the absence is occasioned by illness or other unavoidable cause; or
- (g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (h) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (i) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable; or

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SCHEDULE 1—AMENDMENTS RELATING TO CORRECTIVE SERVICES ADMINISTRATION—*continued*

(j) engages in any paid employment outside the duties of the office, except with the consent of the Minister.

(2) The Governor may remove the Director-General or a Deputy Director-General from office at any time for incapacity, incompetence or misbehaviour.

(3) The Director-General or a Deputy Director-General may, after reaching the age of 60 years and before reaching the age of 65 years, be retired from office by the Governor and, if so retired, is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

Filling of vacancy of office of Director-General or Deputy Director-General

7. (1) If the office of the Director-General becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

(2) If the office of a Deputy Director-General becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

Public Service Act 1979

8. The Public Service Act 1979 does not apply to or in respect of the appointment of the Director-General or a Deputy Director-General and the Director-General and a Deputy Director-General are not subject to that Act.

Preservation of rights of Director-General or Deputy Director-General previously public servant etc.

9. (1) This clause applies where the Director-General or a Deputy Director-General was, immediately before being appointed as the Director-General or as a Deputy Director-General—

- (a) an officer of the Public Service or a Teaching Service; or
- (b) a contributor to a superannuation scheme; or
- (c) an officer employed by a proclaimed statutory body; or
- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee.

(2) Subject to the terms of appointment, the Director-General or a Deputy Director-General—

- (a) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person; and
- (b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as the Director-General or as a Deputy Director-General; and
- (c) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as the Director-General or as a Deputy Director-General.

(3) Service as the Director-General or as a Deputy Director-General shall be regarded as service as an officer or employee for the purposes of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred.

**SCHEDULE 1—AMENDMENTS RELATING TO CORRECTIVE
SERVICES ADMINISTRATION—*continued***

(4) The Director-General or a Deputy Director-General shall be regarded as an officer or employee, and the Crown shall be regarded as the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(5) If the Director-General or a Deputy Director-General would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme—

- (a) he or she is not so entitled on becoming (whether upon appointment as the Director-General or as a Deputy Director-General or at any later time while holding office as the Director-General or as a Deputy Director-General) a contributor to any other superannuation scheme; and
- (b) the provisions of subclause (4) cease to apply to or in respect of him or her and the Crown in any case where he or she becomes a contributor to any such other superannuation scheme.

(6) Subclause (5) does not prevent the payment to the Director-General or a Deputy Director-General (on his or her ceasing to be a contributor to a superannuation scheme) of such amount as would have been payable to him or her if he or she had ceased, because of resignation, to be an officer or employee for the purposes of the scheme.

(7) The Director-General or a Deputy Director-General is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.

(8) In this clause—

“proclaimed statutory body” means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

Director-General or Deputy Director-General entitled to re-appointment to former employment in certain cases

10. (1) A person who—

- (a) ceases to be the Director-General or a Deputy Director-General because of the expiration of the period for which the person was appointed or because of resignation; and
- (b) was, immediately before being appointed as the Director-General or as a Deputy Director-General—
 - (i) an officer of the Public Service or a Teaching Service; or
 - (ii) an officer or employee of a proclaimed statutory body; and
- (c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

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SCHEDULE 1—AMENDMENTS RELATING TO CORRECTIVE SERVICES ADMINISTRATION—*continued*

is entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that proclaimed statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as the Director-General or as a Deputy Director-General.

(2) Where subclause (1) does not apply to a person who—

- (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and
- (b) is after that appointment appointed as the Director-General or as a Deputy Director-General,

the person has, in the event of ceasing to be the Director-General or a Deputy Director-General, such rights (if any) to appointment as such an officer or employee as are specified in the instrument of appointment as the Director-General or as a Deputy Director-General or as are agreed on by the person or by or on behalf of the Government.

(3) In this clause—

“proclaimed statutory body” means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause.

(13) Schedules 6 (**Oath of office**) and 7 (**Affirmation of office**)—

Omit “Member of the Corrective Services Commission of New South Wales” wherever occurring, insert instead “Director-General of Corrective Services *or* Deputy Director-General of Corrective Services”.

