

Version No. 085
Corrections Act 1986
No. 117 of 1986

Version incorporating amendments as at 1 December 2010

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Version No. 085
Corrections Act 1986
No. 117 of 1986

Version incorporating amendments as at 1 December 2010

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purposes

The purposes of this Act are—

- (a) to provide for the establishment management and security of prisons and the welfare of prisoners; and
- (b) to provide for the administration of services related to community-based corrections and for the welfare of offenders; and
- (c) to provide for other correctional services.

2 Commencement

This Act comes into operation on a day or days to be proclaimed.

3 Definitions

- (1) In this Act—

Commissioner means the person employed as Commissioner for the purposes of this Act;

S. 3
amended by
No. 72/2001
s. 3(Sch.
item 4.2) (ILA
s. 39B(1)).

S. 3(1) def. of
*Commis-
sioner*
inserted by
No. 45/2001
s. 23(2).

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Part 1—Preliminary

s. 3

S. 3(1) def. of *Commission* substituted as def. of *Committee* by No. 45/1996 s. 4(a), repealed by No. 21/2008 s. 3.

* * * * *

S. 3(1) def. of *Commission farm* repealed by No. 45/1996 s. 4(b).

* * * * *

S. 3(1) def. of *Commission industrial site* repealed by No. 45/1996 s. 4(c).

* * * * *

community corrections officer means a community corrections officer appointed under Part 4;

S. 3(1) def. of *community-based order* amended by No. 49/1991 s. 119(7)(Sch. 4 item 3.1).

community-based order means a community-based order under Division 3 of Part 3 of the **Sentencing Act 1991**;

community corrections centre means a community corrections centre established under Part 9;

S. 3(1) def. of *contractor* inserted by No. 11/1993 s. 4(2), substituted by No. 94/1994 s. 4(a), amended by No. 45/1996 s. 17(Sch. 1 item 1(a)).

contractor means—

- (a) a party to an agreement with the Minister under section 8B(1); or
- (b) a party to an agreement with the Secretary under section 9(1); or

- (c) a party to an agreement with the Chief Commissioner of Police under section 9AA(1);

correctional order means any of the following—

- (a) a community-based order;
- (ab) a community work permit within the meaning of the **Infringements Act 2006**;
- (b) a parole order;
- (c) an intensive correction order;
- (d) a direction under section 107(1)(a) of the **Sentencing Act 1991** that a person be released on giving an undertaking that has as a condition that the person be under the supervision of a community corrections officer;
- (e) a direction under section 107(1)(b) of the **Sentencing Act 1991** that a person be released on parole;
- (f) a supervision order under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** that includes a condition with respect to supervision of the person subject to the order by a community corrections officer;
- (g) a combined custody and treatment order;
- (h) a drug treatment order (as defined in section 3(1) of the **Sentencing Act 1991**);
- (i) a home detention order under this Act or under section 18ZT of the **Sentencing Act 1991**;

S. 3(1) def. of *correctional order* amended by Nos 44/1991 s. 6(a), 49/1991 s. 119(7) (Sch. 4 item 3.2(a)(b)), 11/1993 s. 7(1)(a), 65/1997 s. 81(a), 45/2001 s. 23(1), 2/2002 s. 12, 53/2003 s. 11(2), 32/2006 s. 90(1).

S. 3(1) def. of *correctional services* amended by Nos 44/1991 s. 6(b), 94/1994 s. 4(b).

correctional services means the following services—

- (a) prisons and services related to prisons or prisoners;
- (b) services related to parole and programmes for persons subject to correctional orders;
- (c) community corrections centres regional centres and locations and services related to community corrections centres regional centres and locations;
- (d) community-based programmes and services related to the administration of community-based orders;

S. 3(1) def. of *Director-General* repealed by No. 45/1996 s. 17(Sch. 1 item 1(b)).

* * * * *

S. 3(1) def. of *domestic partner* inserted by No. 72/2001 s. 3(Sch. item 4.1), substituted by No. 12/2008 s. 73(1)(Sch. 1 item 12.1).

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

S. 3(1) def. of *escort officer* inserted by No. 45/2001 s. 3(2).

escort officer means—

- (a) a prison officer; or
- (b) an escort officer employed under Part 4;

fingerprints includes finger, palm, toe and sole prints, whether taken by impression or by means of a device to obtain a record of the fingerprints;

S. 3(1) def. of *fingerprints* inserted by No. 35/2002 s. 7(1).

Example: Fingerprints may be taken by a scanning device to obtain a digital record of the fingerprints.

function includes duty;

S. 3(1) def. of *function* inserted by No. 22/1996 s. 3.

Governor means the Governor of a prison and includes a person nominated by the Secretary to act as the Governor of a prison;

S. 3(1) def. of *Governor* amended by No. 45/1996 s. 17(Sch. 1 item 1(c)).

Health Services Commissioner means the Commissioner as defined in the **Health Services (Conciliation and Review) Act 1987**;

S. 3(1) def. of *Health Services Commissioner* inserted by No. 45/2001 s. 23(2).

home detention order means a home detention order made under Division 4 of Part 8;

S. 3(1) def. of *home detention order* inserted by No. 53/2003 s. 11(1).

hospital security order has the same meaning as in the **Sentencing Act 1991**;

S. 3(1) def. of *hospital security order* inserted by No. 69/2005 s. 26(1).

Human Rights Commissioner means the Human Rights Commissioner appointed under the Human Rights and Equal Opportunity Commission Act 1986 of the Commonwealth;

S. 3(1) def. of *Human Rights Commissioner* inserted by No. 45/2001 s. 23(2).

S. 3(1) def. of
lawyer
substituted by
No. 18/2005
s. 18(Sch. 1
item 22.1).

lawyer means an Australian lawyer within the
meaning of the **Legal Profession Act 2004**;

S. 3(1) def. of
letter
inserted by
No. 45/2001
s. 23(2).

letter, in relation to a prisoner, means a document
containing a communication to, or from, the
prisoner, and includes any article
accompanying the document;

location means any of the following places—

- (a) a community corrections centre;
- (b) a place at which an offender is by a
correctional order required to live;
- (c) a place which an offender is by a
correctional order or Part 9 required to
attend for educational recreation or for
any other purpose;

S. 3(1) def. of
*medical
officer*
amended by
No. 46/1998
s. 7(Sch. 1).

medical officer means a medical officer employed
under Part 4;

S. 3(1) def. of
midwife
inserted by
No. 13/2010
s. 51(Sch.
item 16.1).

midwife means a person registered under the
Health Practitioner Regulation National
Law—

- (a) to practise in the nursing and midwifery
profession as a midwife (other than as a
student); and
- (b) in the register of midwives kept for that
profession;

near relative of a prisoner means—

- (a) a partner of the prisoner;
- (b) a parent or grandparent of the prisoner or of a partner of the prisoner;
- (c) a child or grandchild (of any age) of the prisoner or of a partner of the prisoner;
- (d) a sibling of the prisoner or of a partner of the prisoner;

S. 3(1) def. of *near relative* inserted by No. 72/2001 s. 3(Sch. item 4.1).

nurse means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student);

S. 3(1) def. of *nurse* inserted by No. 13/2010 s. 51(Sch. item 16.1).

offender, other than in sections 30A to 30I, means a person of whatever age who is the subject of a correctional order;

S. 3(1) def. of *offender* amended by No. 49/2006 s. 3.

partner of a person means the person's spouse or domestic partner;

S. 3(1) def. of *partner* inserted by No. 72/2001 s. 3(Sch. item 4.1).

police gaol means a police gaol under Part 3;

position means office;

principal medical officer means a principal medical officer employed under Part 4;

S. 3(1) def. of *principal medical officer* amended by No. 46/1998 s. 7(Sch. 1).

prison means a prison under Part 3 and includes a prison industry site;

S. 3(1) def. of *prison* amended by No. 45/1996 s. 4(d).

S. 3(1) def. of *prisoner* amended by No. 45/1996 s. 17(Sch. 1 item 1(d)), substituted by No. 45/2001 s. 3(1).

prisoner means a person who under Part 1A is deemed to be in the legal custody of the Secretary;

S. 3(1) def. of *prison industry site* inserted by No. 45/1996 s. 4(e).

prison industry site means a place appointed as a prison industry site under section 84F;

prison officer means a prison officer employed under Part 4;

Regional Manager means a Regional Manager appointed under Part 4;

S. 3(1) def. of *registered medical practitioner* inserted by No. 13/2010 s. 51(Sch. item 16.1).

registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

S. 3(1) def. of *relative* inserted by No. 72/2001 s. 3(Sch. item 4.1).

relative of a prisoner means—

- (a) a partner of the prisoner;
- (b) a parent or grandparent of the prisoner or of a partner of the prisoner;
- (c) a child or grandchild (of any age) of the prisoner or of a partner of the prisoner;
- (d) a sibling of the prisoner or of a partner of the prisoner;
- (e) a child (of any age) of a sibling of the prisoner or of a sibling of a partner of the prisoner;
- (f) a child (of any age) of a sibling of a parent of the prisoner or of a sibling of a parent of a partner of the prisoner;

<p><i>Secretary</i> means Secretary to the Department of Justice under the Public Administration Act 2004 and includes a person acting as the Secretary to the Department of Justice under that Act;</p>	<p>S. 3(1) def. of <i>Secretary</i> inserted by No. 45/1996 s. 17(Sch. 1 item 1(e)), amended by Nos 46/1998 s. 7(Sch. 1), 108/2004 s. 117(1) (Sch. 3 item 45.1).</p>
<p><i>Secretary to the Department of Health</i> means the Department Head (within the meaning of the Public Administration Act 2004) of the Department of Health;</p>	<p>S. 3(1) def. of <i>Secretary to the Department of Health</i> inserted by No. 29/2010 s. 52(1).</p>
<p><i>spouse</i> of a person means a person to whom the person is married;</p>	<p>S. 3(1) def. of <i>spouse</i> inserted by No. 72/2001 s. 3(Sch. item 4.1).</p>
<p><i>sub-contractor</i> means a sub-contractor of a contractor;</p>	<p>S. 3(1) def. of <i>sub-contractor</i> inserted by No. 94/1994 s. 4(c).</p>
<p><i>supervise</i>, in relation to a prisoner or person, includes to take charge of and to hold the prisoner or person;</p>	<p>S. 3(1) def. of <i>supervise</i> inserted by No. 45/2001 s. 3(2).</p>
<p><i>transition centre</i> means a transition centre under Part 3;</p>	<p>S. 3(1) def. of <i>transition centre</i> inserted by No. 2/2005 s. 3.</p>

s. 3

S. 3(1) def. of
transport
inserted by
No. 45/2001
s. 3(2).

transport includes escort, bring, transfer, convey,
take and deliver;

S. 3(1) def. of
victims
register
inserted by
No. 14/2004
s. 4.

victims register means the register established
under the regulations for the purpose of
recording persons entitled to be given
information under section 30A and to make
victim submissions;

S. 3(1) def. of
victim
submission
inserted by
No. 14/2004
s. 4.

victim submission means a submission made
under section 74A to the Adult Parole Board;

volunteer means a person whose name appears in
the Register of Volunteers kept under Part 4.

S. 3(2)
inserted by
No. 72/2001
s. 3(Sch.
item 4.2),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 12.2).

(2) For the purposes of the definition of *domestic*
partner in subsection (1)—

- (a) *registered relationship* has the same
meaning as in the **Relationships Act 2008**;
and
- (b) in determining whether persons who are not
in a registered relationship are domestic
partners of each other, all the circumstances
of their relationship are to be taken into
account, including any one or more of the
matters referred to in section 35(2) of the
Relationships Act 2008 as may be relevant
in a particular case.

4 References to prisons to include transition centres

S. 4
amended by
Nos 16/1991
s. 3(1)(a)(b),
44/1991
s. 6(c),
49/1991
s. 119(7)
(Sch. 4
item 3.3),
45/1996
s. 17(Sch. 1
item 2(a)(b)),
26/1997
s. 12(6),
repealed by
No. 45/2001
s. 4, new s. 4
inserted by
No. 2/2005
s. 4.

- (1) A reference in the following provisions of this Act to a prison is to be read as including a reference to a transition centre, unless the contrary intention appears: Parts 1, 1A, 2, 2A, 4, 5, 6, 7, 8 (other than sections 56 and 56AC), 8A, 9C and 10.
- (2) A reference in any other Act, in any subordinate instrument or in any other document to a prison is to be read as including a reference to a transition centre, unless the contrary intention appears.
- (3) A reference to a Governor in this Act or in any regulations made under this Act is to be read as including a reference to the officer in charge of a transition centre, unless the contrary intention appears.
- (4) A reference in any other Act, in any subordinate instrument or in any other document to a Governor of a prison is to be read as including a reference to the officer in charge of a transition centre, unless the contrary intention appears.

S. 4(1)
amended by
No. 50/2008
s. 4.

s. 5

5 Act to bind Crown

This Act binds the Crown, not only in right of the State of Victoria but also, as far as the legislative power of the Parliament permits, the Crown in all its other capacities.

S. 6
repealed by
No. 11/1993
s. 7(1)(b).

* * * * *

PART 1A—LEGAL CUSTODY

Pt 1A
(Heading and
ss 6–6F)
inserted by
No. 45/2001
s. 5.

6 Order of imprisonment

New s. 6
inserted by
No. 45/2001
s. 5.

In this Part, an order of imprisonment is—

- (a) a sentence of imprisonment imposed by a court; or
- (b) an order or warrant issued by a court requiring or directing the imprisonment of a person or the detention of a person in a prison or in a place of detention on court premises; or
- (c) a direction, order or warrant or other instrument made or issued under an Act requiring or directing or authorising the imprisonment of a person or the detention of a person in a prison or the transfer of a person to or from a prison or the return of a person to a prison; or
- (ca) a preventative detention order within the meaning of the **Terrorism (Community Protection) Act 2003** or an order for a person's detention made under a corresponding preventative detention law within the meaning of that Act; or
- (d) an order issued under an interstate law of a participating State within the meaning of the **Prisoners (Interstate Transfer) Act 1983** that corresponds with an order of transfer under that Act or a transfer order made under the Transfer of Prisoners Act 1983 of the Commonwealth or an order made under section 31 of that Act that provides for the

S. 6(ca)
inserted by
No. 5/2006
s. 14(1).

S. 6(d)
amended by
Nos 49/2006
s. 4, 91/2009
s. 201(1).

s. 6A

transfer of a person from another State or a Territory to Victoria; or

S. 6(e)
inserted by
No. 91/2009
s. 201(2).

- (e) a detention order or interim detention order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009**.

S. 6A
inserted by
No. 45/2001
s. 5.

6A When is a person in the legal custody of the Secretary?

- (1) A person is deemed to enter the legal custody of the Secretary when—
- (a) an order of imprisonment is made in relation to the person; and
 - (b) either of the following events occurs—
 - (i) a person acting under lawful authority on behalf of the Secretary takes physical custody of the person; or
 - (ii) a person at a prison acting under lawful authority on behalf of the Secretary receives the person into the prison.

S. 6A(1A)
inserted by
No. 5/2006
s. 14(2).

- (1A) Subsection (1) applies each time when—
- (a) a person who has ceased to be in the legal custody of the Secretary by force of section 6B(ca) is again taken into custody and detained under the order referred to in that section; and
 - (b) either of the events referred to in subsection (1)(b) occurs.
- (2) A person who enters the legal custody of the Secretary under subsection (1) is deemed to remain in that custody until that custody ceases under this Part.
- (3) This section applies to a person regardless of the person's age.

- (4) A person in respect of whom a detention order or an interim detention order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009** has been made is deemed to be in the legal custody of the Secretary following the occurrence of either event set out in subsection (1)(b).

S. 6A(4)
inserted by
No. 91/2009
s. 201(3).

6B When does legal custody of the Secretary cease?

S. 6B
inserted by
No. 45/2001
s. 5,
amended by
No. 5/2006
s. 14(4) (ILA
s. 39B(1)).

- (1) A person ceases to be in the legal custody of the Secretary—

- (a) on the expiration of the person's sentence of imprisonment, or if the person is serving more than one sentence of imprisonment, on the expiration of all of those sentences of imprisonment, unless the person is also in that custody under a detention order or an interim detention order under the **Serious Sex Offenders (Detention and Supervision) Act 2009** or for some other reason; or

S. 6B(1)(a)
amended by
No. 91/2009
s. 201(4).

- (b) when the Secretary acting under lawful direction or authority releases the person from the Secretary's legal custody; or

- (c) when the legal custody of the person is lawfully transferred from the Secretary to the Chief Commissioner of Police or another person; or

- (ca) if the person is being detained under an order referred to in section 6(ca), during any period when he or she is taken not to be detained under the order by force of section 13V of the **Terrorism (Community Protection) Act 2003** or section 105.26 of the Criminal Code of the Commonwealth; or

S. 6B(ca)
inserted by
No. 5/2006
s. 14(3).

s. 6C

- (d) if the person is in a prison or is in the physical custody of an officer within the meaning of Part 5 or an escort officer or of a person acting under lawful authority on behalf of the Secretary, when the person escapes from that prison or physical custody; or
- (e) if the person is in the community in the legal custody of the Secretary, when the person does anything that constitutes an offence under section 479C(2) or (3) of the **Crimes Act 1958**.

S. 6B(2)
inserted by
No. 5/2006
s. 14(4).

- (2) Despite subsection (1)(a), a person being detained under an order referred to in section 6(ca) who is in the legal custody of the Secretary does not cease to be in the legal custody of the Secretary on the expiration of the order if—
 - (a) another such order comes into force in relation to the person immediately after that expiration; or
 - (b) another such order continues in force in relation to the person.

S. 6C
inserted by
No. 45/2001
s. 5.

6C Persons not regarded to be in the Secretary's legal custody

- (1) Despite section 6A, the following persons are not to be regarded as being in the Secretary's legal custody—
 - (a) a person who is on parole;
 - (b) a person who is serving a combined custody and treatment order and who is in the community under that order;
 - (ba) a person who is subject to a drug treatment order and who is in the community under that order;

S. 6C(1)(ba)
inserted by
No. 2/2002
s. 13(1).

(bb) a person who is serving a sentence of imprisonment by way of home detention;

S. 6C(1)(bb)
inserted by
No. 53/2003
s. 12.

(bc) a person who is absent from a prison under a fine default permit;

S. 6C(1)(bc)
inserted by
No. 2/2005
s. 8(1).

(c) a person who is serving a sentence of imprisonment by way of intensive correction in the community;

(d) a person who is serving a sentence of imprisonment that was wholly or partly suspended and who is in the community in accordance with that sentence.

(2) A person is on parole if there is in force a parole order relating to the person and the person is serving a sentence of imprisonment but is not detained in a prison.

(3) A person is in the community under a drug treatment order even if he or she is—

S. 6C(3)
inserted by
No. 2/2002
s. 13(2).

(a) submitting to residential detoxification or other treatment in accordance with a program condition attached to the order; or

(b) at a place in accordance with an order under section 18ZL(1)(c) or (e) of the **Sentencing Act 1991**.

6D When is a person in the legal custody of the Chief Commissioner of Police?

S. 6D
inserted by
No. 45/2001
s. 5.

(1) A person is deemed to enter the legal custody of the Chief Commissioner of Police for the purposes of this Act when—

(a) an order of imprisonment is made in relation to the person, or an order is made by a court requiring the person to be held in police

s. 6D

custody, or there is other lawful authority to detain the person in a police gaol; and

- (b) either of the following events occurs—
- (i) a member of the police force or a person acting under lawful authority on behalf of the Chief Commissioner takes physical custody of the person; or
 - (ii) a person at a police gaol acting under lawful authority on behalf of the Chief Commissioner receives the person into the police gaol.

S. 6D(1A)
inserted by
No. 5/2006
s. 14(5).

- (1A) Subsection (1) applies each time when—
- (a) a person who has ceased to be in the legal custody of the Chief Commissioner of Police by force of section 6E(ca) is again taken into custody and detained under the order referred to in that section; and
 - (b) either of the events referred to in subsection (1)(b) occurs.

S. 6D(2)(a)
amended by
No. 48/2006
s. 42(Sch.
item 8.1).

- (2) A person is also deemed to enter into the legal custody of the Chief Commissioner when—
- (a) the person is remanded in custody by a court or a bail justice under the **Children, Youth and Families Act 2005**; and
 - (b) a member of the police force or a person acting under lawful authority on behalf of the Chief Commissioner takes physical custody of the person.
- (3) A person who enters the legal custody of the Chief Commissioner of Police under subsection (1) or (2) is deemed to remain in that custody until that custody ceases under this Part.

- (4) This section applies to a person regardless of the person's age.

6E When does legal custody of the Chief Commissioner cease?

S. 6E
inserted by
No. 45/2001
s. 5,
amended by
No. 5/2006
s. 14(7) (ILA
s. 39B(1)).

- (1) A person who is deemed by this Act to enter the legal custody of the Chief Commissioner of Police ceases to be in the legal custody of the Chief Commissioner—

- (a) on the expiration of the person's sentence of imprisonment, or if the person is serving more than one sentence of imprisonment, on the expiration of all of those sentences of imprisonment, unless the person is also in that custody for some other reason; or
- (b) when the Chief Commissioner acting under lawful direction or authority releases the person from the Chief Commissioner's legal custody; or
- (c) when the legal custody of the person is lawfully transferred from the Chief Commissioner to the Secretary or another person; or

- (ca) if the person is being detained under an order referred to in section 6(ca), during any period when he or she is taken not to be detained under the order by force of section 13V of the **Terrorism (Community Protection) Act 2003** or section 105.26 of the Criminal Code of the Commonwealth; or

S. 6E(ca)
inserted by
No. 5/2006
s. 14(6).

- (d) if the person is in a police gaol or is in the physical custody of a member of the police force or of a person acting under lawful authority on behalf of the Chief Commissioner, when the person escapes from that police gaol or physical custody; or

S. 6E(d)
amended by
No. 2/2005
s. 8(2)(a).

s. 6F

S. 6E(e)
inserted by
No. 2/2005
s. 8(2)(b).

(e) when the Chief Commissioner releases from his or her legal custody a person who has been issued, while in that custody, with a fine default permit by the Secretary.

S. 6E(2)
inserted by
No. 5/2006
s. 14(7).

(2) Despite subsection (1)(a), a person being detained under an order referred to in section 6(ca) who is in the legal custody of the Chief Commissioner of Police does not cease to be in the legal custody of the Chief Commissioner of Police on the expiration of the order if—

(a) another such order comes into force in relation to the person immediately after that expiration; or

(b) another such order continues in force in relation to the person.

S. 6F
inserted by
No. 45/2001
s. 5.

6F Powers of court or tribunal not to be affected

(1) Every person in the legal custody of the Secretary under this Part who is brought before a court or tribunal remains in the legal custody of the Secretary, subject to any lawful order or direction of the court or tribunal.

(2) Every person in the legal custody of the Chief Commissioner of Police under this Part who is brought before a court or tribunal remains in the legal custody of the Chief Commissioner, subject to any lawful order or direction of the court or tribunal.

(3) The fact that a person appearing before a court or tribunal is in the legal custody of the Secretary or the Chief Commissioner of Police does not affect any power or authority of the court or tribunal to make orders or directions in relation to the person in respect of the proceedings before the court or tribunal.

PART 2—ADMINISTRATION

7 Functions of Secretary

- (1) The Secretary is responsible for monitoring performance in the provision of all correctional services to achieve the safe custody and welfare of prisoners and offenders.

