

## PRISONS (AMENDMENT) BILL 1988

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Prisons Act 1952—

- (a) to abolish the Corrective Services Commission of New South Wales and the Corrective Services Advisory Council; and
- (b) to provide for the appointment and functions of the Director-General of Corrective Services and Deputy Directors-General of Corrective Services; and
- (c) to simplify the provisions relating to the proclamation of prisons and to enable the proclamation of prison complexes; and
- (d) to provide for the appointment and functions of Official Visitors to prisons; and
- (e) to enable the banking and investment of money held on behalf of prisoners; and
- (f) to enable the governor of a prison to order the deprivation of a prisoner's privileges if the prisoner is found, as the result of a urine test, to have used a prohibited drug or if the prisoner refuses to provide a urine sample; and
- (g) to remove the right of appeal of a prisoner against a decision of a Visiting Justice; and
- (h) to provide for the lawful custody of a prisoner transferred to or through the Australian Capital Territory; and
- (i) to enable the use of dogs in maintaining good order and security in prisons and prison complexes; and
- (j) to enable the transfer to New South Wales of prisoners from Norfolk Island; and
- (k) to make other miscellaneous amendments.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the proposed Act to commence on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the Schedules of amendments.

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**Clause 4** amends Schedule 3 to the Public Finance and Audit Act 1983 consequent on the abolition of the Corrective Services Commission and so as to apply to the Department of Corrective Services the accounting, auditing and annual reporting requirements for departments.

**Clause 5** amends Schedule 2 to the Statutory and Other Offices Remuneration Act 1975 consequent on the abolition of the offices of Chairman, Deputy Chairman and Commissioner of the Corrective Services Commission and the creation of the offices of the Director-General of Corrective Services and Deputy Directors-General of Corrective Services.

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

**Schedule 1 (1)** amends section 4 (Definitions) of the Principal Act by omitting certain definitions consequent on the abolition of the Corrective Services Commission and the Corrective Services Advisory Council. It also inserts new definitions of “Director-General” (meaning the Director-General of Corrective Services) and “Deputy Director-General” (meaning a Deputy Director-General of Correctives Services).

**Schedule 1 (2)** omits sections 6–7D of the Principal Act (dealing with the Corrective Services Commission and the Advisory Council) and inserts proposed sections 6, 7 and 7A into the Principal Act. Proposed section 6 provides for the appointment by the Governor of the Director-General. It further provides that the Director-General is to have the control and management of all prisons. Proposed section 7 provides for the appointment by the Governor of Deputy Directors-General. Proposed section 7A gives effect to a substituted Schedule 3 to the Principal Act which contains provisions relating to the terms of appointment (including maximum age, length of appointment, remuneration and the preservation of certain rights and entitlements) of the Director-General and Deputy Directors-General.

**Schedule 1 (3)–(11) and (13)** amend various sections of the Principal Act as a consequence of the transfer to the Director-General of functions previously undertaken by the Corrective Services Commission.

**Schedule 1 (12)** omits Schedules 3 and 4 to the Principal Act and inserts the substituted Schedule 3. Proposed Schedule 3 contains provisions relating to the terms of appointment of the Director-General and Deputy Directors-General.

**SCHEDULE 2—MISCELLANEOUS AMENDMENTS**

**Proclamation of prisons and prison complexes**

**Schedule 2 (1)** amends section 4 (Definitions) of the Principal Act by substituting the definition of “prison” with a new definition. “Prison” includes any premises or place declared to be a prison by proclamation under the Principal Act or any jail or place of detention. **Schedule 2 (1)** also inserts a new definition of “prison complex”. “Prison complex” is defined to mean any premises or place declared to be a prison complex by proclamation. A prison complex will generally comprise one or more prisons and adjacent areas.