SCHEDULE 2—MISCELLANEOUS AMENDMENTS

(Sec. 3)

(1) Section 4 (**Definitions**)—

Section 4 (1), definitions of “prison”, “prison complex”—

Omit the definition of “prison”, insert instead:

“prison” includes—

- (a) any premises or place declared to be a prison by virtue of a proclamation in force under section 5; and
- (b) any jail or place of detention, irrespective of the title by which it is known,

but does not include a detention centre within the meaning of the Children (Detention Centres) Act 1987;

“prison complex” means any premises or place declared to be a prison complex by virtue of a proclamation in force under section 5;

SCHEDULE 2—MISCELLANEOUS AMENDMENTS—*continued***(2) Sections 5, 5A—**

Omit the sections, insert instead:

Prison complexes and prisons

5. (1) The Governor may, by proclamation, declare any premises or place specified or described in the proclamation to be a prison complex for the purposes of this Act.

(2) The Governor may, by the proclamation by which any premises or place is declared to be a prison complex or by a subsequent proclamation, give a name to the prison complex.

(3) The Governor may, by the proclamation by which any premises or place is declared to be a prison complex or by a subsequent proclamation, declare any part of the prison complex to be a prison for the purposes of this Act.

(4) The Governor may, by proclamation, declare any premises or place specified or described in the proclamation, to be a prison for purposes of this Act.

(5) The Governor may, by the proclamation by which any premises or place or any part of a prison complex is declared to be a prison or by a subsequent proclamation, give a name to the prison.

(6) The Governor may, by proclamation, vary or revoke any proclamation under this section.

(3) Sections 8A, 8B—

After section 8, insert:

Official Visitors

8A. (1) The Minister may appoint, in respect of each prison, one or more Official Visitors.

(2) Any such appointment shall be notified in the Gazette.

(3) A person employed as an officer or temporary employee in the Department of Corrective Services is not eligible to be an Official Visitor.

(4) An Official Visitor—

(a) shall visit the prison in respect of which the Official Visitor is appointed at least once each month for the purpose of giving interviews to prison officers and prisoners; and

(b) may visit the prison at any other time unless, in the opinion of the governor of the prison, a visit would be undesirable for reasons of security; and

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- (c) shall, in accordance with the regulations, receive and deal with complaints; and
 - (d) shall, in accordance with the regulations, report at least once every 6 months to the Minister; and
 - (e) shall have such other functions as may be prescribed.
- (5) Schedule 4A has effect with respect to Official Visitors.

Disclosure of information

8B. An Official Visitor shall not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made—

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration or execution of this Act; or
- (c) for the purposes of any legal proceedings arising out of this Act; or
- (d) in accordance with a requirement of the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Maximum penalty: 10 penalty units.

(4) Section 10 (Visiting Justices)—

Section 10 (1)—

Omit the subsection, insert instead:

(1) For each prison there shall be a Visiting Justice, being a Magistrate appointed by the Chief Magistrate.

(5) Section 11 (Inspection by Judge or Magistrate)—

(a) After “District Court”, insert “, and any Magistrate,”.

(b) After “prison”, insert “or prison complex”.

(6) Section 12 (Exercise)—

Section 12 (3)—

After section 12 (2), insert:

(3) A prisoner shall not be taken to be absent from a prison merely because the prisoner is in some other part of a prison complex of which the prison forms part.

(7) Section 18 (Private property)—

Section 18 (2A)–(2C)—

After section 18 (2), insert:

 SCHEDULE 2—MISCELLANEOUS AMENDMENTS—*continued*

- (2A) Any money which is—
- (a) surrendered by a prisoner upon the prisoner's reception into prison and not sent away; or
 - (b) received but not spent by a prisoner while in prison,
- shall, while the prisoner remains in prison, be deposited in a bank in New South Wales.
- (2B) Until repaid, money deposited under subsection (2A) may be invested by the Treasurer in any form of investment approved by the Treasurer.
- (2C) Interest from any such investment shall be applied for the benefit of prisoners in such manner as the Director-General may determine.
- (8) Section 23 (**Prison offences to be declared by regulations**)—
- (a) Section 23 (1)—
After “within a prison”, insert “or prison complex”.
 - (b) Section 23 (3)—
After “within another prison”, insert “or prison complex”.
- (9) Section 25 (**Governor of prison may impose penalties for certain prison offences**)—
- (a) Section 25 (4A), (4B)—
After section 25 (4), insert:
 - (4A) The governor of a prison may order that a prisoner be deprived of specified amenities or privileges (being amenities or privileges of a kind prescribed by the regulations) for a period not exceeding 6 months if—
 - (a) the result of a urine test carried out in accordance with the regulations shows the presence of a drug in the prisoner's urine; or
 - (b) the prisoner refuses to provide a sample of his or her urine when required to do so by a prison officer of or above the rank of Assistant Superintendent.
 - (4B) The governor of a prison shall not make an order under subsection (4A) if the prisoner proves that the drug, the presence of which has been shown to be in the prisoner's urine, was administered on the prescription of a registered medical practitioner and in accordance with such instructions as may have been given by the medical practitioner.
 - (b) Section 25 (7)—
After section 25 (6), insert:

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(7) In this section—

“drug” means a prohibited drug or prohibited plant within the meaning of the Drug Misuse and Trafficking Act 1985.