S. 7(1)
repealed by
No. 45/1996
s. 17(Sch. 1
item 3(a)),
new s. 7(1)
inserted by
No. 21/2008
s. 4(1).

* * * * *

S. 7(2)
amended by
No. 45/1996
s. 17(Sch. 1
item 3(b)),
repealed by
No. 55/2009
s. 3.

8 Delegation

- (1) The Secretary may, by instrument, delegate to the Commissioner or to any other employee of the Department of Justice or to any officer within the meaning of Part 5 or Part 9 any function, power, duty or responsibility of the Secretary—

S. 8
amended by
No. 16/1991
ss 14(2), 15(2),
substituted by
No. 94/1994
s. 5.

- (a) under this Act or the regulations or under any other Act other than the **Public Administration Act 2004**; or

S. 8(1)
amended by
Nos 45/1996
s. 17(Sch. 1
item 4(a)(b)),
46/1998
s. 7(Sch. 1).

S. 8(1)(a)
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 45.2).

s. 8A

S. 8(1)(ab)
inserted by
No. 45/2001
s. 24,
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 45.2).

(ab) under regulations made under any Act other than the **Public Administration Act 2004**;
or

(b) under an agreement under Part 2A—
except this power of delegation and the Secretary's powers under section 54A.

S. 8(2)
amended by
No. 45/1996
s. 17(Sch. 1
item 4(a)).

(2) The Secretary may under subsection (1) delegate a function, power, duty or responsibility to a person or class of persons.

S. 8A
inserted by
No. 94/1994
s. 6.

8A Commissioner

S. 8A(1)
amended by
Nos 45/1996
s. 17(Sch. 1
item 5),
46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 45.2).

(1) The Secretary may under Part 3 of the **Public Administration Act 2004** employ a person to be Commissioner for the purposes of this Act.

(2) The Commissioner is responsible for—

S. 8A(2)(a)
amended by
No. 21/2008
s. 4(2).

(a) assessing performance in the provision of all correctional services to achieve the safe custody and welfare of prisoners and offenders; and

S. 8A(2)(b)
amended by
No. 45/1996
s. 17(Sch. 1
item 5).

(b) exercising any other functions relating to correctional services that the Secretary may determine from time to time.

(3) The Commissioner must endeavour to exercise his or her functions in relation to correctional services impartially between all providers of correctional services so far as this is consistent with the safe custody and welfare of prisoners and offenders and the proper operation of the correctional services.

* * * * *

S. 9
repealed by
No. 16/1991
s. 15(3).

Pt 2A
(Heading and
ss 9–9G)
inserted by
No. 11/1993
s. 4(1).

PART 2A—ENGAGEMENT OF CONTRACTORS

Pt 2A Div. 1
(Heading and
ss 8B–8G)
inserted by
No. 94/1994
s. 7.

Division 1—Correctional services agreements

S. 8B
inserted by
No. 94/1994
s. 7.

8B Minister may enter into correctional services agreements

- (1) The Minister may, for and on behalf of the Crown—
 - (a) enter into an agreement with a person or body for the provision by that person or body of any correctional services; or
 - (b) enter into an agreement with a person or body which is ancillary to an agreement entered into under paragraph (a), including an agreement with any person or body providing financial accommodation (within the meaning of the **Borrowing and Investment Powers Act 1987**) or a guarantee in respect of an agreement entered into under paragraph (a).
- (2) The Minister must obtain the written approval of the Treasurer before entering into an agreement under subsection (1).

8C Matters to be included in agreement

S. 8C
inserted by
No. 94/1994
s. 7.

- (1) An agreement under section 8B(1)(a) must provide for—
- (a) compliance by the contractor with all relevant provisions of this Act or the regulations or of any other Act or instrument of a legislative character;
 - (b) objectives and performance standards in relation to the provision of services;
 - (c) the fees, costs and charges to be paid to the contractor;
 - (d) the submission of periodic reports in relation to the contractor's operations under the agreement;
 - (e) an indemnity by the contractor in favour of the Crown and the Minister;
 - (f) the office the holder of which is to be the principal officer for the purposes of the application of the **Freedom of Information Act 1982** to the contractor;
 - (g) the office the holder of which is to be the principal officer for the purposes of the application of the **Ombudsman Act 1973** to the contractor;
 - (h) any other matter that may be prescribed.
- (2) An agreement under section 8B(1) may contain—
- (a) a provision leaving any matter to be determined, approved or dispensed with by a specified person or body;
 - (b) a provision providing for the assignment to the Minister or any other person of any right or interest;

- (c) a provision providing for the Minister to delegate powers and functions under the agreement;
- (d) a provision providing for sub-contracting;
- (e) a provision requiring the provision by the contractor of a performance bond;
- (f) a provision providing for the suspension of obligations under the agreement in specified circumstances, except the obligations referred to in subsection (1)(e), (f) and (g);
- (g) in the case of an agreement under section 8B(1)(b), a provision providing for—
 - (i) the Minister to take over, or nominate any other person or body to take over, rights or obligations under any other agreement or transaction;
 - (ii) the transfer of land to the Minister in the circumstances set out in the agreement;
- (h) a provision providing for rights of access in relation to correctional services;
- (i) any other provisions that are not inconsistent with this Act or the regulations.

S. 8D
inserted by
No. 94/1994
s. 7.

8D Agreement to run with land

- (1) An agreement entered into under section 8B(1)(b) under which the owner of land covenants to transfer that land to the Minister in the circumstances set out in the agreement must be under seal and must bind the owner of land to those covenants.

- (2) Sections 181, 182 and 183 of the **Planning and Environment Act 1987** apply to that agreement as if a reference in those sections to the responsible authority were a reference to the Minister.
- (3) Land which is transferred to the Minister in accordance with an agreement under section 8B(1)(b) is deemed to be unalienated land of the Crown freed and discharged from all trusts, limitations, reservations, restrictions, encumbrances, estates and interests.
- (4) No compensation is payable by the Crown in respect of the transfer of land to the Minister in accordance with an agreement under section 8B(1)(b) except compensation (if any) which is expressly provided for in that agreement.

8E Rights of access

S. 8E
inserted by
No. 94/1994
s. 7.

- (1) A contractor or sub-contractor must give the Minister, the Secretary, the Commissioner and any person authorised by the Secretary or the Commissioner free and unfettered access at all times, together with any assistants and equipment that the Minister, the Secretary, the Commissioner or authorised person considers necessary—
 - (a) to any correctional service under the management or control of the contractor or sub-contractor (as the case requires) which is the subject of an agreement under Part 2A;
and
 - (b) to all persons detained or employed there;
and

S. 8E(1)
amended by
Nos 45/1996
s. 17(Sch. 1
item 6),
45/2001
s. 25(a)(i)(ii).

- (c) to all documents in the possession of the contractor or sub-contractor (as the case requires) in relation to any correctional service which is the subject of an agreement under Part 2A—

for the purpose of ensuring compliance with the Act or the regulations or an agreement under Part 2A or ensuring that the safe custody and welfare of prisoners and offenders are maintained.

Penalty: 50 penalty units.

- (2) A contractor or sub-contractor must give an administrator appointed under section 8F free and unfettered access at all times, together with any assistants and equipment that the administrator considers necessary—
 - (a) to any correctional service under the management or control of the contractor or sub-contractor (as the case requires) which is the subject of an agreement under Part 2A; and
 - (b) to all persons detained or employed there; and
 - (c) to all documents in the possession of the contractor or sub-contractor (as the case requires) in relation to any correctional service which is the subject of an agreement under Part 2A—

for the purpose of enabling the administrator to carry out his or her powers and functions under that section.

Penalty: 50 penalty units.

- (3) An authorisation under subsection (1) must be in writing and may be given subject to any conditions and limitations that the Secretary or Commissioner (as the case may be) thinks fit.

S. 8E(3)
amended by
Nos 45/1996
s. 17(Sch. 1
item 6),
45/2001
s. 25(b).

8F Emergency powers

S. 8F
inserted by
No. 94/1994
s. 7.

- (1) If an agreement under section 8B(1) relates to the management of a correctional service, the Minister may intervene in the management of that service if—
- (a) the Minister considers that—
 - (i) there is an emergency in the service; or
 - (ii) the contractor has failed to provide competent management of the service; and
 - (b) the Minister considers that it is in the public interest or the interest of the safe custody or welfare of prisoners or offenders to intervene.
- (2) If the Minister intervenes in the management of a correctional service, the Minister may appoint an administrator to manage the service until the Minister determines that—
- (a) the emergency is over; or
 - (b) the contractor is able to manage the service to the satisfaction of the Minister.
- (3) If an administrator is appointed under subsection (2), then for the period of that appointment—
- (a) the contractor a sub-contractor and any person appointed or employed by the contractor or a sub-contractor to manage the service must—

s. 8G

- (i) manage the service in accordance with the directions of the administrator; or
 - (ii) cease to manage the service completely or to the extent directed by the administrator; and
- (b) any person who is employed by the contractor or a sub-contractor in relation to the service must comply with the directions of the administrator in relation to the management and operation of the service.

Penalty: 50 penalty units.

- (4) An administrator appointed under subsection (2) has and may exercise all of the functions or powers under this Act or the regulations of a Governor, prison officer, Regional Manager and community corrections officer in relation to the service and prisoners and offenders for the period of appointment.
- (5) The Secretary must provide the administrator with any assistance necessary to the carrying out of his or her functions under this section.
- (6) This section applies despite anything to the contrary in the agreement.

S. 8F(5)
amended by
No. 45/1996
s. 17(Sch. 1
item 7).

S. 8G
inserted by
No. 94/1994
s. 7.

8G Building work

- (1) Section 218 of the **Building Act 1993** does not apply to the carrying out of building work under an agreement under section 8B(1)(a).
- (2) Sections 30 and 73 of the **Building Act 1993** do not apply in relation to any permit, approval, amendment, plan or other document relating to building work carried out or to be carried out under an agreement under section 8B(1)(a).

Division 2—Management agreements

Pt 2A Div. 2
(Heading)
inserted by
No. 94/1994
s. 8.

9 Management agreements

New s. 9
inserted by
No. 11/1993
s. 4(1).

(1) The Secretary may, for and on behalf of the Crown, enter into an agreement with a person or body for the provision by that person or body of any correctional services.

S. 9(1)
amended by
Nos 94/1994
s. 9(1)(a)(i)(ii),
45/1996
s. 17(Sch. 1
item 8).

(2) The agreement must provide for—

- (a) compliance by the contractor with all relevant provisions of this Act or the regulations or of any other Act or instrument of a legislative character;
- (b) objectives and performance standards in relation to the provision of the services;

* * * * *

S. 9(2)(c)
repealed by
No. 94/1994
s. 9(1)(b)(i).

(d) the fees, costs and charges to be paid to the contractor;

S. 9(2)(d)
amended by
No. 94/1994
s. 9(1)(b)(ii).

(e) the submission of periodic reports in relation to the contractor's operations;

S. 9(2)(e)
amended by
No. 94/1994
s. 9(1)(b)(iii).

* * * * *

S. 9(2)(f)
repealed by
No. 94/1994
s. 9(1)(b)(iv).

Corrections Act 1986
No. 117 of 1986
Part 2A—Engagement of Contractors

s. 9

S. 9(2)(g)
substituted by
No. 94/1994
s. 9(1)(b)(v),
amended by
No. 45/1996
s. 17(Sch. 1
item 8).

(g) an indemnity by the contractor in favour of
the Crown and the Secretary;

S. 9(2)(h)
repealed by
No. 94/1994
s. 9(1)(b)(vi).

* * * * *

(i) the office the holder of which is to be the
principal officer for the purposes of the
application of the **Freedom of Information
Act 1982** to the contractor;

(j) the office the holder of which is to be the
principal officer for the purposes of the
application of the **Ombudsman Act 1973** to
the contractor;

(k) any other matter that may be prescribed.

S. 9(3)
substituted by
No. 94/1994
s. 9(2).

(3) The agreement may contain—

(a) a provision leaving any matter to be
determined, approved or dispensed with by a
specified person or body;

S. 9(3)(b)
amended by
No. 45/1996
s. 17(Sch. 1
item 8).

(b) a provision providing for the assignment to
the Secretary or any other person of any right
or interest;

S. 9(3)(c)
amended by
No. 45/1996
s. 17(Sch. 1
item 8).

(c) a provision providing for the Secretary to
delegate powers and functions under the
agreement;

- (d) a provision providing for sub-contracting;
- (e) a provision requiring the provision by the contractor of a performance bond;
- (f) a provision providing for the suspension of obligations under the agreement in specified circumstances;
- (g) a provision providing for rights of access in relation to correctional services;
- (h) any other provisions that are not inconsistent with this Act or the regulations.

Division 3—Agreements with the Chief Commissioner of Police

Pt 2A Div. 3
(Heading and
ss 9AA–9AC)
inserted by
No. 94/1994
s. 10,
substituted by
No. 26/1997
s. 10.

9AA Agreements with the Chief Commissioner

- (1) The Chief Commissioner of Police may, for and on behalf of the Crown, enter into an agreement with a person or body, including the Secretary, for the provision by that person or body of—
 - (a) custodial services in police gaols; or
 - (b) services related to the transport of—
 - (i) persons detained in a police gaol to or from a police gaol; or
 - (ii) persons detained in custody in a prison from the prison to a court or police gaol or from a court to a prison or police gaol; or

S. 9AA
inserted by
No. 94/1994
s. 10,
amended by
No. 45/1996
s. 17(Sch. 1
item 9),
substituted by
No. 26/1997
s. 11.

s. 9AB

S. 9AA(1)
(b)(iii)
amended by
No. 65/1997
s. 81(b).

(iii) forensic patients, security patients or involuntary patients within the meaning of the **Mental Health Act 1986** from an approved mental health service under that Act to a court or a police gaol or from a court or police gaol to a court or police gaol or approved mental health service; or

S. 9AA(1)(b)(iv)
amended by
No. 48/2006
s. 42(Sch.
item 8.2).

(iv) persons detained in a remand centre, youth residential centre or youth justice centre within the meaning of the **Children, Youth and Families Act 2005** from that centre to a court or a police gaol or from a court or police gaol to a court or police gaol or such a centre; or

(c) services related to security in relation to persons in the custody of the Chief Commissioner of Police.

S. 9AA(2)
repealed by
No. 45/2001
s. 6.

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S. 9AB
inserted by
No. 94/1994
s. 10.

9AB Matters to be included in agreement

(1) An agreement under section 9AA must provide for—

- (a) compliance by the contractor with all relevant provisions of this Act or the regulations or of any other Act or instrument of a legislative character;
- (b) objectives and performance standards in relation to the provision of services;
- (c) the fees, costs and charges to be paid to the contractor;

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- (d) the submission of periodic reports in relation to the contractor's operations;
 - (e) an indemnity by the contractor in favour of the Crown and the Chief Commissioner of Police;
 - (f) the office the holder of which is to be the principal officer for the purposes of the application of the **Freedom of Information Act 1982** to the contractor;
 - (g) the office the holder of which is to be the principal officer for the purposes of the application of the **Ombudsman Act 1973** to the contractor;
 - (h) any other matter that may be prescribed.
- (2) An agreement under section 9AA may contain—
- (a) a provision leaving any matter to be determined, approved or dispensed with by a specified person or body;
 - (b) a provision providing for the assignment to the Chief Commissioner or any other person of any right or interest;
 - (c) a provision providing for the Chief Commissioner to delegate powers and functions under the agreement;
 - (d) a provision providing for sub-contracting;
 - (e) a provision requiring the provision by the contractor of a performance bond;
 - (f) a provision providing for the suspension of obligations under the agreement in specified circumstances;
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s. 9AC

- (g) a provision providing for rights of access in relation to correctional services;
- (h) any other provisions that are not inconsistent with this Act or the regulations.

S. 9AC
inserted by
No. 94/1994
s. 10.

9AC Rights of access

- (1) A contractor or sub-contractor must give the Chief Commissioner of Police and any person authorised by the Chief Commissioner free and unfettered access at all times together with any assistants and equipment that the Chief Commissioner or the authorised person considers necessary—

S. 9AC(1)(a)
amended by
No. 26/1997
s. 12(5).

- (a) to any police gaol or any vehicle under the management or control of the contractor or sub-contractor (as the case requires); and
- (b) to all persons detained or employed there; and
- (c) to all documents in the possession of the contractor as a provider of services under this Act or under an agreement under section 9AA—

for the purpose of ensuring compliance with the Act or the regulations or ensuring that the safe custody and welfare of persons detained in the police gaol are maintained.

Penalty: 50 penalty units.

- (2) An authorisation under subsection (1) must be in writing and may be subject to any conditions and limitations that the Chief Commissioner thinks fit.

Division 4—General provisions relating to agreements

Pt 2A Div. 4
(Heading)
inserted by
No. 94/1994
s. 11.

9A Authorisation of certain staff

S. 9A
inserted by
No. 11/1993
s. 4(1).

(1) The Secretary may, by instrument, authorise a contractor under Division 1 or 2 or a sub-contractor of that contractor or a person employed by that contractor or sub-contractor to exercise all or any of the functions or powers under this Act or the regulations or under any other Act or the regulations under that Act of—

S. 9A(1)
amended by
No. 94/1994
s. 12(1),
substituted by
No. 22/1996
s. 4(1),
amended by
No. 45/1996
s. 17(Sch. 1
item 10).

(a) the Secretary; or

S. 9A(1)(a)
amended by
No. 45/1996
s. 17(Sch. 1
item 10).

(b) an officer within the meaning of Part 5; or

(c) an officer within the meaning of Part 9; or

S. 9A(1)(c)
amended by
No. 45/2001
s. 7(a).

(d) an escort officer.

S. 9A(1)(d)
inserted by
No. 45/2001
s. 7(b).

(1A) The Chief Commissioner of Police may, by instrument, authorise a contractor under Division 3 or a sub-contractor of that contractor or a person employed by that contractor or sub-contractor to exercise all or any of the functions or powers as may be exercised under section 27 of the **Bail Act 1977** or Part 9A of this Act or under

S. 9A(1A)
inserted by
No. 94/1994
s. 12(2),
substituted by
No. 45/1996
s. 12.

s. 9A

the regulations made under this Act by a member of the police force.

S. 9A(1B)
inserted by
No. 26/1997
s. 12(1).

(1B) The Chief Commissioner may, by instrument, authorise a contractor under an agreement entered into under section 9AA or a sub-contractor of that contractor or a person employed by that contractor or sub-contractor—

(a) to carry out the transport of any persons or class of persons in accordance with that agreement and to detain those persons while being transported; and

S. 9A(1B)(b)
substituted by
No. 45/2001
s. 8(1).

(b) to have and exercise all or any of the following functions—

- (i) to take all reasonable steps to ensure a person being transported remains in the physical custody of the authorised person;
- (ii) to take all reasonable steps to ensure that the safety and welfare of a person being transported are maintained;
- (iii) to take all reasonable steps to prevent and detect the commission by a person being transported of any unlawful act or any attempt to commit an unlawful act;
- (iv) to report to the Chief Commissioner of Police on the commission by a person being transported of any unlawful act or any attempt to commit an unlawful act;
- (v) to take all reasonable steps to ensure the good order and discipline of a person being transported;
- (vi) to take all reasonable steps to attend to the security of any property that is in the possession of a person being transported;

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- (vii) to take all reasonable steps to ensure the person is transported to or from the appropriate place as required by the Chief Commissioner of Police;
 - (viii) to take all reasonable steps to ensure that the person is transferred—
 - (A) into the physical custody of another person acting on behalf of the Chief Commissioner of Police; or
 - (B) if legal custody of the person is authorised to be transferred to a person other than the Chief Commissioner, into the physical custody of a person acting on behalf of the person to whom legal custody is to be transferred;
 - (c) to exercise all or any of the following powers in relation to the functions set out in paragraph (b)—
 - (i) to order a person being transported to do or not to do anything which the authorised person believes on reasonable grounds is necessary for the safety of the authorised person, the person being transported or any other person;
 - (ii) to search and examine a person being transported or any thing in the person's possession or under the person's control if the authorised person believes on reasonable grounds that this is necessary for the safety of the authorised person, the person being transported or any other person;

S. 9A(1B)(c)
inserted by
No. 45/2001
s. 8(1).

- (iii) to seize any thing found on a person being transported or in that person's possession or under that person's control if the authorised person believes on reasonable grounds that this is necessary for the safety of the authorised person, the person being transported or any other person;
- (iv) subject to subsection (2A), to apply an authorised instrument of restraint to a person being transported if the authorised person believes on reasonable grounds that the application of the instrument of restraint is necessary to prevent the escape of the person being transported or the assault of, or injury to, any person.

(2) An authority may be given subject to any conditions or limitations that are stated in it.

(2A) A person authorised under subsection (1B)(c)(iv) may apply an instrument of restraint to a person being transported only if—

- (a) the instrument, or type of instrument, is approved by the Chief Commissioner of Police; and
- (b) the instrument is used in the manner determined by the Chief Commissioner of Police.

(3) A contractor or sub-contractor or a person employed by a contractor or sub-contractor is incapable of exercising any function or power referred to in subsection (1), (1A) or (1B) except in accordance with an authority given under that subsection.

S. 9A(2A)
inserted by
No. 45/2001
s. 8(2).

S. 9A(3)
amended by
Nos 94/1994
s. 12(3)(a)(b),
22/1996
s. 4(2),
26/1997
s. 12(2).

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|---|--|
| (4) The Secretary or the Chief Commissioner of Police may refuse to give an authority to any person if he or she considers that it is in the public interest not to give it. | S. 9A(4)
amended by
Nos 94/1994
s. 12(3)(c),
45/1996
s. 17(Sch. 1
item 10). |
| (5) Without limiting subsection (4), the Secretary or the Chief Commissioner of Police may refuse to give an authority— | S. 9A(5)
amended by
Nos 94/1994
s. 12(3)(c),
45/1996
s. 17(Sch. 1
item 10). |
| (a) to any person who has not undertaken a relevant course of training or instruction accredited by the Secretary or the Chief Commissioner of Police for the purposes of this Part; or | S. 9A(5)(a)
amended by
Nos 94/1994
s. 12(3)(c),
45/1996
s. 17(Sch. 1
item 10). |
| (b) to any person whom the Secretary or the Chief Commissioner of Police considers not to be a fit and proper person to be so authorised for any reason including criminal record, character or educational standard. | S. 9A(5)(b)
amended by
Nos 94/1994
s. 12(3)(c),
45/1996
s. 17(Sch. 1
item 10). |
| (6) After giving the person a reasonable opportunity to be heard, the Secretary or the Chief Commissioner of Police may at any time revoke an authority given by him or her to that person if he or she considers that it is in the public interest to do so. | S. 9A(6)
amended by
Nos 94/1994
s. 12(3)(c)(d),
45/1996
s. 17(Sch. 1
item 10). |
| (7) Without limiting subsection (6), the Secretary or the Chief Commissioner of Police may revoke an authority given by him or her if— | S. 9A(7)
amended by
Nos 94/1994
s. 12(3)(c)(e),
45/1996
s. 17(Sch. 1
item 10). |
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s. 9B

S. 9A(7)(a)
amended by
Nos 94/1994
s. 12(3)(c),
45/1996
s. 17(Sch. 1
item 10).

(a) in the opinion of the Secretary or the Chief Commissioner of Police it ought not to have been given having regard to subsections (4) and (5); or

(b) the person has failed to comply with any provision of this Act or the regulations or with any direction given to him or her under this Act or the regulations.

S. 9A(8)
inserted by
No. 26/1997
s. 12(3),
repealed by
No. 45/2001
s. 8(3).

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S. 9B
inserted by
No. 11/1993
s. 4(1).