**Schedule 2 (2)** omits sections 5 and 5A from the Principal Act and inserts a new section 5 (Prison complexes and prisons) which enables the Governor to declare by proclamation any specified premises or place to be a prison complex. Any part of that complex may be proclaimed as a prison. Under proposed section 5 (4) the Governor may declare by proclamation any specified premises or place to be a prison. A proclamation made under proposed section 5 can be varied or revoked by proclamation.

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Schedule 2 (5) (b), (6), (8), (12), (16), (17) (a), (18), (19) and (21) (a) and (f) effect other amendments to various sections of the Principal Act as a consequence of the amendments made by Schedule 2 (1) and (2).

**Official Visitors**

Schedule 2 (3) inserts proposed sections 8A (Official Visitors) and 8B (Disclosure of information) into the Principal Act. Proposed section 8A provides that the Minister may appoint one or more Official Visitors in respect of each prison and specifies the functions of Official Visitors.

An officer of the Department of Corrective Services is ineligible to be appointed as an Official Visitor.

Official Visitors will be required to visit prisons at least once each month for the purpose of giving interviews to prison officers and prisoners. They are to receive and deal with complaints. They are to report at least once every 6 months to the Minister. They may exercise such other functions as may be prescribed by regulations made under the Principal Act. Official Visitors are to deal confidentially with information disclosed to them. Proposed section 8B creates an offence of unlawful disclosure of information obtained in connection with the administration or execution of the Principal Act or the regulations by an Official Visitor. The maximum penalty for this offence is 10 penalty units (currently \$1,000).

Schedule 2 (26) inserts proposed Schedule 4A into the Principal Act containing provisions relating to the terms of appointment of Official Visitors.

**Visiting Justices**

Schedule 2 (4) substitutes subsection (1) of section 10 (Visiting Justices) of the Principal Act to transfer from the Minister to the Chief Magistrate the function of appointing Magistrates as Official Visitors.

**Examination of prisons and prison complexes**

Schedule 2 (5) (a) amends section 11 (Inspection by Judge or Magistrate) of the Principal Act to provide that a Magistrate (as well as a Judge as is presently the case) may visit a prison or prison complex at any time the Magistrate thinks fit.

**Banking and investment of prisoner's money**

Schedule 2 (7) amends section 18 (Private property) of the Principal Act to authorise the banking and investment of money surrendered or received by a prisoner and which is not sent away or spent by the prisoner while in prison. The amendment enables the money to be invested by the Treasurer in a form of investment approved by the Treasurer. Interest from investments is to be applied, at the discretion of the Director-General, for the benefit of prisoners.

**Prison offences—urine tests for drugs**

Schedule 2 (9) amends section 25 (Governor of prison may impose penalties for certain prison offences) of the Principal Act to enable the governor of a prison to order that a prisoner be deprived of specified amenities or privileges for up to 6 months if a drug test detects the presence of a prohibited drug in the prisoner's urine or if the prisoner refuses to provide a sample of his or her urine if required to do so by a prison officer of or above the rank of Assistant Superintendent. A governor of a prison may not make such an order if the prisoner proves that the drug was administered in accordance with medical advice.

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**Appeals against decisions of Visiting Justices**

**Schedule 2 (10)** substitutes section 26G of the Principal Act to provide that no appeal lies to any court against the decision of a Visiting Justice to impose a penalty on a prisoner. Prisoners currently have a right of appeal to the District Court. By proposed clause 15 of Part 3 of Schedule 8 to the Principal Act, to be inserted by **Schedule 2 (27) (b)**, an appeal will be denied in respect of a decision of a Visiting Justice given before the commencement of the substituted section if an appeal against the decision has not been lodged before that commencement.

**Removal of prisoners from a prison to a hospital which is a prison**

**Schedule 2 (11)** amends section 28 (Removal of prisoners to hospital) of the Principal Act so that a prisoner can be removed in an emergency to a hospital, despite the fact that the hospital has been proclaimed to be a prison, on the order of the governor of the prison from which the prisoner is removed rather than on the order of the Director-General.