(10) Section 28 (**Removal of prisoners to hospital**)—

(a) Section 28 (3)—

Omit “prison”, insert instead “the prison from which the prisoner was removed”.

(b) Section 28 (4)—

After section 28 (3), insert:

(4) A prisoner may, under this section, be removed to a hospital which is a prison.

(11) Section 29 (**Absence from prison in certain circumstances permitted**)—

Section 29 (5)—

After section 29 (4), insert:

(5) A prisoner shall not be taken to be absent from a prison merely because the prisoner is in some other part of a prison complex of which the prison forms part.

(12) Section 29c—

After section 29B, insert:

Transfer of prisoners to or through the Australian Capital Territory

29c. A prisoner who at any time is in the Australian Capital Territory—

(a) while being removed from one prison to another under this Act; or

(b) while being removed to a hospital or other place for medical attendance and treatment under this Act; or

(c) while absent from a prison in accordance with an order or permit under this Act,

remains in the lawful custody of the governor of the prison from which the prisoner is removed or absent.

(13) Section 30 (**Appointment of prison officers**)—

Omit “Public Service Act 1902”, insert instead “Public Service Act 1979”.

(14) Section 30A (**Commissioned and non-commissioned prison officers**)—

Section 30A (4A)—

After section 30A (4), insert:

 SCHEDULE 2—MISCELLANEOUS AMENDMENTS—*continued*

(4A) A commission is taken to have been resigned by a commissioned officer on his or her dismissal, resignation or termination of service.

(15) Section 33 (**Aiding escape**)—

Section 33 (b)—

After “prison”, insert “or prison complex”.

(16) Section 37 (**Trafficking**)—

(a) After “prison”, insert “or prison complex”.

(b) At the end of the section, insert:

(2) A person who enters or attempts to enter a prison or prison complex and who is found to have any spirituous or fermented liquor or any drug in his or her possession may be arrested by a prison officer who, for the purpose, shall have the same powers of arrest as a member of the Police Force.

(17) Section 38 (1) (**Miscellaneous offences**)—

After “prison” wherever occurring, insert “or prison complex”.

(18) Section 39 (**Custody of prisoners**)—

Section 39 (2)—

At the end of section 39, insert:

(2) A prisoner does not cease to be in the custody of the governor of a prison merely because the prisoner is for the time being detained in some other part of a prison complex (other than another prison) of which the prison forms part.

(19) Section 45A—

After section 45, insert:

Use of dogs in maintaining good order and security

45A. (1) A prison officer may, with the approval of the governor of a prison, use a dog to assist in maintaining the good order and security of the prison.

(2) Without limiting the generality of subsection (1), the approval of the governor of a prison may be given to any of the following:

- (a) the carrying out of searches within a prison or prison complex for any reason;
- (b) the tracking of an escaped prisoner;
- (c) the escorting of prisoners while they are being moved from one place to another;

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- (d) the disarming of prisoners;
- (e) the patrolling of prisons and prison complexes;
- (f) the assisting of a member of the Police Force in the execution of the member's functions.

(3) Without limiting the generality of section 46, a prison officer is not personally liable for injury or damage caused by the use of a dog under the prison officer's control if that use was in accordance with the governor's approval.

(4) Subsection (3) does not apply if injury or damage occurs as a result of anything commanded to be done by a prison officer maliciously and without reasonable and probable cause.

(20) Section 50 (**Regulations**)—

(a) Section 50 (1) (a), (g)—

After "prisons" wherever occurring, insert "and prison complexes".

(b) Section 50 (1) (a2)—

After section 50 (1) (a1), insert:

- (a2) the functions of Official Visitors, including inquiries by Official Visitors, the receiving of and dealing with complaints by Official Visitors and the furnishing of reports by Official Visitors;

(c) Section 50 (1) (d3)—

After section 50 (1) (d2), insert:

- (d3) the expenditure of money within prisons and prison complexes by prisoners;

(d) Section 50 (1) (k1)—

After section 50 (1) (k), insert:

- (k1) the use of dogs for the purposes of this Act;

(e) Section 50 (1) (j3)—

After section 50 (1) (j2), insert:

- (j3) the distribution and use of condoms in prisons and prison complexes;

(f) Section 50 (1) (o)—

After "prison" where secondly occurring, insert "or prison complex".