9B Police inquiry and report

S. 9B(1)
substituted by
No. 94/1994
s. 13(1),
amended by
No. 45/1996
s. 17(Sch. 1
item 11).

(1) Before—

(a) the Minister enters into an agreement under section 8B(1); or

S. 9B(1)(b)
amended by
No. 45/1996
s. 17(Sch. 1
item 11).

(b) the Secretary enters into an agreement under section 9(1); or

S. 9B(1)(c)
amended by
No. 45/1996
s. 17(Sch. 1
item 11).

(c) the Secretary authorises a person under section 9A(1) to exercise any functions or powers—

the Secretary must request the Chief Commissioner of Police to inquire into and report to him or her on the character, honesty and integrity of any relevant person.

(1A) Before the Chief Commissioner of Police—

(a) enters into an agreement under section 9AA;
or

(b) authorises a person under section 9A(1A)
or (1B) to exercise any functions or
powers—

S. 9B(1A)
inserted by
No. 94/1994
s. 13(1).

S. 9B(1A)(b)
amended by
No. 26/1997
s. 12(4).

the Chief Commissioner of Police must inquire
into the character, honesty and integrity of any
relevant person.

(2) For the purposes of this section a person is a
relevant person if he or she—

(a) is the proposed contractor; or

(b) holds or will hold a position of director,
manager or secretary or any other executive
position (however designated) whether in his
or her own right or on behalf of any other
person, in the proposed business of the
contractor as a provider of services under
this Act; or

(c) has or will have a share in the capital of, or
an entitlement to receive any income derived
from, the proposed business of the contractor
as a provider of services under this Act and
as a result is or will be able to exercise a
significant influence over or with respect to
the management or operation of that
business; or

(d) is or will be entitled to exercise a power
(whether by voting or otherwise and whether
alone or in association with others)—

(i) to participate in any directorial,
managerial or executive decision of the
contractor as a provider of services
under this Act; or

s. 9C

- (ii) to elect or appoint any person to a position referred to in paragraph (b); or
- (e) is employed or will be employed by the contractor or proposed contractor.

S. 9B(3)
amended by
No. 45/1996
s. 17(Sch. 1
item 11).

- (3) The Chief Commissioner of Police must cause appropriate enquiries to be made in response to a request made under subsection (1) and report the results of those enquiries to the Secretary.

S. 9B(4)
inserted by
No. 94/1994
s. 13(2),
amended by
No. 45/1996
s. 17(Sch. 1
item 11).

- (4) The Secretary must give a copy of a report under subsection (3) to the Minister if it was sought in relation to a proposed agreement under section 8B(1).

S. 9C
inserted by
No. 11/1993
s. 4(1).

9C Status of staff

S. 9C(1)
amended by
No. 45/2001
ss 9, 26.

- (1) A person authorised under section 9A to exercise all or any of the functions or powers of a Governor, prison officer, disciplinary officer, Regional Manager, community corrections officer or escort officer must, for the purposes of this Act and all other purposes (including the purposes of section 479C of the **Crimes Act 1958**), be taken to be a Governor, prison officer, disciplinary officer, Regional Manager, community corrections officer or escort officer, as the case requires.

- (2) Despite subsection (1), a person referred to in that subsection—

S. 9C(2)(a)
amended by
No. 45/2001
ss 9, 26.

- (a) does not hold the position of Governor, prison officer, disciplinary officer, Regional Manager, community corrections officer or escort officer, as the case requires; and

(b) is not subject to the **Public Administration Act 2004**.

S. 9C(2)(b) amended by Nos 46/1998 s. 7(Sch. 1), 108/2004 s. 117(1) (Sch. 3 item 45.2).

9CA Staff—police goals

A reference in section 27 of the **Bail Act 1977** or Part 9A of this Act or the regulations made under this Act to a member of the police force includes, in relation to the exercise of any function or power under that section or Part or those regulations, a reference to a person authorised under section 9A(1A) to exercise that function or power.

S. 9CA inserted by No. 94/1994 s. 14, substituted by No. 45/1996 s. 13.

9CAA Transport functions

- (1) If a person is authorised under section 9A(1B) to carry out the transport of any person to or from a place, any provision of an Act or regulation or of a warrant or order of a court or of any order or instrument under an Act which requires or authorises (either expressly or by necessary implication) a member of the police force (by name or otherwise) to transport that person to or from that place must be taken to also authorise the person authorised under section 9A(1B) to carry out that transport function in place of a member of the police force in accordance with that authorisation.
- (2) Nothing in subsection (1) prevents a member of the police force from exercising any function referred to in that subsection or any other function under the provision, warrant, order or instrument.

S. 9CAA inserted by No. 26/1997 s. 13.

s. 9CB

- (3) Despite anything to the contrary in any other provision of this Act or in any other Act or regulation or in any warrant, order or instrument of any kind, a person who is being transported to or from a place by a person authorised under section 9A(1B) is deemed to be in the custody of the Chief Commissioner of Police while being so transported.

S. 9CAA(4)
repealed by
No. 45/2001
s. 10.

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S. 9CB
inserted by
No. 94/1994
s. 14,
amended by
No. 26/1997
s. 14(a)(b).

9CB Use of reasonable force by staff—police gaols

S. 9CB(1)
amended by
No. 45/2001
s. 11.

- (1) A person authorised under section 9A(1A) or 9A(1B) to exercise a function or power may, where necessary, use reasonable force to compel a person who is deemed under Part 1A or section 9CAA to be in the custody of the Chief Commissioner of Police to obey an order given by the first-mentioned person in the exercise of that function or power.

- (2) Where a person uses force under the powers in subsection (1), the person must report the fact to the Chief Commissioner of Police without delay.

S. 9CB(3)
amended by
No. 38/2003
s. 3.

- (3) A person who uses force in accordance with this section is not liable for injury or damage caused by that use of force.

9D Employment of monitors

- S. 9D inserted by No. 11/1993 s. 4(1).
- (1) There may be employed under Part 3 of the **Public Administration Act 2004** such monitors as are necessary for the purposes of this Part.
- S. 9D(1) substituted by No. 46/1998 s. 7(Sch. 1), amended by No. 108/2004 s. 117(1) (Sch. 3 item 45.2).
- (2) Monitors employed in relation to agreements under section 8B(1) or 9(1) are responsible to the Secretary for assessment and review of the provision of services by contractors or sub-contractors under those agreements and have any other functions that may be prescribed or specified by the Secretary.
- S. 9D(2) amended by Nos 94/1994 s. 15(1), 45/1996 s. 17(Sch. 1 item 12), substituted by No. 26/1997 s. 15(1), amended by No. 46/1998 s. 7(Sch. 1).
- (2A) Monitors employed in relation to agreements under section 9AA are responsible to the Chief Commissioner of Police for assessment and review of the provision of services by contractors or sub-contractors under those agreements and have any other functions that may be prescribed or specified by the Chief Commissioner.
- S. 9D(2A) inserted by No. 26/1997 s. 15(1), amended by No. 46/1998 s. 7(Sch. 1).
- (3) A monitor referred to in subsection (2) must make an annual report in writing to the Secretary on his or her operations. That report is to form part of the Department's annual report under the **Financial Management Act 1994**.
- S. 9D(3) amended by No. 45/1996 s. 17(Sch. 1 item 12), substituted by No. 26/1997 s. 15(1).

Corrections Act 1986
No. 117 of 1986
Part 2A—Engagement of Contractors

s. 9E

S. 9D(3A)
inserted by
No. 26/1997
s. 15(1).

(3A) A monitor referred to in subsection (2A) must make an annual report in writing to the Chief Commissioner of Police on his or her operations. That report is to form part of the Chief Commissioner's annual report under the **Financial Management Act 1994**.

S. 9D(4)
amended by
No. 94/1994
s. 15(2)(a).

(4) A contractor or sub-contractor must give a monitor free and unfettered access at all times—

S. 9D(4)(a)
amended by
Nos 94/1994
s. 15(2)(b)(c),
26/1997
s. 15(2).

(a) to all premises, places or vehicles under the management or control of the contractor or sub-contractor (as the case requires) in accordance with, or for the purposes of, an agreement under section 8B(1), 9(1) or 9AA or a sub-contract agreement under that agreement and to all persons detained or employed there; and

S. 9D(4)(b)
amended by
No. 94/1994
s. 15(2)(b).

(b) to all documents in the possession of the contractor or sub-contractor (as the case requires) as a provider of services under this Act.

S. 9E
inserted by
No. 11/1993
s. 4(1).

9E Minimum standards

S. 9E(1)
amended by
Nos 94/1994
s. 16(1),
45/1996
s. 17(Sch. 1
item 13).

(1) The Secretary must cause a written statement to be prepared setting out minimum standards in relation to the provision of services by a contractor under an agreement entered into under section 8B(1) or 9(1).

S. 9E(2)
substituted by
No. 94/1994
s. 16(2).

(2) The Chief Commissioner of Police must cause a written statement to be prepared setting out minimum standards in relation to the provision of services by a contractor under an agreement entered into under section 9AA.

- (3) The Secretary or Chief Commissioner of Police may from time to time amend the statement prepared by him or her.

S. 9E(3)
inserted by
No. 94/1994
s. 16(2),
amended by
No. 45/1996
s. 17(Sch. 1
item 13).

9F Application of FOI

The **Freedom of Information Act 1982** applies to a contractor in its capacity as a provider of services under this Act or to a sub-contractor in its capacity as a manager of a prison or police gaol under a sub-contract agreement as if—

S. 9F
inserted by
No. 11/1993
s. 4(1),
amended by
No. 94/1994
s. 17(a).

- (a) the contractor or sub-contractor (as the case requires) were an agency within the meaning of that Act; and
- (b) the holder of the office specified in the agreement under section 8B(1), 9(1) or 9AA or in the sub-contract agreement (as the case requires) for the purposes of the application of the **Freedom of Information Act 1982** were the principal officer of that agency; and
- (c) the Minister were the responsible Minister of that agency; and
- (d) the persons employed by the contractor or sub-contractor (as the case requires) were officers of that agency.

S. 9F(a)
amended by
No. 94/1994
s. 17(b).

S. 9F(b)
amended by
No. 94/1994
s. 17(c).

S. 9F(d)
amended by
No. 94/1994
s. 17(b).

9G Investigation of administrative actions

The **Ombudsman Act 1973** applies to a contractor in its capacity as a provider of services under this Act or to a sub-contractor in its capacity as a manager of a prison or police gaol under a sub-contract agreement as if—

S. 9G
inserted by
No. 11/1993
s. 4(1),
amended by
No. 94/1994
s. 18(a).

- (a) the contractor or sub-contractor (as the case requires) were a public statutory body within the meaning of that Act; and

S. 9G(a)
amended by
No. 94/1994
s. 18(b).

Corrections Act 1986
No. 117 of 1986
Part 2A—Engagement of Contractors

s. 9G

S. 9G(b)
amended by
No. 94/1994
s. 18(c).

(b) the holder of the office specified in the agreement under section 8B(1), 9(1) or 9AA or in the sub-contract agreement (as the case requires) for the purposes of the application of the **Ombudsman Act 1973** were the principal officer of that public statutory body; and

S. 9G(c)
amended by
No. 94/1994
s. 18(b).

(c) the persons employed by the contractor or sub-contractor (as the case requires) were employees of that public statutory body.

PART 3—PRISONS AND POLICE GAOLS

10 Establishment of prisons

- (1) The Governor in Council may by Order appoint any premises or place to be a prison.
- (2) The name of a prison is the name given to it in the Order establishing it.
- (3) The maximum number of persons to be detained in a prison is the number (if any) stated in the Order establishing it.
- (3A) The Governor in Council may by Order revoke the appointment of any place or premises as a prison, including a place or premises listed in column 2 of Schedule 2. S. 10(3A)
inserted by
No. 45/1996
s. 14(1).
- (4) An Order under subsection (1) or (3A) comes into operation on its making or on a later date stated in the Order. S. 10(4)
amended by
No. 45/1996
s. 14(2).
- (5) The Minister must within seven days after the making of an Order under subsection (1) or (3A) publish a copy of the Order in the Government Gazette. S. 10(5)
amended by
No. 45/1996
s. 14(3).
- (6) Each of the premises and places which were prisons under Part V of the **Community Services Act 1970** as in force immediately before the commencement of this section and were known by the names listed in column 1 of Schedule 2 is deemed to be appointed as a prison under this section by the name given to it in column 2 of that Schedule. S. 10(6)
amended by
No. 16/1987
s. 4(3)(Sch. 1
item 7(a)).
- (7) Upon the name of a prison being changed a reference in an Act other than this Act, a subordinate instrument or a document to the prison by its old name is deemed to be a reference to the prison by its new name.

11 Police gaols

- (1) The Governor in Council may by Order appoint any premises or place that is not a prison to be a police gaol.
- (2) The maximum number of persons to be detained in a police gaol is the number (if any) stated in the Order establishing the police gaol.
- (3) The maximum period for which a person may be held in a police gaol is the period (if any) stated in the Order establishing the police gaol.
- (4) An Order under subsection (1) comes into operation on its making or on a later date stated in the Order.
- (5) The Minister must within 7 days after the making of an Order under subsection (1) publish a copy of the Order in the Government Gazette.
- (6) Any premises which were or place which was a police gaol within the meaning of section 113 or 115 of the **Community Services Act 1970** as in force immediately before the commencement of this section are deemed to be appointed a police gaol under this section.

S. 11(6)
amended by
No. 16/1987
s. 4(3)(Sch. 1
item 7(b)).

S. 11(7)
repealed by
No. 45/2001
s. 12.

S. 11(7A)
inserted by
No. 38/1988
s. 7(1)(a),
amended by
No. 35/2002
s. 7(2).

S. 11(8)(9)
repealed by
No. 45/2001
s. 12.

* * * * *

- (7A) As soon as possible after a person is received into a police gaol to serve the whole or a part of a prison sentence a member of the police force may take the person's fingerprints.

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11A Establishment of transition centres

S. 11A
inserted by
No. 2/2005
s. 5.

- (1) The Governor in Council may, by Order, appoint any premises or place to be a transition centre.
- (2) The name of a transition centre is the name given to it in the Order establishing it.
- (3) An Order under subsection (1) may state the maximum number of people that may reside in the transition centre at any one time.
- (4) The Governor in Council may, by Order, revoke the appointment of any premises or place as a transition centre.
- (5) An Order under subsection (1) or (4) comes into operation on its making, or on any later date stated in the Order.
- (6) The Minister must, within 7 days after the making of an Order under subsection (1) or (4), publish a copy of the Order in the Government Gazette.
- (7) On the name of a transition centre being changed, a reference in an Act other than this Act, a subordinate instrument or a document to the transition centre by its old name is deemed to be a reference to the transition centre by its new name.

s. 12

PART 4—OFFICERS

12 Employment under the Public Administration Act

S. 12
(Heading)
inserted by
No. 108/2004
s. 117(1)
(Sch. 3
item 45.3).

- (1) There may be employed under Part 3 of the **Public Administration Act 2004** a Secretary to the Adult Parole Board and such Governors, prison officers, escort officers, principal medical officers, medical officers, Regional Managers, community corrections officers and other officers and employees as are necessary for the purposes of this Act.

S. 12(1)
amended by
Nos 46/1998
s. 7(Sch. 1),
45/2001 s. 13,
108/2004
s. 117(1)
(Sch. 3
item 45.4).

S. 12(2)(3)
amended by
No. 16/1987
s. 4(3)(Sch. 1
item 7(c)),
repealed by
No. 46/1998
s. 7(Sch. 1).

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S. 12(4)(5)
repealed by
No. 46/1998
s. 7(Sch. 1).

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S. 12(6)
amended by
No. 11/1993
s. 7(1)(c),
repealed by
No. 46/1998
s. 7(Sch. 1).

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13 Volunteers

S. 13(1)
amended by
No. 45/1996
s. 17(Sch. 1
item 14).

- (1) The Secretary may by instrument authorize a person to work in an unpaid capacity for prison purposes or at a location.

-
- (2) The Secretary must not under subsection (1) authorize a person to do work which is part of the duties of a prison officer.
- S. 13(2) amended by No. 45/1996 s. 17(Sch. 1 item 14).
- (3) The period for which and the other terms and conditions under which, a person is authorized to work under subsection (1) are those stated in the person's instrument of authority.
- (4) If a person is authorized to work as an officer under Part 5 or Part 9 other than a prison officer the provisions of this Act relating to officers of that kind (except provisions relating to remuneration) apply to the person.
- (5) The Secretary must as soon as possible give to a person authorized to work under subsection (1) a copy of the person's instrument of authority.
- S. 13(5) amended by No. 45/1996 s. 17(Sch. 1 item 14).
- (6) The Secretary must keep a register containing copies of instruments of authority issued under this section.
- S. 13(6) amended by No. 45/1996 s. 17(Sch. 1 item 14).
- (7) A person who immediately before the commencement of this section held a position as an honorary probation officer under section 507 of the **Crimes Act 1958** or an honorary parole officer under Division 4 of Part VIII of the **Community Services Act 1970** is deemed to be authorized under subsection (1) to work as a volunteer on the same terms and conditions as those stated in the person's instrument of appointment as an honorary probation officer or an honorary parole officer.
- S. 13(7) amended by No. 16/1987 s. 4(3)(Sch. 1 item 7(d)).
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**PART 5—PRISON OFFICERS AND OTHER OFFICERS
WORKING IN PRISONS**

Division 1—General

14 Definitions

In this Part—

S. 14 def. of
officer
amended by
Nos 23/1994
s. 118(Sch. 1
item 14.1),
45/1996
s. 7(a),
24/2006
s. 6.1.2(Sch. 7
item 10.1),
13/2010
s. 51(Sch.
item 16.2).

officer means a person who is—

- (a) a Governor; or
- (b) a prison officer; or
- (c) a volunteer; or
- (d) an employee in the public service or the teaching service or a member of the staff of a TAFE institute who is working in a prison or with prisoners;
- * * * *
- (f) a member of a prescribed class of persons who works in a prison as a psychiatrist, registered medical practitioner, dentist, nurse, midwife or health worker.

Division 2—Work

15 Authorized persons may act as prison officers

S. 15(1)
amended by
No. 45/1996
s. 17(Sch. 1
item 15).

- (1) The Secretary may by instrument authorize a member of the police force or a class of members of the police force to exercise in accordance with the regulations all or any of the powers of a prison officer.
- (2) An authority may be given subject to such conditions and limitations as are stated in the authority.

16 Secretary may authorize medical practitioner to act as medical officer

(1) If there is no medical officer appointed for a prison or the medical officer for the prison is absent the Secretary may by instrument authorize a registered medical practitioner to act as medical officer for that prison while the position of medical officer is vacant or until the return of the medical officer.

S. 16(1) amended by Nos 23/1994 s. 118(Sch. 1 item 14.2), 45/1996 s. 17(Sch. 1 item 16), 97/2005 s. 182(Sch. 4 item 13.1), 13/2010 s. 51(Sch. item 16.3).

(2) Before authorizing a person to act as medical officer the Secretary must consult with the Secretary to the Department of Health.

S. 16(2) amended by Nos 45/1996 s. 17(Sch. 1 item 16), 46/1998 s. 7(Sch. 1), 29/2010 s. 52(2).

(3) An authority under subsection (1) may be given subject to such conditions and limitations as are stated in the authority.

(4) This Act applies to a person authorized to act as medical officer as if the person were a medical officer.

17 Powers of Secretary

S. 17 substituted by No. 94/1994 s. 19.

(1) The Secretary has and may exercise all or any of the powers or functions of a Governor of a prison or a prison officer or escort officer under this Act.

S. 17(1) amended by Nos 45/1996 s. 17(Sch. 1 item 17), 45/2001 s. 14.

(2) The Secretary may exercise the powers and functions under subsection (1) in relation to a particular prison or class of prisons or in relation to all prisons in Victoria.

S. 17(2) amended by No. 45/1996 s. 17(Sch. 1 item 17).

S. 17(3)
amended by
Nos 45/1996
s. 17(Sch. 1
item 17),
45/2001 s. 14.

- (3) An exercise by the Secretary of any power or function under subsection (1) in relation to a matter, prevails over the exercise by a Governor or prison officer or escort officer of that power or function in relation to that matter.

18 Prison officer subject to direction of principal of training institutions

- (1) An officer attending a training institution is subject to the direction of the principal of that institution.
- (2) In this section *training institution* means an institution for the training of officers established or conducted in accordance with the regulations.

19 Officers subject to certain directions

- (1) A prison officer is subject to the directions of the Governor of the prison to which the prison officer is assigned.
- (2) The Governor of a prison may give to officers within the meaning of paragraph (f) of the definition of *officer* in section 14 who are working at the prison or with prisoners such directions as the Governor considers necessary for the security of the prison.
- (3) The Governor may give to other officers working at the prison or with prisoners such directions as the Governor considers necessary for the management good order or security of the prison or the prisoners.

20 Duties relating to security and welfare

- (1) An officer in charge of a prison or part of a prison must take all reasonable steps for the security of the prison or part of the prison.
- (2) An officer in charge of prisoners must take all reasonable steps for the safe custody and welfare of the prisoners.

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- (3) An officer must not jeopardize the security of the prison.
- (4) An officer must make returns and reports in accordance with the regulations and other returns and reports required by the Secretary.
- (5) An officer must keep records in accordance with the regulations and other records required by the Secretary.
- (6) In relation to officers within the meaning of paragraph (f) of the definition of "officer" in section 14—
- (a) subsection (2) applies as if it did not include a reference to welfare; and
 - (b) subsections (4) and (5) apply as if they referred to returns, reports and records concerning prison security only.
- (7) At the Secretary's request an officer must make available to the Secretary a return or report prepared under subsection (4), or a record kept under subsection (5).

S. 20(4)
amended by
No. 45/1996
s. 17(Sch. 1
item 18(a)).

S. 20(5)
amended by
No. 45/1996
s. 17(Sch. 1
item 18(a)).

S. 20(7)
amended by
No. 45/1996
s. 17(Sch. 1
item 18(a)(b)).

21 Duties of Governor

- (1) The Governor of a prison is responsible for the management, security and good order of the prison and the safe custody and welfare of the prisoners.
- (2) The Governor of a prison must take reasonable steps to ensure that officers assigned to the prison know what their powers and duties are and what provision is made by or under this Act concerning prisons and prisoners.

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- (3) The Governor of a prison must give all necessary directions to ensure that—
- (a) officers within the meaning of paragraph (f) of the definition of *officer* in section 14 assigned to the prison comply with the provisions of this Act and the regulations relating to prison security; and
 - (b) other officers assigned to the prison comply with this Act, and the regulations.

22 Reports to Governor

- (1) An officer must report immediately to the Governor anything which might reasonably be thought to jeopardize the security of the prison or the welfare of the prisoners.
- (2) An officer must report immediately to the Governor—
 - (a) the escape or suspected escape of a prisoner in the officer's charge; and
 - (b) the escape or suspected escape of a prisoner from the prison where the officer is working if the escape or suspected escape comes to the officer's notice.

S. 22A
inserted by
No. 45/2001
s. 27.

22A Powers of Governor

- (1) A Governor has and may exercise all or any of the powers or functions of a prison officer or escort officer under this Act.
- (2) An exercise by a Governor of any power or function under subsection (1) in relation to a matter prevails over the exercise by a prison officer or escort officer of that power or function in relation to that matter.