**Transfer of prisoners to or through the Australian Capital Territory**

**Schedule 2 (13)** inserts proposed section 29C into the Principal Act to provide that when a prisoner is in the Australian Capital Territory for a lawful reason the prisoner is still in the lawful custody of the governor of the prison from which the prisoner is removed or absent.

**Resignation of commission of commissioned prison officers**

**Schedule 2 (15)** amends section 30A (Commissioned and non-commissioned prison officers) of the Principal Act to provide that a commissioned prison officer is taken to have resigned his or her commission on resignation, dismissal or termination of services.

**Powers of arrest of prison officers**

**Schedule 2 (17) (b)** amends section 37 (Trafficking) of the Principal Act to enable a prison officer to arrest a person who enters or attempts to enter a prison or prison complex and who is found to be in possession of liquor or drugs.

**Use of dogs**

**Schedule 2 (20)** inserts proposed section 45A (Use of dogs in maintaining good order and security) into the Principal Act to authorise a prison officer, with the approval of the governor of the prison, to use a dog in circumstances prescribed by the regulations to assist in maintaining the good order and security of the prison. Those circumstances may include the use of dogs for carrying out searches for any reason within prisons and prison complexes, for tracking escapees, for escorting transferred prisoners, for disarming prisoners, for patrolling prisons and prison complexes and for assisting the police.

**Regulation-making powers**

**Schedule 2 (21) (b)–(e)** amend section 50 (Regulations) of the Principal Act to enable regulations to be made with respect to the functions of Official Visitors, the expenditure of money by prisoners, the use of dogs and the distribution and use of condoms in prisons and prison complexes.

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**Prisoners received from Norfolk Island**

**Schedule 2 (23)** inserts proposed Part 9A into the Principal Act dealing with prisoners received from Norfolk Island. The proposed Part contains provisions which are substantially the same as those in Part 9 which deals with prisoners received from the Australian Capital Territory. Proposed section 58A contains definitions for the purposes of the proposed Part. Proposed section 58B authorises the governor of a prison to accept custody of a prisoner from Norfolk Island in accordance with a warrant under the Removal of Prisoners (Territories) Act 1923 of the Commonwealth. Proposed section 58C provides for the return of prisoners to Norfolk Island. Proposed section 58D is an evidentiary provision to facilitate the proof of a Norfolk Island warrant.

**Schedule 2 (22)** makes an amendment consequential on the insertion of proposed Part 9A into the Principal Act.

**Remissions**

**Schedule 2 (24)** amends section 63 (Monthly determination of remission) of the Principal Act. The existing section 63 (4) will apply to the calculation of remission in the case of sentences of 2 months or more. A new section 63 (4A) will apply to the calculation of remission in the case of sentences of less than 2 months in order to overcome difficulties of calculation which have arisen in applying the provisions of the existing section 63 (4).

**Schedule 2 (25)** amends section 64 (Number of days of remission to be granted) of the Principal Act. The existing section allows remission of 2 days per month to be granted to a prisoner who is detained in an open prison during the whole of the month. The amendment will allow remission of 1 day per month to be granted to a prisoner who is detained in an open prison for less than the whole month but for at least 14 days of that month.

**Statute law revision**

**Schedule 2 (14)** makes an amendment by way of statute law revision.

**Savings and transitional provisions**

**Schedule 2 (27)** amends Schedule 8 (Savings and transitional provisions) to the Principal Act by inserting a new Part 3 to that Schedule containing provisions consequent on the enactment of the proposed Act. Proposed Part 3 provides for references in other Acts to, for example, the Corrective Services Commission to be read as references to the Director-General. It provides for the transfer of assets and liabilities of the Commission to the Crown. It provides for the application and validation of the proposed Part 9A of the Principal Act dealing with prisoners received from Norfolk Island. It also contains other provisions of a savings or transitional nature.

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