(21) Section 53 (**Definitions**)—

Section 53 (2)—

 SCHEDULE 2—MISCELLANEOUS AMENDMENTS—*continued*

Omit “in this Act”, insert instead “in this Part”.

(22) Part 9A—

After Part 9, insert:

PART 9A—PRISONERS RECEIVED FROM NORFOLK ISLAND

Definitions

58A. (1) In this Part—

“Commonwealth Act” means the Removal of Prisoners (Territories) Act 1923 of the Commonwealth;

“constable” and “prisoner” have the same respective meanings as in the Commonwealth Act;

“warrant” means a warrant issued under the Commonwealth Act.

(2) For the purposes of this Part, a reference to an order of a court or Magistrate includes a reference to a warrant issued by a court or a Magistrate, other than a warrant as defined by subsection (1).

Conveyance and detention of prisoners from Norfolk Island

58B. (1) If a constable has a prisoner in custody in accordance with the terms of a warrant, it is lawful for the constable to hold and deal with the prisoner under those terms.

(2) The governor of a prison shall accept custody of any prisoner delivered into the governor’s custody by a constable in accordance with a warrant.

(3) The prisoner shall, subject to this Part, be detained in that prison or any other prison in this State for the period necessary for the execution of the order of the court or Magistrate as referred to in the warrant.

(4) Nothing in this section prevents the early release of a prisoner by the exercise of the Royal prerogative of mercy or by reason of the operation of any law of the Commonwealth, or of any law in force in Norfolk Island, relating to the release of offenders.

(5) Subject to the provisions of the Commonwealth Act, a prisoner, until released from custody or delivered into the custody of a constable under a warrant, may be dealt with as if the sentence in respect of the prisoner was pronounced under a law in force in this State.

*Prisons (Amendment) 1988*SCHEDULE 2—MISCELLANEOUS AMENDMENTS—*continued***Return of prisoners to Norfolk Island**

58C. (1) If a constable presents to a governor of a prison a warrant in respect of a prisoner detained in the prison under this Part—

(a) for the delivery of the prisoner into the custody of the constable; and

(b) for the conveyance of the prisoner to Norfolk Island, the governor of the prison shall deliver the prisoner into the custody of the constable.

(2) A warrant under this section is sufficient authority for the constable to convey the prisoner in custody to Norfolk Island.

Evidentiary provision

58D. A document purporting to be a warrant and to be under the hand of the Administrator of Norfolk Island, a judge of a Federal Court, a Magistrate of a court established under a law in force in Norfolk Island or the clerk of such a court is admissible in any proceedings and is in all courts prima facie evidence of the particulars stated in the document.

(23) Section 63 (Monthly determination of remission)—**(a) Section 63 (4)—**

After “imprisonment”, insert “, in the case of a convicted prisoner whose term of imprisonment is 2 months or more”.

(b) Section 63 (4) (a)—

Omit “a convicted”, insert instead “the”.

(c) Section 63 (4A)—

After section 63 (4), insert:

(4A) If, at the end of a month of imprisonment, in the case of a convicted prisoner whose term of imprisonment is less than 2 months—

(a) the prisoner is granted a number of days of remission under section 64 (1) (a) or (b); and

(b) it appears to the Director-General that the prisoner would be entitled to be released earlier during the next month if the prisoner were to be granted remission in respect of the next month at the same rate as the prisoner has been granted remission in respect of the month then ended,

the Director-General shall thereupon make a further determination and grant the prisoner a number of days of remission, calculated at that rate, in respect of the residue of the period of imprisonment to be served by the prisoner.

SCHEDULE 2—MISCELLANEOUS AMENDMENTS—*continued*
(24) Section 64 (Number of days of remission to be granted)—**Section 64 (1) (b)—**

After “month”, insert “or 1 day of remission if the prisoner is not imprisoned in an open institution during the whole of the month but is so imprisoned for at least 14 days of the month”.

(25) Schedule 4A—

Before Schedule 5, insert:

**SCHEDULE 4A—PROVISIONS RELATING TO
OFFICIAL VISITORS**

(Sec. 8A (5))

Term of office

1. Subject to this Schedule, an Official Visitor shall hold office for such period not exceeding 2 years as may be specified in the Official Visitor's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Acting Official Visitors

2. (1) The Minister may, from time to time, appoint a person to act in the office of an Official Visitor during the illness or absence of the Official Visitor, and the person, while so acting, has all the functions of (and shall be taken to be) an Official Visitor.