23 Control of prisoners

- (1) An officer may give any order to a prisoner which the officer believes to be necessary for the security or good order of the prison or the safety or welfare of the prisoner or other persons.
- (2) A prison officer may where necessary use reasonable force to compel a prisoner to obey an order given by the prison officer or by an officer under this section.
- (3) Where a prison officer uses force to compel a prisoner to obey an order the prison officer must report the fact forthwith to the Governor.
- (4) Where a Governor uses or orders the use of force to compel a prisoner to obey an order the Governor must report the fact to the Secretary.
- (5) A prison officer is not liable for injury or damage caused by the use of force in accordance with this section.

S. 23(4)
amended by
No. 45/1996
s. 17(Sch. 1
item 19).

PART 6—MANAGEMENT AND ADMINISTRATION OF PRISONS

Division 1—Management and security of prisons

24 Delegation by Governor

A Governor may by instrument delegate to any officer or class of officers within the meaning of Part 5 any function or power of the Governor under this Act, except this power of delegation, and any power which is declared by the regulations to be a power which the Governor cannot delegate.

25 Secretary may nominate person to act as Governor

- (1) If the Governor of a prison is absent from the prison or the position of Governor is vacant the Secretary may nominate a prison officer to act as Governor of the prison while the Governor is absent or the position of the Governor is vacant.
- (2) A prison officer nominated to act as Governor has the functions powers and duties of the Governor while so acting.

S. 25(1)
amended by
No. 45/1996
s. 17(Sch. 1
item 20).

26 Management of prisons in Governor's temporary absence

- (1) If the Governor of a prison is to be absent temporarily from the prison the Governor may nominate a prison officer to be in charge of the prison during the Governor's absence.
- (2) If the Governor of a prison is absent from the prison and has not nominated a prison officer to be in charge of the prison and the Secretary has not nominated a prison officer to act as Governor, the most senior ranking prison officer then on duty is in charge of the prison.

S. 26(2)
amended by
No. 45/1996
s. 17(Sch. 1
item 21).

- (3) A prison officer in charge of a prison has the functions powers and duties of the Governor until the Governor returns or the Secretary nominates a person to act as Governor of the prison.

S. 26(3)
amended by
No. 45/1996
s. 17(Sch. 1
item 21).

27 Dogs

- (1) A prison officer may use an approved dog to assist the prison officer in—
- (a) carrying out searches under Division 3; or
 - (b) tracking a prisoner who has escaped; or
 - (c) escorting prisoners while they are being moved from one place to another; or
 - (d) disarming prisoners; or
 - (e) searching inside a prison for prisoners or persons who have entered, or remain in the prison without lawful authority; or
 - (f) carrying out searches outside the prison to find persons attempting to break into the prison; or
 - (g) any circumstances in which the security or good order of the prison is threatened.
- (2) Without affecting the liability of the Crown or any other body or person, a prison officer is not personally liable for injury or damage caused by the use of an approved dog in accordance with this section.
- (3) In this section ***approved dog*** means a dog approved in accordance with the regulations for use by a prison officer.

28 Photographing and fingerprinting

S. 28(1)
amended by
No. 35/2002
s. 7(3).

(1) As soon as possible after a prisoner's reception into a prison an officer may take photographs of the prisoner and may take the prisoner's fingerprints.

S. 28(2)
amended by
No. 35/2002
s. 17(4).

(2) For the purpose of identifying prisoners and compiling records concerning prisoners an officer may at any time after a prisoner's reception into a prison take photographs of the prisoner or take the prisoner's fingerprints or both.

(3) An officer may give to a prisoner all necessary directions to enable the taking of accurate photographs and fingerprints.

29 Medical tests and samples

(1) As soon as possible after a prisoner's reception into a prison the prisoner must submit to medical tests.

(2) At any time after a prisoner's reception into a prison the principal medical officer may direct the prisoner to submit to medical tests.

(3) In this section *medical tests* means any—

(a) medical examinations; and

(b) tests (including the taking of samples of breath, blood and other bodily secretions) to assess a person's physical and mental health—

determined by the principal medical officer.

(4) In determining medical tests which prisoners must undergo the principal medical officer must have regard to the safety and welfare of the other prisoners in the prison.

29A Prisoners may be tested for drug or alcohol use

S. 29A
(Heading)
inserted by
No. 38/2003
s. 4(1).

S. 29A
inserted by
No. 16/1991
s. 4.

(1) If the Governor considers it necessary to do so in the interests of the management, good order or security of the prison, he or she may at any time direct a prisoner to submit to tests to assess whether the prisoner has used or consumed—

S. 29A(1)
substituted by
No. 38/2003
s. 4(2).

(a) any alcohol; or

(b) any drug of dependence within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981**; or

(c) any Schedule 8 poison or Schedule 9 poison within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981**.

S. 29A(1)(c)
substituted by
No. 74/2004
s. 21.

(2) Tests under subsection (1)—

(a) must be of a kind approved by the Secretary; and

S. 29A(2)(a)
amended by
No. 45/1996
s. 17(Sch. 1
item 22).

(b) may include the taking of samples of urine; and

(c) must be carried out by an officer within the meaning of Part 5.

(3) The following are deemed to be, and to have always been, valid—

S. 29A(3)
inserted by
No. 38/2003
s. 4(3).

(a) any direction given, or purportedly given, under this Act before the date of commencement of section 4 of the **Corrections (Amendment) Act 2003** requiring a prisoner to submit to any test to

assess whether the prisoner was using alcohol; and

- (b) any test conducted on a urine sample, taken under this section before the date of commencement of section 4 of the **Corrections (Amendment) Act 2003**, to assess whether the prisoner who provided the sample was using alcohol.

30 Secrecy

- (1) In this section—

confidential information means—

S. 30(1) def. of *confidential information* substituted by No. 16/1991 s. 5(1), amended by Nos 11/1993 s. 4(3)(a), 94/1994 s. 20, 45/1996 s. 17(Sch. 1 item 23(a)), 45/2001 s. 28(1).

- (a) information relating to the classification of a prisoner given to the Secretary or to the classification committee established under the Corrections Regulations 1988; or
- (b) information given to the Adult Parole Board that is not disclosed in a decision of the Board or in any reasons given by the Board for a decision of the Board; or
- (c) information given to an official visitor as an official visitor; or
- (d) information relating to the personal affairs of a prisoner; or
- (e) information concerning procedures or plans to be adopted or followed in a prison in the event of an emergency; or
- (f) information concerning the management of, or the operation of security measures in, or in relation to, a prison; or

- (g) information concerning the investigation of a breach or possible breach of the law by—
 - (i) a prisoner; or
 - (ii) an officer within the meaning of Part 5; or
 - (iii) a person authorised under section 9A to exercise a function or power; or
- (h) information contained in a report given to a court that is not disclosed in a decision of the court or in any reasons given by the court for a decision of the court; or
- (i) information of a business, commercial or financial nature relating to—
 - (i) the provision of services referred to in section 8B(1) or 9(1); or
 - (ii) an agreement entered into under section 8B(1) or 9(1) or a sub-contract agreement under that agreement;

information includes photographs, fingerprints, samples and results of tests;

information relating to the personal affairs of a prisoner includes information—

- (a) that identifies the prisoner or discloses his or her address or location; or
- (b) from which any other person's identity, address or location can reasonably be determined—

but does not include information that is in the public domain;

S. 30(1) def. of *information* inserted by No. 16/1991 s. 5(1).

S. 30(1) def. of *information relating to the personal affairs of a prisoner* inserted by No. 45/2001 s. 28(2).

S. 30(1) def. of *position* amended by Nos 11/1993 s. 4(3)(b), 45/1996 s. 17(Sch. 1 item 23(b)), 64/2010 s. 15.

position means any of the following—

- (a) a position as an officer within the meaning of Part 5;
 - (b) a delegate of the Secretary or a Governor;
 - (c) a person authorized to exercise the functions or powers of a prison officer or a medical officer;
 - (d) a position of being a person authorised under section 9A to exercise functions or powers;
 - (e) a person employed as a sheriff, deputy sheriff, sheriff's officer or appointed as a deputised person under Part 2 of the **Sheriff Act 2009**;
 - (f) a person to whom section 124J(1)(c) of the **Magistrates' Court Act 1989** applies when exercising powers or performing functions in connection with the operations of a sub-contractor or contractor under an agreement under section 124B(1)(b) of the **Magistrates' Court Act 1989**.
- (2) A person who holds or has held a position must not, except to the extent necessary to perform official duties powers or functions of that position, record, disclose, communicate or make use of confidential information.

Penalty: 5 penalty units.

- (3) Subsection (2) does not prevent a person from—
- (a) giving evidence or producing a document to a court in the course of criminal proceedings or proceedings under this Act, even though the evidence or document contains confidential information; or

S. 30(3) amended by No. 11/1993 s. 7(1)(d).

- (b) disclosing or communicating confidential information in accordance with the written authority of the Minister or the person to whom the information relates; or
- (c) disclosing or communicating confidential information to the Ombudsman or the Ombudsman's officers; or
- (d) disclosing confidential information that is a photograph to a person who holds a position or is a member of the police force, if the disclosure is made to assist the person to perform official duties; or
- (daa) recording, accessing, disclosing, communicating or making use of information—
 - (i) relating to the personal affairs of a prisoner; or
 - (ii) concerning the investigation of a breach or possible breach of the law by a prisoner—
on a computerised database in the performance of the person's official duties if—
 - (iii) the person holds a position other than as a volunteer; and
 - (iv) the Minister has given written authority under subsection (4) that applies to the person; or
- (da) disclosing information under section 30A; or
- (db) disclosing information to persons included on the victims register for the purposes of making victim submissions; or

S. 30(3)(daa)
inserted by
No. 35/2002
s. 8(1).

S. 30(3)(da)
inserted by
No. 45/2001
s. 28(3).

S. 30(3)(db)
inserted by
No. 14/2004
s. 5.

s. 30

S. 30(3)(dc)
inserted by
No. 5/2006
s. 14(8).

(dc) disclosing to a member of the police force or an AFP member (within the meaning of Part 5.3 of the Criminal Code of the Commonwealth) information relating to a prisoner, if the disclosure is made for the purpose of—

- (i) implementing or enforcing an order referred to in section 6(ca) under which the prisoner is being detained; or
- (ii) the security or good order of the prison or the safety or welfare of the prisoner; or

S. 30(3)(dd)
inserted by
No. 50/2008
s. 5.

(dd) disclosing information under section 104Y, 104Z or 104ZA; or

S. 30(3)(e)
inserted by
No. 16/1991
s. 5(2).

(e) disclosing confidential information to the extent specifically authorised by another Act.

S. 30(4)
inserted by
No. 35/2002
s. 8(2).

(4) The Minister may, by instrument in writing, authorise persons, or classes of persons, specified in the authority, who hold a position, other than as volunteers, to record, access, disclose, communicate or make use of, for the performance of their official duties, confidential information, or classes of confidential information, of a kind referred to in subsection (3)(daa) on a computerised database specified in the authority that is able to be accessed by—

- (a) persons holding a position, other than as volunteers; or
- (b) officers within the meaning of section 85; or
- (c) members of the police force.

(5) Nothing in this section prevents the recording or accessing and using of health information within the meaning of the **Health Records Act 2001** in accordance with that Act.

S. 30(5)
inserted by
No. 35/2002
s. 8(2).

30A Victim may be given certain information about a prisoner

S. 30A
inserted by
No. 45/2001
s. 29.

(1) In this section—

S. 30A(1)
substituted by
No. 14/2004
s. 6.

criminal act of violence means—

S. 30A(1)
def. of
*criminal act of
violence*
amended by
No. 53/2007
s. 15.

- (a) an offence that involves an assault on, or injury or a threat of injury to, a person which is punishable by imprisonment;
- (b) an offence against Subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I of the **Crimes Act 1958** or any corresponding previous enactment (sexual offences);
- (c) an offence at common law of rape or assault with intent to rape;
- (d) an offence against section 21A(1) of the **Crimes Act 1958** (stalking) or any corresponding previous enactment;
- (e) an offence against section 63 of the **Crimes Act 1958** (child stealing) or any corresponding previous enactment;
- (f) an offence against section 63A of the **Crimes Act 1958** (kidnapping) or any corresponding previous enactment;
- (g) an offence against section 77 of the **Crimes Act 1958** (aggravated burglary) or any corresponding previous enactment;

- (ga) an offence against section 318(1) of the **Crimes Act 1958** (culpable driving causing death) or any corresponding previous enactment;
- (gb) an offence against section 319(1) of the **Crimes Act 1958** (dangerous driving causing death or serious injury) or any corresponding previous enactment;
- (gc) an offence against section 61(3) of the **Road Safety Act 1986** (failing to stop and render assistance after a motor vehicle accident causing death or serious injury) or any corresponding previous enactment;
- (h) an offence of conspiracy to commit, incitement to commit or attempting to commit an offence referred to in paragraphs (a) to (gc);
- (i) an offence against the law of another jurisdiction in Australia which substantially corresponds to an offence referred to in paragraphs (a) to (h);

S. 30A(1)
def. of
detention order
inserted by
No. 91/2009
s. 202(1)(a).

detention order means a detention order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009** or an interim detention order under that Act;

S. 30A(1)
def. of
extended supervision order
inserted by
No. 49/2006
s. 5(1)(c),
amended by
No. 21/2008
s. 6(a).

extended supervision order means an extended supervision order within the meaning of the **Serious Sex Offenders Monitoring Act 2005** or an interim extended supervision order within the meaning of that Act;

family member, in relation to a person, means that person's—

- (a) spouse or domestic partner;
- (b) child or step-child aged 18 years or more;
- (c) parent, step-father, step-mother or legal guardian;
- (d) brother, sister, step-brother or step-sister aged 18 years or more;
- (e) grandparent;
- (f) grandchild aged 18 years or more;
- (g) uncle or aunt;
- (h) niece or nephew aged 18 years or more;
- (i) father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law aged 18 years or more;

relevant offence means a relevant offence within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009**;

S. 30A(1)
def. of
relevant offence
inserted by
No. 49/2006
s. 5(1)(c),
amended by
No. 91/2009
s. 202(1)(b).

supervision order means a supervision order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009** or an interim supervision order under that Act;

S. 30A(1)
def. of
supervision order
inserted by
No. 91/2009
s. 202(1)(a).

s. 30A

S. 30A(1)
def. of
victim
amended by
Nos 49/2006
s. 5(1)(a)(b),
52/2008 s. 238,
91/2009
s. 202(1)(c).

victim means—

- (a) a person who has had a criminal act of violence committed against him or her;
 - (b) a family member of a person who has died as a direct result of a criminal act of violence committed against that person;
 - (c) a family member of a person who—
 - (i) has had a criminal act of violence committed against that person; and
 - (ii) is under 18 years of age or is incapable of managing his or her own affairs because of mental impairment;
 - (d) a person who—
 - (i) is or has been the spouse or domestic partner of a prisoner or of an offender who is or was subject to an extended supervision order, a supervision order or a detention order, or an application for an extended supervision order, a supervision order or a detention order; and
 - (ii) is a protected person under a final order under the **Family Violence Protection Act 2008**, for which the prisoner or offender (as the case may be) is the respondent.
- (2) Subject to section 30G, the Secretary may give a person included on the victims register in respect of an offence for which a prisoner is serving a sentence of imprisonment some or all of the following information—

S. 30A(2)
amended by
No. 14/2004
s. 7(1).

-
- (a) details about the length of the prisoner's sentence for the offence and of any other sentences of imprisonment that the prisoner is liable to serve;
- (b) the date on which, and the circumstances in which, the prisoner was, is to be or is likely to be released for any reason (including release on bail, custodial community permit, home detention or parole);
- (c) details of any escape by the prisoner from the legal custody of the Secretary or any other person.
- (2AA) Subject to subsection (2AB) and section 30G, the Secretary may give a person included on the victims register in respect of a relevant offence for which an offender is or was subject to an extended supervision order, a supervision order or a detention order, or an application for an extended supervision order, a supervision order or a detention order, some or all of the following information in respect of the offender—
- (a) the making of an application for an extended supervision order, a supervision order or a detention order and whether such an order was made, whether on appeal or otherwise;
- (b) if an extended supervision order, a supervision order or a detention order is made—
- (i) the date on which it commences, the period of the order and any instructions or directions, or any variation of the instructions or directions, given to the offender by the Adult Parole Board under section 16(2) of the **Serious Sex Offenders Monitoring Act 2005** that are relevant to the person;
- S. 30A(2)(b) amended by No. 53/2003 s. 13.
- S. 30A(2AA) inserted by No. 49/2006 s. 5(2), amended by No. 91/2009 s. 202(2)(a).
- S. 30A (2AA)(a) amended by No. 91/2009 s. 202(2)(a).
- S. 30A (2AA)(b) amended by No. 91/2009 s. 202(2)(a)(b).

s. 30A

S. 30A
(2AA)(ba)
inserted by
No. 91/2009
s. 202(2)(c).

- (ii) details of any changes affecting the operation of the order;
- (ba) if a supervision order or detention order is made or renewed—
 - (i) the date on which it commences, the period of the order and any instructions or directions, or any variation of the instructions or directions, given to the offender by the Adult Parole Board under section 119, 120(2) or 121 the **Serious Sex Offenders (Detention and Supervision) Act 2009**;
 - (ii) details of any changes affecting the operation of the order;

S. 30A
(2AA)(c)
amended by
No. 91/2009
s. 202(2)(d).

- (c) if the extended supervision order, supervision order or detention order is suspended or revoked, the date of suspension or revocation, and the date on which a suspended order recommences operation.

S. 30A(2AB)
inserted by
No. 49/2006
s. 5(2).

- (2AB) Subsection (2AA) applies—
 - (a) despite an order made under section 42 of the **Serious Sex Offenders Monitoring Act 2005** unless the order expressly prohibits publication to a victim; and
 - (b) despite sections 43 and 44 of the **Serious Sex Offenders Monitoring Act 2005**.

S. 30A(2AC)
inserted by
No. 91/2009
s. 202(3).

- (2AC) Subsection (2AA) applies—
 - (a) despite an order made under section 183 of the **Serious Sex Offenders (Detention and Supervision) Act 2009**; and
 - (b) despite sections 182 and 188 of the **Serious Sex Offenders (Detention and Supervision) Act 2009**.

- (2A) If a person included on the victims register has a nominee whose details have been included under section 30D in respect of the person included on the victims register, the Secretary may give information under subsection (2) or (2AA) to the nominee on behalf of that person. **S. 30A(2A) inserted by No. 14/2004 s. 7(2), amended by No. 49/2006 s. 5(3).**
- (3) The Secretary must not disclose the information if the Secretary reasonably believes the disclosure of the information might endanger the security of any prison or the safe custody and welfare of the prisoner or any other prisoner or the safety or welfare of the offender or the safety or welfare of any other person. **S. 30A(3) amended by No. 49/2006 s. 5(4).**

30B Application to be included on victims register

S. 30B inserted by No. 14/2004 s. 8.

- (1) A person may apply to the Secretary for inclusion on the victims register.
- (2) An application under subsection (1)—
- (a) must be in writing; and
 - (b) may include details of a nominee to whom the applicant wishes information to be disclosed under section 30A instead of being disclosed directly to the applicant.
- (3) If an applicant includes details of a nominee in accordance with subsection (2)(b), the application must include the following—
- (a) details of the nominee's relationship to the applicant; and
 - (b) the reason that the applicant wishes information under section 30A to be disclosed to the nominee rather than directly to the applicant; and

s. 30C

(c) an undertaking completed by the nominee that the nominee will not disclose the information disclosed under section 30A by the Secretary, other than in accordance with the Act.

(4) An undertaking referred to in subsection (3)(c) must be in the prescribed form.

S. 30C
inserted by
No. 14/2004
s. 8.

30C Inclusion on the victims register

S. 30C(1)
amended by
No. 49/2006
s. 5(5).

(1) Subject to subsection (4), a person who makes an application under section 30B who is a victim within the meaning of section 30A(1) must be included on the victims register.

S. 30C(2)
amended by
No. 49/2006
s. 5(6).

(2) Subject to subsection (4), a person who makes an application under section 30B who is not a victim within the meaning of section 30A(1) may be included on the victims register if the Secretary, in writing, approves the inclusion of that person on the register.

(3) For the purposes of subsection (2), the Secretary may approve the inclusion of a person on the register if that person—

S. 30C(3)(a)
amended by
Nos 49/2006
s. 5(7)(a),
52/2008 s. 239.

(a) is not a victim within the meaning of paragraph (d) of the definition of *victim* in section 30A(1) but can demonstrate, to the satisfaction of the Secretary, a documented history of family violence (within the meaning of the **Family Violence Protection Act 2008**) being committed by—

S. 30C(3)(a)(i)
inserted by
No. 49/2006
s. 5(7)(a).

(i) a prisoner; or

-
- (ii) an offender who is or was subject to an extended supervision order, a supervision order or a detention order, or an application for an extended supervision order, a supervision order or a detention order—
- against that person; or
- (b) can demonstrate, to the satisfaction of the Secretary, a substantial connection to the offence for which the prisoner is serving a sentence of imprisonment; or
- (c) can demonstrate, to the satisfaction of the Secretary, a substantial connection to the relevant offence for which the offender is or was subject to an extended supervision order, a supervision order or a detention order, or an application for an extended supervision order, a supervision order or a detention order.
- (4) If a person makes an application under section 30B after the expiry of the relevant sentence of imprisonment or the relevant extended supervision order, supervision order or detention order, the Secretary is not required to include the person on the victims register.
- 30D Secretary may refuse to include nominee details for person included on victims register**
- (1) If an applicant under section 30B includes details of a nominee to whom the applicant wishes information under section 30A to be disclosed, the Secretary may include those details in respect of the applicant as part of the inclusion of the applicant as a person on the victims register if satisfied that it is appropriate to do so.
- S. 30C(3)(a)(ii)**
inserted by
No. 49/2006
s. 5(7)(a),
amended by
No. 91/2009
s. 203(1).
- S. 30C(3)(b)**
amended by
No. 49/2006
s. 5(7)(b).
- S. 30C(3)(c)**
inserted by
No. 49/2006
s. 5(7)(c),
amended by
No. 91/2009
s. 203(1).
- S. 30C(4)**
inserted by
No. 49/2006
s. 5(8),
amended by
No. 91/2009
s. 203(2).
- S. 30D**
inserted by
No. 14/2004
s. 8.

s. 30E

(2) If an applicant under section 30B is included on the victims register, the Secretary may refuse to include details of an applicant's nominee if the Secretary believes on reasonable grounds that the disclosure of information under section 30A to the nominee—

(a) may endanger—

(i) the security of any prison; or

(ii) the safe custody and welfare of the prisoner or any other prisoner; or

(ia) the safety or welfare of the offender; or

(iii) the safety or welfare of any other person; or

(b) may result in a contravention of section 30I.

S. 30D
(2)(a)(ia)
inserted by
No. 49/2006
s. 5(9).

30E Annual report

(1) The Secretary must provide an annual written report to the Minister and to the Attorney-General on the inclusion by the Secretary of persons on the victims register under section 30C(3).

(2) A report under subsection (1) must include—

(a) the number of applications for inclusion on the victims register received under section 30C(2); and

(b) the number of such applications approved by the Secretary under section 30C(3); and

(c) the categories of person which the Secretary has approved for inclusion on the victims register.

S. 30E
inserted by
No. 14/2004
s. 8.

30F Secretary may prepare guidelines

- (1) The Secretary may prepare guidelines in relation to the exercise of powers under section 30C.
- (2) The Minister and the Attorney-General must both approve any guidelines prepared under subsection (1).
- (3) Guidelines prepared under subsection (1) and approved under subsection (2)—
 - (a) must be published in the Government Gazette as soon as practicable after their preparation; and
 - (b) take effect on the date of publication in the Government Gazette.

S. 30F
inserted by
No. 14/2004
s. 8.

30G Release of information to "family members"

The Secretary must not disclose information under section 30A to a person included on the victims register who is a family member within the meaning of section 30A(1) unless that person can show, to the satisfaction of the Secretary, that he or she is or was the primary care giver or next of kin of—

- (a) the person against whom the offence for which the prisoner is serving a sentence of imprisonment was committed; or
- (b) the person against whom the relevant offence was committed for which the offender is or was subject to an extended supervision order, a supervision order or detention order, or an application for an extended supervision order, a supervision order or detention order.

S. 30G
inserted by
No. 14/2004
s. 8,
amended by
No. 49/2006
s. 5(10).

S. 30G(a)
inserted by
No. 49/2006
s. 5(10).

S. 30G(b)
inserted by
No. 49/2006
s. 5(10),
amended by
No. 91/2009
s. 204.

s. 30H

S. 30H
inserted by
No. 14/2004
s. 8.

30H Confidentiality of information

A person included on the victims register and that person's nominee (if any) to whom information is disclosed under section 30A by the Secretary must treat that information in an appropriate manner that respects the confidential nature of the information.

S. 30I
inserted by
No. 14/2004
s. 8.

30I Offence to publish information disclosed under section 30A in electronic or print media

S. 30I(1)
amended by
No. 49/2006
s. 5(11)(a).

- (1) A person must not publish in the electronic or print media or cause to be published in the electronic or print media any information relating to the personal affairs of a prisoner or offender if that person knows that the information has been disclosed under section 30A.

Penalty: 60 penalty units, in the case of a natural person;

1200 penalty units, in the case of a body corporate.

S. 30I(2)
amended by
No. 49/2006
s. 5(11)(a).

- (2) A person must not, for the purposes of publication in the electronic or print media, solicit or obtain any information relating to the personal affairs of a prisoner or offender, being information which has been disclosed under section 30A from—

(a) a person included on the victims register or that person's nominee (if any); or

(b) a person who has previously been included on the victims register or that person's nominee (if any).

Penalty: 60 penalty units, in the case of a natural person;

1200 penalty units, in the case of a body corporate.

- (3) A person included on the victims register, a person who has previously been included on the victims register or the nominee of either of those persons must not disclose any information relating to the personal affairs of a prisoner or offender which has been disclosed to that person under section 30A if that person reasonably believes that the information is likely to be or will be published in the electronic or print media or caused to be published in the electronic or print media.

S. 30I(3)
amended by
No. 49/2006
s. 5(11)(a).

Penalty: 60 penalty units.

- (4) Nothing in this section prevents—
- (a) a nominee of a person included on the victims register disclosing information to the person on whose behalf information has been disclosed under section 30A by the Secretary to the nominee; or
 - (b) a person included on the victims register or a nominee of a person included on the victims register from disclosing information disclosed under section 30A by the Secretary to an authorised person.

- (5) In this section—

authorised person means—

- (a) in the case of a person included on the victims register, a family member within the meaning of section 30A(1);
- (b) a member of the police force, the DPP or a person employed in the Office of Public Prosecutions established under the **Public Prosecutions Act 1994** if that member or person is investigating an offence;

S. 30I(5)
def. of
*authorised
person*
amended by
Nos 18/2005
s. 18(Sch. 1
item 22.2),
97/2005
s. 182(Sch. 4
item 13.2),
13/2010
s. 51(Sch.
item 16.4).

- (c) a registered medical practitioner in the course of treatment of a person included on the victims register in relation to a condition or issues arising from that person being a victim of a criminal act of violence;
- (d) a person registered as a psychologist under the Health Practitioner Regulation National Law in the course of treatment of a person included on the victims register in relation to a condition or issues arising from that person being a victim of a criminal act of violence;
- (e) a lawyer in the course of consulting that lawyer for legal advice;

Director of Public Prosecutions means the Director of Public Prosecutions appointed under section 87AB of the **Constitution Act 1975**;

information relating to the personal affairs of a prisoner or an offender includes information, including photographs, fingerprints, samples and results of tests—

- (a) that identifies the prisoner or offender or discloses his or her address or location; or
- (b) from which any other person's identity, address or location can reasonably be determined—

but does not include information that is in the public domain.

S. 30(5)
def. of
information relating to the personal affairs of a prisoner
substituted as
information relating to the personal affairs of a prisoner or an offender by
No. 49/2006
s. 5(11)(b).

31 Children

- (1) At the request of a prisoner who is the child's parent the Secretary may permit the prisoner's child to live with the prisoner in the prison if the Secretary is satisfied that—
- (a) it is in the best interests of the child to live with his or her parent in the prison; and
- (b) the management good order or security of the prison will not be threatened by the child living in the prison.
- (2) The prisoner is responsible for the safety and care of the prisoner's child while the child lives in the prison.
- (3) If the Secretary considers that the child's behaviour is threatening the security or good order of the prison or the child's safety is threatened, the Secretary may cause the child to be removed from the prison.
- (4) In this section, *parent* of a child means a person who would have day to day care and control of the child and with whom the child would ordinarily be resident if the person were not in prison.

S. 31(1)
amended by
Nos 16/1991
s. 6, 45/1996
s. 17(Sch. 1
item 24).

S. 31(3)
amended by
Nos 16/1991
s. 6, 45/1996
s. 17(Sch. 1
item 24).

S. 31(4)
inserted by
No. 72/2001
s. 3(Sch.
item 4.3).

* * * * *

S. 31A
inserted by
No. 16/1991
s. 7,
repealed by
No. 45/1996
s. 5.

32 Offences relating to prison security

- (1) A person who without being authorized to do so by this Act or the regulations—
- (a) enters or attempts to enter a prison; or
- (b) communicates or attempts to communicate with a prisoner; or

(c) takes or sends or attempts to take or send anything into or out of a prison—

is guilty of an offence.

Penalty: 2 years imprisonment.

(2) If a prison officer believes on reasonable grounds that a person who is outside but near a prison or near a place where prisoners are, is acting in a way which threatens or is likely to threaten the security of the prison or the prisoners, the prison officer may order the person to leave the neighbourhood of the prison or place.

(3) A person who disobeys an order to leave the neighbourhood of a prison or place is guilty of an offence.

Penalty: 5 penalty units.

(4) If a prison officer believes on reasonable grounds that a person is committing or has committed an offence under this section, the prison officer may apprehend the person without warrant.

S. 32(4)
substituted by
No. 16/1991
s. 8.

(4A) A prison officer who has apprehended a person pursuant to subsection (4) must as soon as possible deliver the person to the custody of a member of the police force to be dealt with according to law.

S. 32(4A)
inserted by
No. 16/1991
s. 8.

(5) The **Crimes Act 1958** (except section 458(1) and 458(2)) applies to the apprehension of a person under this section as if the person were found committing an offence within the meaning of section 458(1)(a) of that Act¹.

Division 2—Access to prisons

33 Definitions

In this Division—

official visitor means an official visitor appointed under this Division;

visitor means any of the following persons—

- (a) a judge of the Supreme Court;
- (b) a judge of the County Court;
- (c) a magistrate;
- * * * * *
- (e) an official visitor;
- (f) the Ombudsman or the Ombudsman's officers;
- (g) a person authorized to visit a prison by the Minister, the Secretary or a Governor;
- (h) a person who visits a prison under section 37;
- (i) a lawyer;
- (j) a person authorized by a lawyer to act on the lawyer's behalf;
- (k) a member of the police force;
- (l) a person authorized to visit a prison under a contact visiting programme or a residential visiting programme.

S. 33 def. of *visitor* amended by No. 45/1996 ss 7(b), 17(Sch. 1 item 25).

34 Visits by judges or magistrates

- (1) A judge of the Supreme Court or the County Court or a magistrate may visit any prison at any time.

S. 34 amended by No. 45/1996 s. 7(c).

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- (2) A person who visits a prison under this section may report on the visit to the Minister.
 - (3) A person's report under this section to the Minister may include recommendations as to the action to be taken concerning any matters mentioned in the report.

35 Appointment of official visitors

- (1) For each prison the Minister may appoint official visitors.
- (2) The terms and conditions of appointment of an official visitor are those stated in the instrument of appointment.

36 Secrecy

- (1) A person who is or has been an official visitor must not, except to the extent necessary to perform official duties, disclose or make use of information gained by the person as an official visitor.

Penalty: 5 penalty units.

- (2) Subsection (1) does not prevent a person from—
 - (a) producing a document or giving evidence to a court, where the document or evidence includes information mentioned in subsection (1), in the course of criminal proceedings under this Act; or
 - (b) disclosing information mentioned in subsection (1) to a person nominated by the Minister.

37 Visits by relatives or friends

- (1) With the permission of the Governor, a prisoner's relatives or friends may enter a prison and visit the prisoner.

-
- (2) A relative or friend who visits a prisoner may see and speak with the prisoner but is not permitted to touch the prisoner, unless the visit is part of a contact visiting programme or residential visiting programme.
 - (3) The Governor may give to a visitor under this section such orders as are necessary for the management and good order and security of the prison.
 - (4) A visitor who disobeys a Governor's order is guilty of an offence.

Penalty: 5 penalty units.

38 Contact visiting and residential visiting

- (1) The Secretary may in accordance with the regulations by instrument approve contact visiting programmes under which a prisoner's family and friends may visit and have physical contact with the prisoner.
- (2) The Secretary may in accordance with the regulations by instrument approve residential visiting programmes under which a prisoner's family may stay with the prisoner in the prison.
- (3) The Governor of a prison must in accordance with the regulations bring to the attention of all prisoners eligible to take part in a contact visiting programme or a residential visiting programme the privileges offered by the programme.
- (4) In this section *family* of a prisoner includes—
 - (a) a near relative of the prisoner; and
 - (b) any other person who has a long standing close personal relationship with the prisoner.

S. 38(1)
amended by
No. 45/1996
s. 17(Sch. 1
item 26).

S. 38(2)
amended by
No. 45/1996
s. 17(Sch. 1
item 26).

39 Exclusion of visitors for security reasons

- (1) The Governor of a prison may by order prohibit a relative or friend wishing to visit a prisoner under sections 37 or 38 from entering or remaining in the prison if the Governor believes on reasonable grounds that the person's entry into the prison or visit to the prisoner might endanger the good order or security of the prison or the safety of the prisoners.
- (2) The Governor of a prison may order a person visiting the prison under sections 37 or 38 to leave the prison if the Governor believes on reasonable grounds that—
 - (a) the person has committed an offence under section 32; or
 - (b) the person has contravened the regulations; or
 - (c) the person has disobeyed an order of the Governor given under this Division.
- (3) A person who disobeys an order under this section is guilty of an offence.
Penalty: 10 penalty units.
- (4) If a visitor disobeys an order to leave a prison under this section a prison officer may, if necessary, use reasonable force to compel the visitor to leave the prison.
- (5) A prison officer who uses force to compel a visitor to leave a prison must as soon as possible report the fact to the Governor.
- (6) A prison officer is not liable for injury or damage caused by the use of force in accordance with this section.

40 Visits by lawyers and their assistants

- (1) A lawyer acting in the course of the lawyer's practice may at the times fixed by the regulations enter a prison and visit a prisoner.
- (2) As well as the visits authorized by subsection (1) a lawyer acting in the course of the lawyer's practice may with the permission of the Minister, the Secretary or the Governor enter a prison and visit a prisoner.
- (3) With the Governor's permission, a person authorized by a lawyer to act on the lawyer's behalf in connection with the lawyer's practice may enter a prison and visit a prisoner.

S. 40(2)
amended by
No. 45/1996
s. 17(Sch. 1
item 27).

41 Visits by the police

- (1) A member of the police force may at the times fixed by the regulations enter a prison and visit a prisoner.
- (2) As well as visits authorized by subsection (1), a member of the police force may with the permission of the Secretary or the Governor enter a prison and visit a prisoner at any time stated in the permission.
- (3) A prisoner may refuse a visit from a member of the police force under this section.
- (4) A prisoner is not required to answer questions asked by a member of the police force during a visit authorized by this section.
- (5) A prisoner may request a prison officer to be present at, or to observe but not hear, any part of an interview between the prisoner and a member of the police force visiting the prison.
- (6) Nothing in this section applies to any questioning or investigation by a member of the police force in accordance with an order made under section 464B(5) of the **Crimes Act 1958**.

S. 41(2)
amended by
No. 45/1996
s. 17(Sch. 1
item 28).

S. 41(6)
inserted by
No. 86/2000
s. 8(3).

42 Visitors to give prescribed information

S. 42(1)
substituted by
No. 45/2001
s. 30(1).

- (1) A prison officer may require any person who wishes to enter, or who has entered, a prison as a visitor to give the prison officer information as to—
 - (a) the purpose of the visit or intended visit;
 - (b) the person's identity, address, occupation and age;
 - (c) the person's relationship (if any) to any prisoner the person wishes to visit.
- (2) A person who wishes to enter or has entered a prison as a visitor and who knowingly gives to a prison officer information that is false or misleading is guilty of an offence.

Penalty: 5 penalty units.

S. 42(3)
amended by
No. 45/2001
s. 30(2).

- (3) If when asked, a person does not give the required information to a prison officer or gives information to a prison officer that is false or misleading the prison officer may—
 - (a) if the person has not entered the prison, by order prohibit the person from entering the prison; or
 - (b) if the person has entered the prison, order the person to leave the prison immediately.
- (4) A person who disobeys an order under this section is guilty of an offence.

Penalty: 5 penalty units.

S. 42(5)
amended by
No. 45/1996
s. 17(Sch. 1
item 29).

- (5) A person ordered to leave a prison under this section may only re-enter the prison with the Secretary's permission.

- (6) If a person disobeys an order to leave a prison, a prison officer may, if necessary, use reasonable force to compel the person to leave the prison.
- (7) A prison officer who orders a person to leave a prison or uses force to compel a person to leave a prison must as soon as possible report the fact to the Governor.

43 Governor may refuse or terminate visits for security reasons

- (1) If the Governor of a prison believes on reasonable grounds that the security of the prison or the safety of a visitor is threatened, the Governor may—
 - (a) by order prohibit a person from entering the prison as a visitor; or
 - (b) order the visitor to leave the prison immediately.
- (1A) Without limiting any other power of the Secretary under this Act, if the Secretary believes on reasonable grounds that the good order or security of prisons or the safety of prisoners or visitors to prisons is threatened, the Secretary may by order prohibit a person from entering all or any prisons in Victoria as a visitor. S. 43(1A) inserted by No. 94/1994 s. 21(1), amended by No. 45/1996 s. 17(Sch. 1 item 30).
- (1B) An order under subsection (1A) in relation to a matter prevails over any order under subsection (1) or section 39 in relation to that matter. S. 43(1B) inserted by No. 94/1994 s. 21(1).
- (2) A person who disobeys an order under this section is guilty of an offence. S. 43(2) amended by No. 94/1994 s. 21(2).

Penalty: 5 penalty units.
- (3) If a person disobeys a Governor's order to leave a prison, a prison officer may, if necessary, use reasonable force to compel the person to leave the prison.

Division 3—Search and seizure

44 Formal searches

- (1) A person who wishes to enter or remain in a prison as a visitor must, if asked, submit to a formal search.
- (2) In this section *formal search* means a search to detect the presence of drugs weapons or metal articles carried out by an electronic or mechanical device.
- (3) If, when asked, a person does not submit to a formal search, a prison officer may prohibit the person from entering the prison or if the person is in the prison order the person to leave the prison immediately.

45 Search

S. 45(1)
amended by
No. 16/1991
s. 9(a)(c).

- (1) The Governor of a prison may for the security or good order of the prison or the prisoners at any time order a prison officer to—

S. 45(1)(b)
substituted by
No. 45/2001
s. 31.

- (a) search any part of the prison; or
- (b) search and examine any person in the prison other than a judge of the Supreme Court or County Court, or a magistrate; or
- (c) search and examine any thing in the prison; or
- (d) as well as the formal search required by section 44, require a person wishing to enter a prison (other than a judge of the Supreme Court or County Court or a magistrate) to submit to search and examination of the person and of any thing in the person's possession or under the person's control; or
- (e) conduct any search under paragraph (a), (b), (c) or (d) at random.

S. 45(1)(e)
inserted by
No. 16/1991
s. 9(b).

- (2) If the Governor of a prison outside the metropolitan area believes on reasonable grounds that, by reason of any activity outside but near the prison, the security or good order of the prison or the prisoners is threatened, the Governor may order a prison officer to search and examine any thing outside but near the prison and to require a person outside but near the prison to submit to a search.
- (3) If a person, other than a prisoner or a prison officer, refuses to submit to be searched under this section while inside the prison the Governor may order the person to leave the prison immediately.
- (4) A person who disobeys a Governor's order under subsection (3) is guilty of an offence.
Penalty: 5 penalty units.
- (5) A prison officer may, if necessary, use reasonable force to compel a person to obey an order to leave the prison.
- (6) A prison officer is not liable for injury or damage caused in carrying out searches in accordance with this section.
- (7) The Governor may at any time make an order terminating a search under this section.
- (8) In this section and sections 44 and 46—

metropolitan area means an area within the radius of 30 kilometres from the general post office at the corner of Elizabeth Street and Bourke Street; and

prison includes a place where prisoners are.

S. 45(8)
amended by
No. 16/1991
s. 15(4).

46 Seizure

- (1) In carrying out searches under sections 44 and 45 a prison officer may seize any one or more of the following—

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- (a) any thing found in the prison, whether in a person's possession or not, which the prison officer believes on reasonable grounds jeopardizes or is likely to jeopardize the security or good order of the prison or the safety of persons in the prison;
 - (b) any thing found on a prisoner or in a prisoner's possession, other than a thing which the prisoner is authorized to wear or to possess under Division 4, the regulations, or a direction of the Governor;
 - (c) any thing which a prisoner is authorized to wear or to possess under Division 4, the regulations or a direction of the Governor, which the prison officer believes on reasonable grounds jeopardizes or is likely to jeopardize the security of the prison or the safety of persons in the prison.
- (2) A prison officer who seizes any thing under subsection (1) must immediately inform the Governor.
 - (3) A Governor must deal in accordance with the regulations with any thing, which is not a drug of dependence, and is seized under this section.

Division 4—Prisoners rights

47 Prisoners rights

- (1) Every prisoner has the following rights—
 - (a) if not ordinarily engaged in outdoor work, the right to be in the open air for at least an hour each day, if the weather permits;
 - (b) the right to be provided with food that is adequate to maintain the health and well-being of the prisoner;
-

- (c) the right to be provided with special dietary food where the Governor is satisfied that such food is necessary for medical reasons or on account of the prisoner's religious beliefs or because the prisoner is a vegetarian;
- (d) the right to be provided with clothing that is suitable for the climate and for any work which the prisoner is required to do and adequate to maintain the health of the prisoner;
- (e) if not serving a sentence of imprisonment, the right to wear suitable clothing owned by the prisoner;
- (f) the right to have access to reasonable medical care and treatment necessary for the preservation of health including, with the approval of the principal medical officer but at the prisoner's own expense, a private registered medical practitioner physiotherapist or chiropractor chosen by the prisoner;
- (g) if intellectually disabled or mentally ill, the right to have reasonable access within the prison or, with the Governor's approval outside a prison to such special care and treatment as the medical officer considers necessary or desirable in the circumstances;
- (h) the right to have access to reasonable dental treatment necessary for the preservation of dental health;
- (i) the right to practise a religion of the prisoner's choice and, if consistent with prison security and good prison management to join with other prisoners in practising that religion and to possess such articles as are necessary for the practice of that religion;

S. 47(1)(f)
amended by
No. 23/1994
s. 118(Sch. 1
item 14.4).

s. 47

S. 47(1)(j)
amended by
No. 45/1996
s. 17(Sch. 1
item 31),
substituted by
No. 45/2001
s. 32(a).

- (j) the right to make complaints concerning prison management to the Minister, the Secretary, the Commissioner, the Governor, an official visitor, the Ombudsman, the Health Services Commissioner and the Human Rights Commissioner;
- (k) the right to receive at least one visit which is to last at least half an hour in each week under section 37;
- (l) the right to be classified under a classification system established in accordance with the regulations as soon as possible after being sentenced and to have that classification reviewed annually;

S. 47(1)(m)
substituted by
No. 45/2001
s. 32(b).

- (m) subject to sections 47A and 47B, the right to send letters to, and receive letters from, the following people without those letters being opened by prison staff—

- (i) the Minister, the Secretary, the Commissioner or an official visitor;

- (ii) a member of Parliament;

- (iii) a lawyer representing the prisoner, or from whom the prisoner is seeking legal advice;

- (iv) the Ombudsman;

- (v) the Health Services Commissioner;

- (vi) the Human Rights Commissioner;

- (vii) any person authorised to act on behalf of a person listed in subparagraph (iv), (v) or (vi);

S. 47(1)(m)(iii)
amended by
No. 18/2005
s. 18(Sch. 1
item 22.3).

(n) subject to section 47D, the right to send and receive other letters uncensored by prison staff;

S. 47(1)(n) amended by No. 16/1991 s. 10(1), substituted by No. 45/2001 s. 32(b).

(o) the right to take part in educational programmes in the prison.

(2) A prisoner's rights under this section are additional to, and do not affect any other rights which a prisoner has under an Act other than this Act or at common law.

(3) Subsection (1)(m) does not prevent the opening of letters in accordance with section 28(3) of the **Ombudsman Act 1973** or section 86L(7) of the **Police Regulation Act 1958**.

S. 47(3) inserted by No. 15/1989 s. 29.

* * * * *

S. 47(4) inserted by No. 16/1991 s. 10(2), repealed by No. 45/2001 s. 32(c).

Division 4A—Letters to and from prisoners

Pt 6 Div. 4A (Heading) inserted by No. 53/2007 s. 16.

47AA Definitions

S. 47AA inserted by No. 53/2007 s. 16.

In this Division—

family member, in relation to a person, means—

- (a) a partner of the person; or
- (b) a parent, step-parent, legal guardian or grandparent of the person or of a partner of the person; or
- (c) a child or grandchild (of any age) of the person or of a partner of the person or a

child of whom that person or the person's partner is a guardian; or

- (d) a sibling or a step-sibling of the person or of a partner of the person; or
- (e) a child (of any age) of a sibling of the person or of a sibling of a partner of the person; or
- (f) a child (of any age) of a sibling of a parent of the person or of a sibling of a parent of a partner of the person; or
- (g) a person who has or has had an intimate personal relationship with that person; or
- (h) a child who normally or regularly resides with that person; or
- (i) another person who is or has been ordinarily a member of the household of that person;

victim means—

- (a) a natural person who has suffered injury, loss or damage (including grief, distress, trauma or other significant adverse effect) as a direct result of an offence, whether or not that injury, loss or damage was reasonably foreseeable by the offender; or
- (b) a family member of a person to whom paragraph (a) applies.

S. 47A
inserted by
No. 45/2001
s. 33.

47A Suspected dangerous letters may be disposed of

If the Governor reasonably suspects that any letter to, or from, a prisoner contains an unauthorised article or substance that could pose an immediate danger to any person, the Governor may dispose

of the letter in any manner he or she considers to be appropriate.

47B Certain confidential letters may be inspected

(1) This section applies if the Governor reasonably suspects that a letter to, or from, a prisoner contains any unauthorised article or substance, but section 47A does not apply.