(2) The Minister may, at any time, remove a person from any office to which the person was appointed under this clause.

(3) A person while acting in the office of an Official Visitor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(4) For the purposes of this clause, a vacancy in the office of an Official Visitor shall be taken to be an absence from office of the Official Visitor.

Remuneration

3. An Official Visitor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

Vacancy in office of Official Visitor

4. (1) The office of an Official Visitor becomes vacant if the Official Visitor—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister;
or
- (d) is removed from office by the Minister under this clause; or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

*Prisons (Amendment) 1988***SCHEDULE 2—MISCELLANEOUS AMENDMENTS—*continued***

(f) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or

(g) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an Official Visitor from office at any time for such cause as to the Minister seems sufficient.

(3) Without affecting the generality of subclause (2), the Minister may remove from office an Official Visitor who contravenes section 8B.

Filling of vacancy in office of Official Visitor

5. If the office of an Official Visitor becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

(26) Schedule 8 (Savings and transitional provisions)—**(a) Clause 1 (1)—**

At the end of the subclause, insert:

Prisons (Amendment) Act 1988.

(b) After Part 2, insert:**PART 3—PROVISIONS CONSEQUENT ON ENACTMENT
OF PRISONS (AMENDMENT) ACT 1988****Definitions**

9. In this Part—

“amending Act” means the Prisons (Amendment) Act 1988;

“Commission” means the Corrective Services Commission as constituted in accordance with this Act immediately before the relevant commencement;

“Commissioner” means a person who held office as a member of the Commission immediately before the relevant commencement;

“Council” means the Corrective Services Advisory Council as constituted in accordance with this Act immediately before the relevant commencement;

“relevant commencement” means the commencement of Schedule 1 (2) to the amending Act.

Abolition of the Commission and the Council

10. On the relevant commencement, the Commission and the Council are abolished.

Commissioners and members of the Council

11. (1) A person who, immediately before the relevant commencement, held office as a Commissioner or a member of the Council ceases to hold office as such on that commencement.

(2) Nothing in this clause affects any arrangement for the appointment of any such person to a position in the service of the Government.

*Prisons (Amendment) 1988***SCHEDULE 2—MISCELLANEOUS AMENDMENTS—*continued*****References to Commission etc.**

12. On and from the relevant commencement, a reference in any other Act, or in any instrument made under any Act, to—

- (a) the Comptroller-General of Prisons, the Deputy Comptroller-General of Prisons, the Commissioner of Corrective Services, the Deputy Commissioner of Corrective Services, the Commission, the Chairman of the Corrective Services Commission or a Commissioner shall be read as a reference to the Director-General; or
- (b) the Department of Prisons shall be read as a reference to the Department of Corrective Services.

Transfer of assets, liabilities etc. of Commission

13. On and from the relevant commencement, any assets, liabilities or obligations of the Commission shall become assets, liabilities or obligations of the Crown.

Private property

14. Section 18, as amended by the amending Act, applies to money referred to in subsection (2A) (a) or (b) of that section which is held on behalf of a prisoner as at the commencement of Schedule 2 (7) to the amending Act.

Application of Part 9A

15. (1) Expressions used in this clause and clause 16 have the same meanings as in Part 9A.

(2) Part 9A applies to a prisoner who was, before the commencement of that Part, placed in custody in a prison for the purpose of giving effect to an order or sentence of a court or Magistrate and has not been released before that commencement, as if—

- (a) the Commonwealth Act and that Part had been in force at the time the prisoner was placed in custody; and
- (b) the prisoner had been delivered into the custody of the governor of that prison in accordance with the terms of a warrant issued in relation to that order or sentence; and
- (c) the detention of the prisoner before the commencement of that Part had been detention in accordance with that Part.

Validation—Part 9A

16. (1) If, before the commencement of Part 9A, a prisoner has undergone a period of imprisonment in a prison by way of execution or purported execution of a sentence of imprisonment imposed under a law in force in Norfolk Island, whether or not the prisoner is in prison at that commencement, the prisoner shall be taken to have duly served that period of imprisonment in accordance with that sentence and that law.

Prisons (Amendment) 1988

SCHEDULE 2—MISCELLANEOUS AMENDMENTS—*continued*

(2) If, before the commencement of Part 9A, a prisoner has been detained in custody in this State for the purpose of giving effect to an order or sentence of a court or Magistrate, that detention shall for all purposes (including the purposes of any action or proceedings, whether instituted before or after the commencement of that Part) be taken to be as lawful as it would have been if the Commonwealth Act and that Part had been in force at the time of the detention and the detention had been in accordance with that Part.