S. 47B inserted by No. 45/2001 s. 33.

(2) If the letter is to, or from, a lawyer, the Health Services Commissioner or the Human Rights Commissioner or any person authorised to act on behalf of either of those Commissioners, the Governor—

S. 47B(2) amended by Nos 18/2005 s. 18(Sch. 1 item 22.3), 28/2007 s. 3(Sch. item 14).

(a) may hold the letter and notify the prisoner and the lawyer, or the relevant Commissioner, of his or her suspicions; and

S. 47B(2)(a) amended by No. 18/2005 s. 18(Sch. 1 item 22.3).

(b) may open and inspect the letter—

(i) in the presence of the prisoner and a representative of the lawyer or relevant Commissioner; or

S. 47B(2)(b)(i) amended by No. 18/2005 s. 18(Sch. 1 item 22.3).

(ii) in accordance with any alternative arrangement agreed with the lawyer or relevant Commissioner—

S. 47B(2)(b)(ii) amended by No. 18/2005 s. 18(Sch. 1 item 22.3).

but must not read or censor the letter.

(3) If the Governor has not received a response from the relevant Commissioner or lawyer within 7 days after notice is given under subsection (2), the Governor may require the prisoner to open the letter to enable the Governor to inspect it.

S. 47B(3) amended by No. 18/2005 s. 18(Sch. 1 item 22.3).

s. 47C

- (4) If the letter is to, or from, the Minister, a member of Parliament, the Secretary, the Commissioner or an official visitor, the Governor may require the prisoner to open the letter to enable the Governor to inspect it.
- (5) If a prisoner refuses a request to open a letter under subsection (3) or (4), the Governor may open the letter.
- (6) In opening or inspecting a letter under this section, the Governor—
 - (a) may inspect the envelope, and any associated packet, parcel, container or wrapper; but
 - (b) must not read or censor the letter.

S. 47C
inserted by
No. 45/2001
s. 33.

47C All other letters may be opened and read

A prison officer may open, inspect and read a letter sent to, or received by, a prisoner by or from any person who is not listed in section 47(1)(m) to determine whether or not the contents of the letter may jeopardise the safety and security of the prison, the safe custody and welfare of any prisoner or the safety of the community.

S. 47D
(Heading)
substituted by
No. 97/2004
s. 3(1).

47D When letters may be stopped and censored

S. 47D
inserted by
No. 45/2001
s. 33.

- (1) This section applies if the Governor reasonably believes that any letter to be sent by a prisoner to, or sent to a prisoner by, any person who is not listed in section 47(1)(m)—
 - (a) is a threat to prison security; or

S. 47D(1)
amended by
No. 97/2004
s. 3(2).

- (b) may be of a threatening or harassing nature;
or
- (c) may be being used to further an unlawful
activity or purpose; or
- (d) contains indecent, abusive, threatening or
offensive written or pictorial matter, or
written or pictorial matter that may be
regarded by a victim as distressing or
traumatic, or an indecent, obscene or
offensive article or substance; or
- (e) contravenes or would contravene
section 47H.

S. 47D(1)(d)
amended by
Nos 97/2004
s. 3(3),
53/2007 s. 17.

S. 47D(1)(e)
inserted by
No. 97/2004
s. 3(4).

- (2) The Governor may—
 - (a) if the belief concerns the whole letter, stop
the letter from being sent or received by the
prisoner; or
 - (b) if the belief concerns only part of a letter,
cause the relevant part of the letter to be
censored.

**47DA Offence for prisoner to send distressing or
traumatic letters**

S. 47DA
inserted by
No. 53/2007
s. 18.

A prisoner must not send or cause to be sent, or
attempt to send or cause to be sent, a letter to a
victim who is not listed in section 47(1)(m) if the
prisoner knows, or ought reasonably to know, that
the letter contains written or pictorial matter that
may be regarded as distressing or traumatic by the
victim or any other victim who might reasonably
receive it.

Penalty: 6 months imprisonment.

s. 47E

S. 47E
inserted by
No. 45/2001
s. 33.

47E Letter register

The Governor must establish and maintain a register containing—

S. 47E(ab)
inserted by
No. 5/2006
s. 14(9).

- (a) details of every letter disposed of under section 47A; and
- (ab) details of every letter given by a prison officer to a member of the force or a police officer (within the meaning of Part 5.3 of the Criminal Code of the Commonwealth) under section 13ZC of the **Terrorism (Community Protection) Act 2003**; and
- (b) details of every letter opened under—
 - (i) section 47B(2), (3), (4) or (5); or
 - (ii) section 28(3) of the **Ombudsman Act 1973**; or
 - (iii) section 86L(7) of the **Police Regulation Act 1958**; and
- (c) the reasons for opening any letter referred to in paragraph (b); and
- (d) details of any unauthorised article or substance found in conducting an inspection in relation to a letter; and
- (e) details of any other action taken in relation to a letter or anything found in or with a letter.

Pt 6 Div. 5
(Heading and
ss 47F–47L)
inserted by
No. 97/2004
s. 4.

Division 5—Change of name applications by prisoners

S. 47F
inserted by
No. 97/2004
s. 4.

47F Application

This Division applies despite anything to the contrary in the **Births, Deaths and Marriages Registration Act 1996**.

47G Definitions

In this Division—

change of name application means an application by or on behalf of a prisoner for registration of—

- (a) a change of the prisoner's name; or
- (b) a change of the name of a child of the prisoner;

Victorian Registrar means Registrar of Births, Deaths and Marriages under the **Births, Deaths and Marriages Registration Act 1996**.

S. 47G
inserted by
No. 97/2004
s. 4.

47H Applications for change of name by or on behalf of a prisoner

- (1) A prisoner must not make a change of name application to a Registrar without having first obtained the written approval of the Secretary.

Penalty: 5 penalty units.

- (2) A person must not make a change of name application to a Registrar on behalf of a prisoner unless the written approval of the Secretary is first obtained.

Penalty: 5 penalty units.

- (3) In this section, ***Registrar*** means—

- (a) the Victorian Registrar; or
- (b) an authority responsible under a law of another State or a Territory for the registration of births, deaths and marriages.

S. 47H
inserted by
No. 97/2004
s. 4.

s. 47I

S. 47I
inserted by
No. 97/2004
s. 4.

47I Approval by Secretary

- (1) Subject to subsection (2), the Secretary may only approve a change of name application if he or she is satisfied that the change of name is in all the circumstances necessary or reasonable.
- (2) The Secretary must not approve a change of name application if he or she is satisfied that the change of name would, if registered, be reasonably likely—
 - (a) to be a threat to prison security; or
 - (b) to jeopardise the safe custody or welfare of any prisoner; or
 - (c) to be used to further an unlawful activity or purpose; or
 - (d) to be regarded as offensive by a victim of crime or an appreciable sector of the community.

S. 47J
inserted by
No. 97/2004
s. 4.

47J Approval to be notified in writing

If the Secretary approves a change of name application, the Secretary must—

- (a) as soon as practicable, give written notice of the approval to the person who made the application; and
- (b) if the prisoner consents, give a copy of the written notice of approval to the Victorian Registrar.

S. 47K
inserted by
No. 97/2004
s. 4.

47K Registration of change of name

The Victorian Registrar must not register a change of name under the **Births, Deaths and Marriages Registration Act 1996** if—

- (a) the Victorian Registrar knows that—

-
- (i) the application for the change of name is made by or on behalf of a prisoner; and
 - (ii) the change of name relates to the name of the prisoner or a child of the prisoner; and
- (b) the Victorian Registrar has not received a copy of the notice of approval of the Secretary to the application under section 47J.

47L Registrar may correct Register

S. 47L
inserted by
No. 97/2004
s. 4.

Without limiting section 43 of the **Births, Deaths and Marriages Registration Act 1996**, the Victorian Registrar may correct the Register under that section if—

- (a) the name of a prisoner or a child of a prisoner on the Register was changed because of a change of name application; and
 - (b) the Secretary had not approved that change of name application under section 47I.
-

PART 7—PRISON DISCIPLINE

48 Definitions

In this Part—

S. 48 def. of
*Chief prison
officer*
repealed by
No. 16/1991
s. 11(1).

* * * * *

S. 48 def. of
*disciplinary
officer*
inserted by
No. 16/1991
s. 11(1),
amended by
No. 45/1996
s. 17(Sch. 1
item 32).

disciplinary officer means a prison officer—

- (a) nominated by the Secretary as a disciplinary officer; or
- (b) in a class of prison officers nominated by the Secretary as disciplinary officers;

privilege in relation to a prison means any of the privileges determined in accordance with the regulations for that prison;

prison offence means a contravention of this Act or the regulations;

register of offences means the register of prison offences established in accordance with the regulations.

S. 49
substituted by
No. 16/1991
s. 11(2),
amended by
No. 45/1996
s. 17(Sch. 1
item 33).

49 Disciplinary officers

The Secretary may by instrument nominate—

- (a) a prison officer to be a disciplinary officer in a prison or in any part of a prison; or
- (b) officers in a class of prison officers to be disciplinary officers in a prison or in any part of a prison.

50 Prison offences

- (1) If an officer within the meaning of Part 5 or an escort officer suspects that a prisoner has committed a prison offence the officer must as soon as possible report the fact to the disciplinary officer.
- (2) The disciplinary officer must make proper investigation of all alleged prison offences which come to the officer's notice and must give the prisoner alleged to have committed the offence an opportunity of making an explanation.
- (3) If after investigating an alleged prison offence the disciplinary officer is satisfied that no offence has been committed the disciplinary officer is to take no further action.
- (4) If after investigating an alleged prison offence the disciplinary officer is satisfied that the offence has been committed but is trivial, the disciplinary officer need take no further action.
- (5) Subject to subsection (4) if after investigating an alleged prison offence the disciplinary officer is satisfied that the prisoner has committed the offence the disciplinary officer must record the offence in the register of offences and may, in addition, do one of the following—
- (a) reprimand a prisoner; or
 - (b) withdraw one of the prisoner's privileges for less than 14 days; or
- * * * * *
- (d) charge the prisoner with the prison offence.
- S. 50(1) amended by Nos 16/1991 s. 11(3), 45/2001 s. 34(1).
- S. 50(2) amended by No. 16/1991 s. 11(3).
- S. 50(3) amended by No. 16/1991 s. 11(3).
- S. 50(4) amended by No. 16/1991 s. 11(3).
- S. 50(5) amended by No. 16/1991 ss 11(3), 12(a)(i).
- S. 50(5)(c) repealed by No. 16/1991 s. 12(a)(ii).
- S. 50(5)(d) amended by No. 45/2001 s. 34(2)(a).

Corrections Act 1986
No. 117 of 1986
Part 7—Prison Discipline

s. 51

S. 50(5)(e)
amended by
No. 16/1991
s. 12(a)(iii),
repealed by
No. 45/2001
s. 34(2)(b).

* * * * *

S. 50(5A)
inserted by
No. 45/2001
s. 34(3).

(5A) In addition to any action the disciplinary officer may take under subsection (5)(a), (b) or (d), the disciplinary officer may also take steps to have the matter dealt with under the criminal law.

S. 50(6)
amended by
No. 16/1991
s. 11(3).

(6) A charge for a prison offence must be in writing, and the disciplinary officer must as soon as possible give a copy of the charge to the Governor and the prisoner.

S. 50(7)(8)
repealed by
No. 44/1991
s. 6(d).

* * * * *

S. 50(9)
amended by
No. 16/1991
s. 11(3).

(9) A decision or purported decision of a disciplinary officer under this section cannot be appealed against, reviewed, challenged or called in question in any court.

51 Governor's action where charge laid

On receiving a copy of a charge for a prison offence the Governor may do any of the following—

S. 51(a)
amended by
No. 16/1991
s. 11(3).

- (a) if satisfied that the prison offence should have been dealt with by the disciplinary officer, refer the matter back to the disciplinary officer to be dealt with under section 50(5);
- (b) if the Governor believes that the Governor has an interest which would prejudice the fair hearing of the charge, refer the matter to another Governor for hearing;
- (c) hear the charge;

- (d) take steps to have the matter dealt with under the criminal law.

S. 51(d)
amended by
No. 16/1991
s. 12(b).

52 Secretary may nominate Governor to hear charge

- (1) At any time before a Governor's hearing a prisoner charged with a prison offence may ask the Governor to refer the matter to another Governor for hearing.
- (2) As soon as possible after receiving a request under subsection (1) the Governor must refer it to the Secretary unless the Governor refers the charge for a prison offence to another Governor for hearing.
- (3) On receiving a request under subsection (1) the Secretary may grant it and may nominate another Governor to hear the charge for the prison offence or may refuse the request.
- (4) As soon as possible after deciding to grant or refuse a request under subsection (3) the Secretary must give notice of the decision to the Governor of the prison concerned.
- (5) A Governor who has received a request under subsection (1) must not hear the charge for the prison offence to which the request relates unless and until the Secretary notifies the Governor that the request has been refused.

S. 52(2)
amended by
No. 45/1996
s. 17(Sch. 1
item 34).

S. 52(3)
amended by
No. 45/1996
s. 17(Sch. 1
item 34).

S. 52(4)
amended by
No. 45/1996
s. 17(Sch. 1
item 34).

S. 52(5)
amended by
No. 45/1996
s. 17(Sch. 1
item 34).

53 Governor's hearing

- (1) If a charge is to be heard by the Governor of the prison or by another Governor, the Governor of the prison must—
- (a) not less than 72 hours before the hearing; or
- (b) if the Governor and prisoner agree to a shorter period, within that shorter period; or

S. 53(1)
substituted by
No. 16/1991
s. 13(1).

S. 53(1)(c)
amended by
No. 45/1996
s. 17(Sch. 1
item 35).

(c) if the prisoner is due to be discharged from prison within 7 days of the alleged prison offence occurring or if, in the opinion of the Secretary, a period of notice shorter than 72 hours is necessary for the security or good order of the prison, within the period determined by the Secretary—

give notice to the prisoner of the time, date and place of the hearing.

(2) At a hearing a Governor must allow the prisoner reasonable opportunity to call relevant witnesses and cross examine the person conducting the case against the prisoner and witnesses called by that person.

S. 53(3)
amended by
No. 16/1991
s. 13(2).

(3) At a Governor's hearing the prisoner, if he or she attends the hearing may be represented by another prisoner if the Governor approves.

S. 53(3A)
inserted by
No. 16/1991
s. 13(3).

(3A) If a prisoner, having been given notice under subsection (1) of the time, date and place of the hearing, refuses or fails to attend the hearing, the Governor by whom the charge is to be heard may proceed to hear and determine the charge in the prisoner's absence.

(4) If at a Governor's hearing the Governor finds that the prisoner is guilty of the prison offence or the prisoner admits the truth of the charge, the Governor may impose any of the following penalties—

(a) a reprimand;

(b) a fine not exceeding 1 penalty unit;

(c) withdrawal of one or more of the prisoner's privileges for a period not exceeding 14 days for each prison offence committed, but not exceeding in total 30 days;

* * * * *

S. 53(4)(d)
repealed by
No. 44/1991
s. 6(e).

(5) The payment of fines imposed under subsection (4) may be recovered by deduction in accordance with the regulations from moneys payable to, or held by or for, the prisoner.

(6) For each prison offence committed the Governor must not under subsection (4) impose more than one of the penalties listed in that subsection.

* * * * *

S. 54
amended by
No. 57/1989
s. 3(Sch.
item 35.1),
repealed by
No. 44/1991
s. 6(f).

54A Power of Secretary to withdraw privileges

S. 54A
inserted by
No. 16/1991
s. 14(1).

(1) If the Secretary is satisfied that—

- (a) an investigation into whether a prisoner committed a prison offence is being carried out; or
- (b) a prisoner has been charged under section 50(5)(d) with a prison offence; or
- (c) steps have been taken to have an alleged prison offence dealt with under the criminal law—

S. 54A(1)
amended by
No. 45/1996
s. 17(Sch. 1
item 36).

the Secretary may withdraw one or more of the prisoner's privileges for such period as the Secretary thinks fit.

Corrections Act 1986
No. 117 of 1986
Part 7—Prison Discipline

s. 54A

S. 54A(2)
amended by
No. 45/1996
s. 17(Sch. 1
item 36).

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- (2) The Secretary may only withdraw a prisoner's privileges under subsection (1) if he or she is satisfied that it is necessary to do so in the interests of the management, good order and security of the prison concerned.
 - (3) The withdrawal of privileges under subsection (1) does not affect the imposition of any other penalties under this Part or under the criminal law in respect of the prison offence.
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PART 8—TEMPORARY ABSENCE FROM PRISON

Pt 8 (Heading)
amended by
No. 44/1991
s. 6(g).

Division 1—Definitions

55 Definitions

(1) In this Part—

* * * * *

S. 55(1) def. of
*approved
programme*
repealed by
No. 45/1996
s. 15.

Board means the parole board established under
this Part;

parole period means a period beginning on the
day on which a person is released from
prison on parole and ending at the end of the
person's prison sentence;

* * * * *

S. 55(1) def. of
*pre-release
permit*
repealed by
No. 44/1991
s. 6(h).

prison sentence in relation to a person means the
total of the following sentences or non-
parole periods which have been imposed or
determined in relation to the person, reduced
as provided for under this or any other Act—

S. 55(1) def. of
*prison
sentence*
amended by
Nos 44/1991
s. 6(j), 49/1991
s. 119(7)
(Sch. 4 item
3.4(a)(b)).

- (a) if a non-parole period has not been
fixed in relation to a sentence of
imprisonment—the sentence of
imprisonment;

s. 55A

- (b) if a non-parole period has been fixed in relation to a sentence of imprisonment and the prisoner has not served the non-parole period—the non-parole period;
- (c) if a non-parole period has been fixed in relation to a sentence of imprisonment and the prisoner has served the non-parole period and is not on parole—so much of the sentence as the board determines for the purposes of this definition.

S. 55(2)
repealed by
No. 44/1991
s. 6(j).

* * * * *

Pt 8 Div. 1A
(Heading and
ss 55A–55J)
inserted by
No. 45/2001
s. 15.

Division 1A—Escort officers

S. 55A
inserted by
No. 45/2001
s. 15.

55A Powers of Secretary in relation to escort officers

- (1) The Secretary may direct an escort officer to transport or supervise a prisoner.
- (2) An escort officer must comply with a direction of the Secretary.

S. 55B
inserted by
No. 45/2001
s. 15.

55B Escort officers subject to direction of court or tribunal

- (1) An escort officer must, if directed by the court, supervise a person who has surrendered himself or herself into the custody of the court in answer to his or her bail.
- (2) An escort officer must comply with any lawful direction of the court or tribunal when supervising—

(a) a prisoner attending before the court or tribunal; or

S. 55B(2)(a)
amended by
No. 68/2009
s. 97(Sch.
item 33.1).

(b) a person who has surrendered himself or herself into the custody of a court in answer to his or her bail.

55C Functions and powers of escort officers in relation to prisoners

S. 55C
inserted by
No. 45/2001
s. 15.

(1) An escort officer has the following functions in relation to a prisoner he or she is transporting or supervising—

(a) to take all reasonable steps to prevent the escape or attempted escape of the prisoner from the physical custody of the escort officer;

(b) to take all reasonable steps to ensure that the prisoner's safety and welfare are maintained;

(c) to take all reasonable steps to prevent and detect the commission by the prisoner of any unlawful act or any attempt to commit an unlawful act;

(d) to take all reasonable steps to ensure the good order and discipline of the prisoner;

(e) to take all reasonable steps to ensure the security of any property that is in the prisoner's possession;

(f) to take all reasonable steps to ensure that the prisoner is transported to or from the appropriate place as required by the Secretary;

-
- (g) to take all reasonable steps to ensure that the prisoner is transferred—
- (i) into the physical custody of another person acting on behalf of the Secretary; or
 - (ii) if legal custody of the prisoner is authorised to be transferred to a person other than the Secretary, into the physical custody of a person acting on behalf of the person to whom legal custody is to be transferred.
- (2) An escort officer has the following powers in relation to a prisoner he or she is transporting or supervising—
- (a) to order the prisoner to do or not to do anything which the escort officer believes on reasonable grounds is necessary for the safety of the escort officer, the prisoner or any other person;
 - (b) to search and examine the prisoner or any thing in the prisoner's possession or under the prisoner's control if the escort officer believes on reasonable grounds that this is necessary for the safety of the escort officer, the prisoner or any other person;
 - (c) to seize any thing found on the prisoner or in the prisoner's possession or under the prisoner's control if the escort officer believes on reasonable grounds that this is necessary for the safety of the escort officer, the prisoner or any other person;
 - (d) to apply an authorised instrument of restraint to the prisoner for the duration of the transport or supervision of the prisoner if the Secretary believes on reasonable grounds that the application of the instrument of
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restraint is necessary to prevent the escape of the prisoner or the assault of, or injury to, any person;

- (e) to apply an authorised instrument of restraint to the prisoner during the transport or supervision of a prisoner if the conduct of the prisoner during that transport or supervision has been such that it is reasonable to believe that the application of the instrument of restraint is necessary to prevent the escape of the prisoner or the assault of, or injury to, any person.

55D Authorisation of instruments of restraint

S. 55D
inserted by
No. 45/2001
s. 15.

An escort officer may apply an instrument of restraint to a person being transported only if—

- (a) the instrument, or type of instrument, is approved by the Secretary; and
- (b) the instrument is used in the manner determined by the Secretary.

55E Use of reasonable force

S. 55E
inserted by
No. 45/2001
s. 15.

- (1) An escort officer may, where necessary, use reasonable force to compel a prisoner to obey an order given by the escort officer in the exercise of a function or power.
- (2) An escort officer who uses force in accordance with this section is not liable for injury or damage caused by that use of force.

55F Report to Secretary

S. 55F
inserted by
No. 45/2001
s. 15.

- (1) An escort officer must immediately report to the Secretary the escape or suspected escape of a prisoner—
 - (a) from the physical custody of the escort officer; or

- (b) from the physical custody of another person who is transporting or supervising the prisoner, if the escape or suspected escape comes to the escort officer's notice.
- (2) An escort officer must report to the Secretary without delay—
- (a) anything which might reasonably be thought to jeopardise the welfare of a prisoner the escort officer is transporting or supervising;
 - (b) the exercise of any of the powers the escort officer has under sections 55C(2)(b) to 55C(2)(e) in relation to the prisoner;
 - (c) on the commission by the prisoner of an act that is, in the opinion of the escort officer, an unlawful act or an attempt to commit an unlawful act;
 - (d) on an omission by a prisoner that is, in the opinion of the escort officer, an unlawful omission;
 - (e) if the escort officer uses force to compel a prisoner to obey an order.

S. 55G
inserted by
No. 45/2001
s. 15.

55G Functions and powers of escort officers in relation to persons surrendering to court

- (1) This section applies if an escort officer is directed by a court to supervise a person who—
- (a) has surrendered himself or herself into the custody of the court in answer to his or her bail; or
 - (b) has been ordered by the court to be detained in custody on the court premises.
- (2) The escort officer, in relation to the supervision of the person, has the functions set out in sections 55C(1) and 55F, and may exercise the powers set out in sections 55C(2) and 55E.

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- (3) For the purposes of subsection (2), sections 55C, 55E and 55F apply as if—
 - (a) any reference to a prisoner were a reference to the person being supervised; and
 - (b) any reference to the Secretary were a reference to the court.
 - (4) The court may direct the escort officer to exercise one or more of the powers set out in sections 55C(2) and 55E.
 - (5) For the purposes of subsection (4), if the escort officer is directed by the court to exercise a power under section 55C(2), that section applies as if it did not require the escort officer to form a belief on reasonable grounds before exercising the power.

55H How are things seized by an escort officer to be dealt with?

S. 55H
inserted by
No. 45/2001
s. 15.

- (1) An escort officer who is transporting or supervising a prisoner and who seizes a thing under section 55C(2), must, as soon as is practicable, give the thing to the Secretary.
- (2) The Secretary must deal with or dispose of the seized thing in accordance with the regulations.
- (3) An escort officer who is supervising a person at the direction of a court under section 55B and who seizes a thing under section 55C(2), must, as soon as is practicable, give the thing to the court to be dealt with or disposed of as the court thinks appropriate.

s. 55I

S. 55I
inserted by
No. 45/2001
s. 15.

55I Powers of members of police force

- (1) If an escort officer is authorised to transport a person to or from a prison or police gaol or other place, then, unless the court otherwise determines, a member of the police force may, at the request of the Secretary, transport the person to or from that place in place of the escort officer, or may assist the escort officer to transport the person.
- (2) A member of the police force who is transporting, or assisting in the transport of, a person under this section may do anything in relation to that person that an escort officer transporting the person may do.
- (3) A person who is being transported only by members of the police force under subsection (1) is deemed to be in the legal custody of the Chief Commissioner of Police while being so transported.
- (4) If one or more members of the police force assist an escort officer to transport a person under this section, the person is deemed to be in the legal custody of the Secretary while being so transported.

S. 55J
inserted by
No. 45/2001
s. 15.

55J Additional powers of escort officers

- (1) An escort officer may execute a warrant to imprison, or a remand warrant, as if the escort officer was a prison officer.
- (2) A warrant to imprison or a remand warrant may be directed to an escort officer.

Division 2—Transfer of prisoners

Pt 8 Div. 2
(Heading and
s. 56)
amended by
Nos 16/1987
s. 4(3)(Sch. 1
item 7(e)),
16/1991
s. 3(2)-(5),
45/1996
s. 17(Sch. 1
item 37(a)(b)),
substituted as
Pt 8 Div. 2
(Heading and
ss 56–56AB)
by No.
45/2001 s. 16.

56 Transfers between prisons

The Secretary may, by instrument, direct the transfer of a prisoner or a class of prisoner from one prison to another or from one part of a prison to another part of a prison.

S. 56
substituted by
No. 45/2001
s. 16.

56AA Transfers to and from police gaols

- (1) The Secretary may, by instrument, direct the transfer of a prisoner from a prison to a police gaol.
- (2) The Secretary may, by instrument, authorise the transfer from a police gaol to a prison of a person who is in the legal custody of the Chief Commissioner of Police under Part 1A.

S. 56AA
inserted by
No. 45/2001
s. 16.

56AB Legal custody of prisoners and detainees transferred to institutions and approved mental health services

- (1) This section applies if a prisoner in a prison or a person detained in a police gaol is transferred from the prison or police gaol to—

S. 56AB
inserted by
No. 45/2001
s. 16.

s. 56AB

S. 56AB(1)(b)
amended by
No. 23/2006
s. 235(a).

S. 56AB(1)(c)
substituted by
No. 23/2006
s. 235(b).

S. 56AB(2)(a)
amended by
No. 23/2006
s. 235(c).

S. 56AB(2)(c)
amended by
No. 23/2006
s. 235(c).

- (a) an approved mental health service within the meaning of the **Mental Health Act 1986** in accordance with that Act;
 - (b) a residential institution within the meaning of the **Disability Act 2006** in accordance with that Act;
 - (c) a residential treatment facility within the meaning of the **Disability Act 2006** in accordance with that Act.
- (2) On a transfer referred to in subsection (1) of a prisoner or person, the prisoner or person is deemed to be in the legal custody of—
- (a) the person specified as the person who is to have the custody of the prisoner or person under the **Mental Health Act 1986**, the **Disability Act 2006** or the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**;
 - (b) in the case of a transfer referred to in subsection (1)(a), if no person is specified under the **Mental Health Act 1986**, the authorised psychiatrist of the approved mental health service;
 - (c) in the case of a transfer referred to in subsection (1)(b) or (1)(c), if no person is specified under the **Disability Act 2006**, the chief executive of the place to which the prisoner or person is transferred.

- (3) A transfer referred to in subsection (1) of a prisoner or person occurs when the person who is to have legal custody of the prisoner or person, or a person acting under lawful authority on behalf of the person who is to have legal custody, accepts physical custody of the prisoner or person.

Note

Specific provision for the transfer or return of prisoners and other people can be found in sections 16, 17, 36, 37, 44 and 45 of the **Mental Health Act 1986**, in sections 161, 166, 177 and 178 of the **Disability Act 2006** and in Part 5.6 of the **Children, Youth and Families Act 2005** (this list is not exhaustive).

Note to s. 56AB amended by Nos 23/2006 s. 235(d), 48/2006 s. 42(Sch. item 8.3).

56AC Transfers to and from transition centres

S. 56AC inserted by No. 2/2005 s. 6.

- (1) The Secretary may, by instrument, direct the transfer of a prisoner from a prison to a transition centre, or from a transition centre to a prison.
- (2) The Secretary may only direct the transfer of a prisoner to a transition centre if—
- (a) the Secretary is satisfied that adequate consideration has been given to the security and good order of the transition centre and the safety and welfare of the prisoner and members of the public; and
 - (b) the transfer is to occur not less than 3 months, and not more than 12 months, before the earliest possible release date of the prisoner; and
 - (c) a transitional activity plan has been developed for the prisoner that identifies the prisoner's rehabilitation or re-integration needs, and that proposes work, community work, education or other programs to address those needs.

s. 56A

- (3) Without limiting the factors the Secretary may consider, for the purposes of subsection (2)(a) the Secretary must have regard to whether the prisoner—
- (a) has a significant risk of self-harm;
 - (b) is an active drug user;
 - (c) has a history of violence;
 - (d) has a history of sexual offences or other offences that may make his or her presence at a transition centre inappropriate;
 - (e) has a history of escape, or presents a significant escape risk;
 - (f) has outstanding criminal charges or other legal or disciplinary matters pending.

Pt 8 Div. 2A
(Heading and
s. 56A)
inserted by
No. 70/1987
s. 8.

Division 2A—Absence to give evidence at foreign proceedings

S. 56A
inserted by
No. 70/1987
s. 8.

56A Arrangements with Commonwealth

S. 56A(1)
amended by
No. 45/1996
s. 17(Sch. 1
item 38).

- (1) If, under the Mutual Assistance in Criminal Matters Act 1987 of the Commonwealth, the Commonwealth Attorney-General makes arrangements for the travel of a prisoner to a foreign country to give evidence at a proceeding or assistance in relation to an investigation relating to a criminal matter, the Secretary may, by instrument, authorise the prisoner to be released from prison for the purpose of travelling to the foreign country to give evidence at the proceeding or assistance in relation to the investigation.

- (2) An authority given by the Secretary under subsection (1) may be subject to any conditions the Secretary thinks fit.

S. 56A(2) amended by No. 45/1996 s. 17(Sch. 1 item 38).

Division 3—Custodial community permits

Pt 8 Div. 3 (Heading and ss 57, 58) substituted as Pt 8 Div. 3 (Heading and ss 57–58D) by No. 16/1991 s. 15(1).

57 Custodial community permits

- (1) The Secretary may issue, in accordance with this Division, the following custodial community permits to prisoners—
- (a) a corrections administration permit;
 - (b) a rehabilitation and transition permit;
 - (c) a fine default permit.
- (2) The Secretary may issue, in accordance with this Division, a fine default permit to a person in the custody of the Chief Commissioner of Police.

S. 57 substituted by No. 16/1991 s. 15(1), amended by Nos 45/1996 s. 17(Sch. 1 item 39), 45/2001 s. 17, substituted by No. 2/2005 s. 7.

57A Corrections administration permit

- (1) The Secretary may issue a corrections administration permit to a prisoner for any of the following purposes—
- (a) a purpose related to the health of the prisoner;
 - (b) a purpose related to the administration of justice, including (but not limited to) being under police protection on account of evidence given, or to be given, by the prisoner in a legal proceeding within the

S. 57A inserted by No. 2/2005 s. 7.

S. 57A(1)(b) amended by No. 69/2009 s. 54(Sch. Pt 2 item 14.1).

meaning of the **Evidence (Miscellaneous Provisions) Act 1958**;

- (c) to visit a person with whom the prisoner has had a long-standing personal relationship if that person is seriously ill or in acute personal need;
 - (d) to attend the funeral of a person with whom the prisoner had a long-standing personal relationship;
 - (e) to visit another prison.
- (2) The Secretary may issue the permit for a period of up to 3 days.
- (3) Despite subsection (2), the Secretary may issue the permit for a longer period if the permit is to be issued—
- (a) under subsection (1)(b) and the prisoner will be under police protection while the permit is in force; or
 - (b) for a purpose related to the health of the prisoner.
- (4) Subject to section 6B, a prisoner who is authorised to be absent from prison under the permit continues in the legal custody of the Secretary while absent.

S. 57B
inserted by
No. 2/2005
s. 7.

57B Rehabilitation and transition permit

- (1) The Secretary may issue a rehabilitation and transition permit to a prisoner for any of the following purposes—
- (a) a purpose related to the physical fitness or education of the prisoner;
 - (b) to take part in a program approved by the Secretary that is designed to facilitate the maintenance of the prisoner's family ties;

- (c) in the case of a prisoner residing at a transition centre, to undertake activities provided for in the prisoner's transitional activity plan;
 - (d) to look for or carry out work, including (but not limited to) unpaid community work;
 - (e) to take part in a program approved by the Secretary that is designed to facilitate—
 - (i) the rehabilitation of the prisoner; or
 - (ii) the prisoner's re-integration into the community; or
 - (iii) the preparation of the prisoner for release.
- (2) The Secretary may issue the permit for a period of up to 30 days.
- (3) Subject to section 6B, a prisoner who is authorised to be absent from prison under the permit continues in the legal custody of the Secretary while absent.

57C Fine default permit

- (1) This section only applies to a person—
- (a) who is a prisoner who is in the legal custody of the Secretary solely because he or she failed to pay a monetary penalty or an instalment under an instalment order; or
 - (b) who is in the legal custody of the Chief Commissioner solely for a reason described in paragraph (a).
- (2) The Secretary may issue a fine default permit to the person requiring the person to carry out community work as specified in the permit.

S. 57C
inserted by
No. 2/2005
s. 7.

S. 57C(1)(a)
substituted by
No. 32/2006
s. 90(2)(a).

S. 57C(1)(b)
amended by
No. 32/2006
s. 90(2)(b).

- (3) The Secretary may issue the permit for a period of up to the whole, or the remaining part, of the term for which the person may be imprisoned.

Note

Section 6C(1)(bc) provides that a person who is absent from a prison under a fine default permit is not in the legal custody of the Secretary.

S. 57D
inserted by
No. 2/2005
s. 7.

57D Provisions applying to all custodial community permits

- (1) The Secretary may only issue a custodial community permit to a prisoner if the Secretary is satisfied that—
- (a) adequate consideration has been given to the safety and welfare of the prisoner and members of the public; and
 - (b) facilities exist for the provision of adequate and suitable escort and transport where necessary; and
 - (c) in addition to the requirements of this Division, the issuing of the permit complies with any requirements set out in the regulations.
- (2) In issuing a custodial community permit, the Secretary—
- (a) must comply with any requirements set out in the regulations; and
 - (b) may impose any conditions on the permit that he or she thinks are appropriate.
- (3) A custodial community permit—
- (a) authorises the prisoner to be absent from the prison for the period stated in the permit; and
 - (b) is subject to any relevant conditions set out in the regulations and any other conditions set out in the permit.

- (4) The Secretary may issue a custodial community permit in accordance with this section to a prisoner who is not in a prison.
- (5) If the Secretary issues a custodial community permit to a prisoner who is not in a prison, the Secretary must nominate a prison as the prison from which the prisoner is authorised to be absent.
- (6) Nothing in this Division is intended to prevent the Secretary from re-issuing a permit that has expired.
- (7) In the case of a person referred to in section 57C(1)(b), a reference to a prisoner in this section is to be read as a reference to the person.

58 Breach of custodial community permit

A prisoner who fails without reasonable excuse to comply with any conditions of a custodial community permit is guilty of an offence and liable to imprisonment for a term of not more than 3 years.

S. 58
substituted by
No. 16/1991
s. 15(1).

58A Powers of Secretary with respect to custodial community permits

- (1) The Secretary may before the prisoner is allowed to be absent from the prison under a custodial community permit or at any time during the period of such a permit—
 - (a) vary or revoke any condition of the permit or impose any additional condition; or
 - (b) subject to section 57, vary the period of the permit; or
 - (c) revoke the permit.

S. 58A
inserted by
No. 16/1991
s. 15(1).

S. 58A(1)
amended by
No. 45/1996
s. 17(Sch. 1
item 40).

s. 58B

- (2) The revocation of a custodial community permit or the varying or revocation of a condition or the varying of the period of such a permit or the imposing of an additional condition takes effect immediately.

S. 58B
inserted by
No. 16/1991
s. 15(1).

58B Visitors to give prescribed information

- (1) In this section and sections 58C and 58D—

S. 58B(1)
def. of
prisoner
amended by
No. 2/2005
s. 8(3).

prisoner means a prisoner who is authorised to be absent from a prison under a corrections administration permit or a rehabilitation and transition permit.

- (2) If a prison officer believes on reasonable grounds that the safety or security of a prisoner or the safety of a visitor to the prisoner is threatened, the prison officer may ask any person who wishes to visit the prisoner to give to the prison officer information as to the person's name, address, relationship (if any) to the prisoner and as to the purpose of the person's visit.
- (3) A person who wishes to visit a prisoner must, give the required information to a prison officer if asked to do so under subsection (2).
- (4) A person who wishes to visit or visits a prisoner and who knowingly gives to a prison officer information that is false or misleading is guilty of an offence.

Penalty: 5 penalty units.

S. 58B(5)
amended by
No. 45/2001
s. 35.

- (5) If when asked, a person does not give the required information to a prison officer or gives information to a prison officer which is false or misleading the prison officer may—
- (a) prohibit the person from visiting the prisoner; or

(b) direct the person to leave the place where the prisoner is.

(6) A person who disobeys an order under this section is guilty of an offence.

Penalty: 5 penalty units.

58C Governor may refuse or terminate visits for security reasons

S. 58C
inserted by
No. 16/1991
s. 15(1).

(1) If the Governor of the prison from which a prisoner is absent under a corrections administration permit or a rehabilitation and transition permit believes on reasonable grounds that the safety or security of the prisoner or the safety of a visitor to the prisoner is threatened, the Governor may—

S. 58C(1)
amended by
No. 2/2005
s. 8(3).

(a) by order prohibit a person from visiting the prisoner; or

(b) order the visitor to leave immediately the place where the prisoner is.

(2) A person who disobeys a Governor's order under this section is guilty of an offence.

Penalty: 5 penalty units.

58D Offence to give item to prisoner

S. 58D
inserted by
No. 16/1991
s. 15(1).

A visitor to a prisoner who gives or attempts to give to the prisoner anything which jeopardises or is likely to jeopardise the security, management or safety of the prisoner or the safety of persons at the place where the prisoner is, is guilty of an offence.

Penalty: 2 years imprisonment.

s. 58E

Pt 8 Div. 3A
(Heading and
s. 58E)
inserted by
No. 44/1991
s. 4(1).

Division 3A—Emergency management days

S. 58E
inserted by
No. 44/1991
s. 4(1).

58E Emergency management days

S. 58E(1)
amended by
No. 45/1996
s. 17(Sch. 1
item 41).

- (1) The Secretary may, in accordance with the regulations, reduce the length of a sentence of imprisonment being served by a person or the length of the non-parole period (if one has been fixed in respect of the sentence) on account of good behaviour while suffering disruption or deprivation—
 - (a) during an industrial dispute or emergency existing in the prison or police gaol in which the sentence is being served; or
 - (b) in other circumstances of an unforeseen and special nature.
- (2) Subsection (1) applies to all sentences of imprisonment, including any imposed for murder, irrespective of whether the sentences were imposed before or after the commencement of this section.

Division 4—Home detention orders

Pt 8 Div. 4
(Heading and
ss 59, 60)
repealed by
No. 44/1991
s. 3(1), new
Pt 8 Div. 4
(Heading and
ss 59–60X)
inserted by
No. 53/2003
s. 14.

59 Home detention order

New s. 59
inserted by
No. 53/2003
s. 14.

- (1) At the request of a prisoner, the Board may make a home detention order in respect of the prisoner if the Board is satisfied that—
- (a) on the date the order takes effect—
 - (i) the prisoner will have served at least two-thirds of the minimum term of imprisonment; and
 - (ii) the prisoner will be eligible for parole or for release in 6 months or less; and
 - (b) the prisoner is being held under minimum security conditions.
- (2) The Board must not make a home detention order in respect of a prisoner if—
- (a) the prisoner is serving an indefinite sentence; or
 - (b) the prisoner is eligible for parole but has not been granted parole; or
 - (c) the prisoner is on parole.
- (3) A prisoner to whom a home detention order applies must be taken for all purposes to be serving a sentence of imprisonment for the whole term stated in the order except for the purpose of any enactment providing for disqualification for, or the forfeiture or suspension of, pensions or other benefits.

New s. 60
inserted by
No. 53/2003
s. 14.

60 Order must not be made if other residents object

- (1) The Board must not make a home detention order unless the Board is satisfied that all persons of or over the age of 18 years who will be residing with the prisoner—
 - (a) have been consulted by the Secretary or a person authorised by the Secretary, without the prisoner being present, about the making of the home detention order; and
 - (b) have acknowledged in writing that they understand the requirements of the home detention order and are prepared to live in conformity with them; and
 - (c) subject to subsection (3), have consented in writing to the prisoner residing with them under a home detention order.
- (2) The Board must not make a home detention order unless the Board is satisfied that—
 - (a) so far as practicable the wishes and feelings of any person under the age of 18 years who will be residing with the offender under a home detention order have been ascertained; and
 - (b) due consideration has been given to them, having regard to the age and understanding of the person.
- (3) The Board may dispense with the consent of a person under subsection (1), if the Board is satisfied that the person lacks the capacity to give that consent.
- (4) If the Board dispenses with the consent of a person, the Board must not make the order unless the Board is satisfied that—
 - (a) so far as practicable the wishes and feelings of the person have been ascertained; and

- (b) due consideration has been given to them, having regard to the understanding of the person.

60A Home detention not available for certain offences

S. 60A
inserted by
No. 53/2003
s. 14.

The Board must not make a home detention order in respect of a prisoner if the prisoner has at any time been found guilty of any of the following—

- (a) an offence to which clause 1, 2, 3 or 4 of Schedule 1 to the **Sentencing Act 1991** applies; or
- (b) an offence, which in the opinion of the court, was committed in circumstances which involved behaviour of a sexual nature; or
- (c) an offence that involves the use of a firearm or a prohibited weapon (within the meaning of the **Control of Weapons Act 1990**); or
- (d) a contravention of a final order under the **Family Violence Protection Act 2008** or an order of a corresponding nature made in another State or a Territory; or
- (da) a contravention of a final order under the **Stalking Intervention Orders Act 2008** or an order of a corresponding nature made in another State or a Territory; or
- (e) an offence under section 21A of the **Crimes Act 1958** (stalking).

S. 60A(d)
substituted by
No. 52/2008
s. 240.

S. 60A(da)
inserted by
No. 68/2008
s. 67.

60B Suitability of prisoner for home detention

S. 60B
inserted by
No. 53/2003
s. 14.

- (1) The Board may only make a home detention order if the Board is satisfied—
- (a) that the prisoner is a suitable person to be released on home detention; and
- (b) that it is appropriate in all of the circumstances that a home detention order be made in respect of the prisoner; and

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- (c) on written advice received from the Secretary that—
- (i) a place will be available for the prisoner in a home detention program approved by the Secretary from the day on which the prisoner is released on home detention; and
 - (ii) the home detention program is located close enough to the place where the prisoner will reside during the period of the order to ensure adequate support and supervision; and
- (d) that the prisoner has consented in writing to the making of the order and has made the written undertakings required by section 60H; and
- (e) that a home detention assessment report has been prepared on the prisoner in accordance with section 60D.
- (2) In deciding whether or not to make a home detention order, the Board must have regard to the contents of a home detention assessment report on the prisoner.
- (3) The Board may, for any reason it considers sufficient, decline to make a home detention order despite the contents of a home detention assessment report.
- (4) The Board may make a home detention order only if a home detention assessment report states that, in the opinion of the person making the assessment, the prisoner is suitable for a home detention order.

60C Evidence of home detention order

S. 60C
inserted by
No. 53/2003
s. 14.

The Secretary of the Board must ensure that 4 copies of a home detention order made by the Board are signed by the Secretary of the Board or a member of the Board and of them—

- (a) one is retained by the Board; and
- (b) one is delivered to the Secretary to the Department of Justice; and
- (c) one is delivered to the prisoner in respect of whom the order is made; and
- (d) one is delivered to the Governor of the relevant prison if the prisoner is to be released from prison.

60D Assessment for home detention

S. 60D
inserted by
No. 53/2003
s. 14.

- (1) If the Board is considering making a home detention order, the Board must request the Secretary to prepare a home detention assessment report in respect of a prisoner.
- (2) The purpose of a home detention assessment report is to assess the suitability of a prisoner for a home detention order.
- (3) The Secretary must conduct any investigation that he or she thinks appropriate or that is directed by the Board for the purpose of preparing the report.

60E Contents of home detention assessment report

S. 60E
inserted by
No. 53/2003
s. 14.

- (1) A home detention assessment report must set out the following matters—
 - (a) the age of the prisoner;
 - (b) the social history and background of the prisoner;
 - (c) the medical and psychiatric history of the prisoner;

- (d) the prisoner's educational background;
- (e) the prisoner's employment history;
- (f) the circumstances of any other offences of which the prisoner has been found guilty and which are known to the author of the report;
- (g) the extent to which the prisoner is complying with any sentence currently in force in respect of him or her;
- (h) the prisoner's financial circumstances;
- (i) any special needs of the prisoner;
- (j) any courses, programs, treatment, therapy or other assistance that could be available to the prisoner and from which he or she may benefit;
- (k) an assessment as to whether the prisoner is an alcoholic or drug-dependent person;
- (l) an assessment of the likelihood that the prisoner will commit an offence in respect of which a final family violence intervention order could be made under the **Family Violence Protection Act 2008**;
- (la) an assessment of the likelihood that the prisoner will commit an offence in respect of which a final order could be made under the **Stalking Intervention Orders Act 2008**;
- (m) an assessment as to whether any circumstances of the prisoner's residence, employment, study or other prospective activities would not permit effective monitoring of a home detention order;
- (n) an assessment as to whether persons with whom the prisoner intends to reside or to continue to reside understand the

S. 60E(1)(l)
substituted by
No. 52/2008
s. 241,
amended by
No. 53/2010
s. 222.

S. 60E(1)(la)
inserted by
No. 68/2008
s. 68.

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- requirements of the order and are prepared to live in conformity with them;
- (o) whether the making of the order would place at risk of harm any person who would reside with or in the vicinity of the prisoner;
 - (p) any other prescribed matter.
- (2) In preparing the assessment report, the Secretary may also take into account any other relevant matters.

60F Disclosure of information

S. 60F
inserted by
No. 53/2003
s. 14.

- (1) The Secretary or any employee of the Department of Justice must not disclose to any person other than a member of the Board—
 - (a) any home detention assessment report; or
 - (b) any information obtained for the purpose of preparing that report.
- Penalty: 5 penalty units.
- (2) Subsection (1) does not apply to a disclosure made—
 - (a) to the Secretary or to an employee of the Department of Justice; or
 - (b) with the leave of the Board.
 - (3) For the purpose of determining an application for leave under subsection (2), the Board may order that the relevant document be produced to it and may inspect it but must not make the document available, or disclose its contents, to the applicant for leave.
 - (4) Without limiting the matters the Board may take into account for the purpose of determining whether or not to grant leave under subsection (2), the Board must take into account the likelihood, and the nature or extent, of harm that could be

s. 60G

caused to any person if the information is disclosed.

- (5) The Board may grant leave under this section in respect of the whole or part of a document.

S. 60G
inserted by
No. 53/2003
s. 14.

60G Medical examination of prisoner

The Board, in determining whether to make vary or revoke a home detention order, may—

S. 60G(a)
amended by
Nos 97/2005
s. 182(Sch. 4
item 13.3),
13/2010
s. 51(Sch.
item 16.5).

- (a) direct the Secretary to arrange for the examination of the prisoner by a registered medical practitioner, a psychiatrist or a psychologist; and
- (b) require the registered medical practitioner, psychiatrist or psychologist to give a report in writing to the Board.

S. 60H
inserted by
No. 53/2003
s. 14.

60H Undertaking by prisoner

- (1) Before a home detention order may be made in respect of a prisoner, the prisoner must give the following undertakings—
- (a) that the prisoner will comply with an offender's obligations under this Division; and
- (b) that the prisoner will agree and submit to any monitoring or testing required or directed under the home detention order to ensure compliance with those obligations; and
- (c) that the prisoner will pay the incidental costs (if any) incurred by the prisoner as a result of the home detention order that are determined by the Secretary to be payable by the prisoner.

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- (2) An undertaking under this section must—
- (a) be in writing; and
 - (b) set out the obligations of an offender under a home detention order.

60I Obligations of offender

S. 60I
inserted by
No. 53/2003
s. 14.

The obligations of an offender while serving a sentence of imprisonment by way of home detention are—

- (a) to comply with any requirements of this Division that relate to the offender; and
- (b) to comply with the requirements of any conditions to which the offender's home detention order is subject.

60J Core conditions governing home detention

S. 60J
inserted by
No. 53/2003
s. 14.

The core conditions of a home detention order are—

- (a) that the offender must be of good behaviour and must not commit any offence during the period of the order;
- (b) that the offender must advise the Secretary as soon as possible if arrested or detained by a member of the police force;
- (c) that the offender must reside only at premises approved by the Secretary;
- (d) that the offender must remain at the approved residence at all times other than—
 - (i) when the absence is authorised by the Secretary; or
 - (ii) when it is unsafe to remain there due to immediate danger (such as fire or medical emergency); or

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- (iii) when a person residing at the approved residence has withdrawn his or her consent under section 60L;
 - (e) that during authorised absences from the approved residence the offender must adhere to a specified activity plan that—
 - (i) sets out the activities that the offender must carry out in accordance with the other core conditions; and
 - (ii) is approved or arranged by the Secretary;
 - (f) that the offender must advise the Secretary as soon as practicable after departure from the approved residence because—
 - (i) it was unsafe to remain there due to immediate danger; or
 - (ii) a person residing at the approved residence has withdrawn his or her consent under section 60L;
 - (g) that the offender must accept any visit to the approved residence by the Secretary at any time;
 - (h) that the offender must submit to searches of places or things under the immediate control of the offender, as required by the Secretary;
 - (i) that the offender must submit to electronic monitoring (including voice recording) of compliance with the home detention order and comply with all instructions given by the Secretary in relation to the operation of monitoring systems;
 - (j) that the offender must not tamper with, damage or disable monitoring equipment;
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- (k) that the offender must comply with any reasonable direction of the Secretary in relation to association with specified persons;
 - (l) that the offender must not consume alcohol;
 - (m) that the offender must not use prohibited drugs, obtain drugs unlawfully or abuse drugs of any kind;
 - (n) that the offender must submit, as required by the Secretary, to breath testing, urinalysis or other test procedures approved by the Secretary for detecting alcohol or drug use;
 - (o) that the offender must accept any reasonable direction of the Secretary in relation to the maintenance of or obtaining of employment;
 - (p) that the offender must inform any employer of the home detention order and, if directed by the Secretary, of the nature of the offence that occasioned it;
 - (q) that the offender must authorise and make reasonable attempts to facilitate contact between any employer of the offender and the Secretary;
 - (r) that the offender must engage in personal development activities or in counselling or treatment programs, as directed by the Secretary;
 - (s) that the offender must undertake unpaid community work (not exceeding 20 hours per week) as directed by the Secretary when not otherwise employed;
 - (t) that the offender must not possess or have in his or her control—
 - (i) any firearm; or
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s. 60K

- (ii) any prohibited weapon within the meaning of the **Control of Weapons Act 1990**; or
- (iii) any controlled weapon or dangerous article within the meaning of the **Control of Weapons Act 1990** in contravention of that Act;
- (u) that the offender must comply with any order made under section 84 or 86(1) of the **Sentencing Act 1991** (whether before or after the making of the home detention order) in relation to the offence for which the home detention order is made;
- (v) that the offender must comply with all reasonable directions made by the Secretary.

S. 60K
inserted by
No. 53/2003
s. 14.

60K Special conditions

- (1) The Board may at any time attach special conditions to a home detention order.
- (2) The special conditions attached by the Board do not take effect until written notice of the conditions is given to the offender.
- (3) The Board may at any time vary or revoke any special conditions it attaches to an order.
- (4) A variation or revocation of a special condition does not take effect until written notice of the variation or revocation is given to the offender.
- (5) The Board must give the Secretary a copy of any notice it gives to an offender under this section.

S. 60L
inserted by
No. 53/2003
s. 14.

60L Withdrawal of consent

- (1) A person residing with an offender who has given a consent under section 60 may at any time by notice in writing withdraw that consent.
- (2) A notice of withdrawal of consent must be served on the Secretary.

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- (3) An offender must cease to reside in the residence to which the notice relates on being notified by the Secretary that a notice of withdrawal has been served under this section.

60M Revocation of order on application by offender or Secretary

S. 60M
inserted by
No. 53/2003
s. 14.

- (1) If there is no longer any approved residence at which an offender can reside under a home detention order, the Secretary may apply to the Board for the revocation of the home detention order.
- (2) Subject to subsection (3), the Secretary must notify the offender of an application under subsection (1).
- (3) The Secretary is not required to give the notice under subsection (2) if the Board is satisfied that the matter is urgent.
- (4) An offender who is serving a sentence of imprisonment by way of home detention may apply to the Board for the revocation of the home detention order.
- (5) The offender must notify the Secretary of an application under subsection (4).
- (6) The Secretary may make written submissions to the Board in respect of an application under this section.
- (7) The offender concerned may make written submissions to the Board in respect of—
- (a) an application under subsection (1) of which the offender is given notice under this section; or
 - (b) an application under subsection (4).

s. 60N

(8) The Board may, in its discretion, give an offender an opportunity to appear before the Board to be heard in relation to an application.

(9) On an application under this section, the Board after considering any submissions may revoke the home detention order.

S. 60M(10)
amended by
No. 49/2006
s. 6(1).

(10) If the Board revokes a home detention order under this section, the Board may issue a warrant authorising any member of the police force to break, enter and search any place where the offender is reasonably believed to be and to arrest the offender and take the offender to prison.

S. 60N
inserted by
No. 53/2003
s. 14.

60N Alleged breach of a home detention order

If an allegation is made to the Secretary that an offender has breached a condition of a home detention order, the Secretary must—

- (a) make appropriate inquiries in respect of the alleged breach; and
- (b) give the offender an opportunity of making an explanation.

S. 60O
inserted by
No. 53/2003
s. 14.

60O Sanctions for minor breaches

(1) Subject to section 60P, if, after completing the relevant inquiries, the Secretary is satisfied that the offender has breached a condition of the home detention order, the Secretary may impose either of the following sanctions for the breach—

- (a) a formal warning; or
- (b) a more stringent application of the conditions of home detention in accordance with the terms of those conditions, (for example, an increase in the required hours of unpaid community work within the maximum fixed by the Board).

- (2) The Secretary must notify the offender of any sanction imposed on the offender under this section.

60P Serious breach of home detention order

S. 60P
inserted by
No. 53/2003
s. 14.

- (1) If, after completing the relevant inquiries, the Secretary is satisfied that the offender has committed a serious breach of a condition of the home detention order, the Secretary must apply to the Board for the revocation or variation of the order.
- (2) Subject to subsection (3), the Secretary must give the offender notice of an application under subsection (1).
- (3) The Secretary is not required to give the notice under subsection (2) if the breach is of a core condition of the home detention order set out in section 60J(d) or section 60J(e).
- (4) The Secretary may make written submissions to the Board in respect of an application under subsection (1).
- (5) The offender concerned may make written submissions to the Board in respect of an application under subsection (1) of which the offender is given notice under this section.
- (6) In this section *serious breach* in relation to a condition of a home detention order means—
- (a) a breach that compromises the safety and security of the community, any persons residing with the offender or the offender's family; or
 - (b) a breach that involves the commission of an offence; or
 - (c) a breach that involves non-compliance with an order made under section 84 or 86(1) of the **Sentencing Act 1991**; or

s. 60Q

- (d) a breach that occurs after repeated failure to comply with the conditions of the order; or
 - (e) a breach of a core condition of the home detention order set out in section 60J(d) or section 60J(e).
- (7) Despite anything to the contrary in this section, if the Secretary, after completing the relevant inquiries, is satisfied that a breach of a core condition of a home detention order set out in section 60J(e) is of a minor nature, the Secretary—
- (a) is not required to make an application under subsection (1) in respect of that breach; and
 - (b) may impose a sanction under section 60O in respect of that breach.

S. 60Q
inserted by
No. 53/2003
s. 14.

60Q Board may require offender to appear before it

- (1) If an application is made under section 60P for the revocation or variation of a home detention order, the Board may, by notice in writing served on the offender, require the offender to appear before it on a day and at a time and place specified in the notice to be heard in relation to the application.
- (2) If the offender does not appear in accordance with the notice, the Board may proceed in the absence of the offender.

S. 60R
inserted by
No. 53/2003
s. 14.

60R Decision of Board

- (1) The Board must consider any evidence and submissions made or given under section 60P or 60Q—
 - (a) by the offender in relation to the alleged breach of conditions; and
 - (b) by or on behalf of the Secretary in relation to the alleged breach of conditions.

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- (2) If, after complying with subsection (1), the Board is satisfied that there has been a breach of the conditions of a home detention order and that it is proper in the circumstances of the case to do so, the Board may—
- (a) revoke the home detention order; and
 - (b) issue a warrant authorising any member of the police force to break, enter and search any place where the offender is reasonably believed to be and to arrest the offender and return the offender to prison.
- (3) If, after complying with subsection (1), the Board is satisfied that an offender has breached the conditions of a home detention order, the Board, instead of revoking the order, may impose any of the following sanctions for the breach—
- (a) a formal warning;
 - (b) the addition of special conditions to the order;
 - (c) the variation of any special conditions in the order.
- (4) The Board must notify an offender in writing of the revocation of a home detention order or of any sanction imposed on the offender under this section.
- (5) The Board may be satisfied that an offender has breached a condition of a home detention order that involves non-compliance with an order made under section 84 or 86(1) of the **Sentencing Act 1991** whether or not a step has been taken to enforce the order made under section 84 or 86(1) of that Act in any way referred to in section 85 or 87 of that Act, as the case requires.

S. 60R(2)(b)
amended by
No. 49/2006
s. 6(1).

- (6) The revocation of a home detention order or the imposition of a sanction under this section in respect of a breach that involves non-compliance with an order made under section 84 or 86(1) of the **Sentencing Act 1991** has no effect on the enforcement of the order made under section 84 or 86(1) of that Act in any way referred to in section 85 or 87 of that Act, as the case requires.

S. 60S
inserted by
No. 53/2003
s. 14.

60S Effect of revocation of home detention order

- (1) Subject to subsection (2), if the Board revokes a home detention order under section 60R, the offender must be returned to prison to serve a period of imprisonment that is equal to the period from the effective date of revocation of the home detention order to the date of expiry of the term of imprisonment imposed by the court.
- (2) The effective date of revocation of a home detention order is the date of the making of the order revoking the home detention order unless the Board directs otherwise under subsection (3).
- (3) If the Board considers it appropriate to do so, the Board may in writing direct that the effective date of revocation of the home detention order is to be the date that the breach of the conditions occurred or any later date before the date of the making of the order revoking the home detention order that the Board determines.
- (4) If the Board revokes a home detention order under section 60M, the offender must be taken to prison to serve a period of imprisonment that is equal to the period from the date of revocation of the home detention order to the date of expiry of the term of imprisonment imposed by the court.

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- (5) If an offender is returned to prison after a home detention order relating to the offender is revoked, the Governor of the prison must notify the Secretary within 7 days after the offender is returned to the prison.

60T Re-hearing of revocation made in absence of offender

S. 60T
inserted by
No. 53/2003
s. 14.

- (1) This section applies if—
- (a) the Board revokes a home detention order under section 60M and notice was not given to the offender of the application under that section; or
 - (b) the Board revokes a home detention order under section 60R and notice was not given to the offender of the application under section 60P; or
 - (c) the Board revokes a home detention order under section 60R and—
 - (i) the Board had required the offender to appear before it under section 60Q; and
 - (ii) the offender failed to appear.
- (2) The Board must, by notice in writing, advise the offender that he or she may apply to the Board within the period of 14 days after the date of service of the notice for a re-hearing in respect of the revocation of the home detention order.
- (3) If an application is made by the offender within the required time, the Board, after considering any evidence and submissions given by the offender and any other information and reports before it, may rescind the revocation of the home detention order.

- (4) If the revocation of the home detention order is rescinded, the home detention order must be taken for the purposes of this Division not to have been revoked.
- (5) The Board may determine not to make a document or part of a document considered by the Board under subsection (3) available to the offender if a member of the Board who is a Judge or retired Judge or Magistrate or retired Magistrate considers that to make the document or part available could endanger any person or inappropriately reveal the identity of any person.
- (6) Nothing in this section limits the operation of section 60U.

S. 60U
inserted by
No. 53/2003
s. 14.

60U Reconsideration of revocation if approved residence available

- (1) If the Board revokes a home detention order under section 60M, the offender may apply to the Board to rescind the revocation of the home detention order on the ground that an approved residence at which the offender can reside has become available.
- (2) On an application under subsection (1), the Board may rescind the revocation of a home detention order if it is satisfied—
 - (a) that a residence at which the offender can reside is available; and
 - (b) that the premises have been approved by the Secretary; and
 - (c) on the advice of the Secretary, that the rescission is not prohibited under subsection (3); and
 - (d) that it is appropriate in all the circumstances to do so.

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- (3) Section 60 applies to a rescission order under this section as if a reference to the making of a home detention order (except in subsections (1)(b) and (c) and (2)(a)) were a reference to the making of the rescission order.
- (4) If the revocation of the home detention order is rescinded, the home detention order must be taken for the purposes of this Subdivision not to have been revoked.

60V Revocation of order by court

S. 60V
inserted by
No. 53/2003
s. 14.

- (1) Subject to subsection (2), if a court imposes a sentence for another offence on an offender to whom a home detention order relates, the court may revoke the home detention order.
- (2) If a court imposes a sentence of imprisonment to be served in custody in a prison for another offence on an offender to whom a home detention order relates, the court must revoke the home detention order.
- (3) If a court revokes a home detention order under subsection (2), the court must commit the offender to prison for the portion of the term of imprisonment to which he or she was sentenced that was unexpired at the date of the revocation of the order.

60W Expiry of home detention order

S. 60W
inserted by
No. 53/2003
s. 14.

Unless a home detention order is revoked under this Division, the order expires at the end of the minimum term of imprisonment to which the offender was sentenced.

s. 60X

S. 60X
inserted by
No. 53/2003
s. 14.

60X Service of notices on offender

- (1) Any notice required to be served under this Division on an offender in respect of a home detention order may be served on him or her personally or by posting it to the offender's approved residence.
- (2) Any notice required under this Division to be served on an offender in custody in a prison must be served on the Secretary.
- (3) The Secretary must notify the offender of any notice served on him or her under subsection (2).

Division 5—Parole

61 Establishment of Board

- (1) There is established a Board by the name of the Adult Parole Board.
- (2) The Board consists of—

S. 61(2)
amended by
No. 11/1993
s. 7(1)(e).

S. 61(2)(a)
substituted by
No. 16/1991
s. 16(1)(a).

- (a) one or more Judges of the Supreme Court appointed by the Governor in Council on the recommendation of the Chief Justice of the Supreme Court, one of whom is to be appointed chairperson; and

S. 61(2)(b)
substituted by
No. 16/1991
s. 16(1)(b).

- (b) one or more Judges of the County Court appointed by the Governor in Council on the recommendation of the Chief Judge of the County Court; and

S. 61(2)(c)
substituted by
No. 16/1991
s. 16(1)(b).

- (c) one or more Magistrates appointed by the Governor in Council on the recommendation of the Chief Magistrate; and

S. 61(2)(d)
substituted by
No. 91/2009
s. 205.

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- (d) one or more persons appointed by the Governor in Council as full-time members; and
- (da) one or more retired Judges of the Supreme Court or the County Court or retired Magistrates, appointed by the Governor in Council as part-time members; and
- (e) such number of persons, as are appointed by the Governor in Council as part-time members; and
- (f) the Secretary.
- (3) The Board established by this section is deemed to be the same Board as the Adult Parole Board established under Division 4 of Part VIII of the **Community Services Act 1970** and the Parole Board established under Part IV of the **Crimes Act 1958**.
- (4) A reference in an Act other than this Act or in a subordinate instrument or document to the Parole Board or Adult Parole Board is, on the commencement of this section, deemed to be a reference to the Board established by this section.
- (5) All proceedings pending before the Adult Parole Board established under Division 4 of Part VIII of the **Community Services Act 1970** immediately before the commencement of this section may be continued and completed by the Board established by this section, as if those proceedings were commenced under this Act and are not affected by the enactment of this section.
- (6) The Judge of the Supreme Court who, immediately before the commencement of this section, was a member of the Adult Parole Board
- S. 61(2)(da) inserted by No. 16/1991 s. 16(1)(c).
- S. 61(2)(f) amended by No. 45/1996 s. 17(Sch. 1 item 42).
- S. 61(3) amended by No. 16/1987 s. 4(3)(Sch. 1 item 7(f)).
- S. 61(5) amended by No. 16/1987 s. 4(3)(Sch. 1 item 7(f)).
- S. 61(6) amended by No. 16/1987 s. 4(3)(Sch. 1 item 7(f)).

established under Division 4 of Part VIII of the **Community Services Act 1970** is deemed to have been appointed as the chairperson of the Board established by this section.

S. 61(7)
inserted by
No. 16/1991
s. 16(1)(d).

- (7) The Adult Parole Board is the same body after the commencement of section 16 of the **Corrections (Prison Management and Prisoners) Act 1991** as it was before that commencement despite the changes in its membership made by that section.

62 Deputy members

S. 62(1)
amended by
No. 16/1991
s. 16(2).

- (1) In this section *member* includes the chairperson of the Board.

S. 62(2)
amended by
No. 45/1996
s. 17(Sch. 1
item 43(a)).

- (2) If a member (other than the Secretary) is unable to perform the duties of a member or is absent or the office of a member is vacant the Governor in Council may, on any recommendation which is necessary for the appointment of a member of that kind, appoint a qualified person to act in the member's place while the member is unable to perform the duties of office, is absent or the office of member is vacant.

S. 62(3)
amended by
No. 45/1996
s. 17(Sch. 1
item 43(a)(b)).

- (3) If the Secretary is unable to perform the duties of a member or is absent, the Governor in Council may on the recommendation of the Secretary appoint a person to act as a member in the Secretary's place while the Secretary is unable to perform the duties of the member or is absent.

S. 62(4)
amended by
No. 45/1996
s. 17(Sch. 1
item 43(a)).

- (4) If the office of Secretary is vacant the Governor in Council may on the recommendation of the Minister appoint a person to act as a member while the office of the Secretary is vacant.
- (5) While acting in a member's place a deputy member appointed under subsections (2), (3) or (4) has the functions powers and duties of that member.

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- (6) A deputy member is entitled to receive—
- (a) such remuneration as is fixed by the Governor in Council; and
 - (b) such travelling and other allowances as are fixed by the Governor in Council.
- (7) A deputy member acting in the place of a chairperson has the functions powers and duties of a member and if the deputy chairperson is absent, has the functions of the chairperson.

63 Terms of office

- (1) A member of the Board holds office for the term, and subject to the conditions stated in the member's instrument of appointment but is eligible for re-appointment.
- (2) The Secretary ceases to hold office as a member of the Board upon ceasing to hold the office of Secretary.
- (3) A member of the Board may resign the office of member by writing signed by the member and given to the person who nominated or appointed the member.
- (4) The office of a member becomes vacant if—
- (a) the member dies; or
 - (b) the member resigns; or
 - (c) the member's term of office expires.
- (5) A vacancy in the office of a member may be filled by appointment in accordance with this Division.
- (6) If a member who is a Judge of the Supreme Court or the County Court ceases to be a Judge, the member ceases to hold office as a member.

S. 63(2)
amended by
No. 45/1996
s. 17(Sch. 1
item 44).

Corrections Act 1986
No. 117 of 1986
Part 8—Temporary Absence from Prison

s. 63

S. 63(6A)
inserted by
No. 16/1991
s. 16(3).

S. 63(7)
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 45.5),
80/2006
s. 26(Sch.
item 20.1).

S. 63(9)
amended by
No. 16/1991
s. 16(4).

S. 63(10)
amended by
No. 16/1991
s. 16(4).

- (6A) If a member who is a Magistrate ceases to be a Magistrate, the member ceases to hold office as a member.
- (7) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.
- (8) The appointment as a member of the Board of a Judge of the Supreme Court or the County Court does not affect the tenure of office, rank, status or the remuneration rights or privileges of the Judge as the holder of office as a Judge, and for all purposes, service as a member of the Board by a Judge is to be regarded as service as a Judge.
- (9) A member of the Board (other than a Judge of the Supreme Court or County Court or a Magistrate) is entitled to receive—
- (a) such remuneration as is fixed by the Governor in Council; and
 - (b) such travelling and other allowances and expenses as are fixed by the Governor in Council.
- (10) A member of the Board who is a Judge of the Supreme Court or County Court or a Magistrate is entitled to receive such travelling and other allowances and expenses as are fixed by the Governor in Council.
- (11) The remuneration, travelling and other allowances and expenses fixed for members of the Board may be different for different classes of members.

- (12) If a person was immediately before becoming a member of the Board an officer within the meaning of the **State Superannuation Act 1988**, the member continues subject to that Act, to be an officer within the meaning of that Act.

S. 63(12)
amended by
No. 50/1988
s. 93(2)(Sch. 2
Pt 2 item 7).

64 Divisions

- (1) The Board may exercise its powers and functions in divisions of the Board.
- (2) Subject to section 64A, a division of the Board consists of three members of whom at least one must be a Judge, retired Judge, Magistrate or retired Magistrate and that Judge, retired Judge, Magistrate or retired Magistrate is to be chairperson of that division.
- (3) Subject to section 64A, the chairperson of the Board may give directions as to the arrangement of the business of the Board and as to the persons who are to constitute divisions of the Board for the purposes of particular matters.
- (4) The following questions which may arise before a division of the Board are to be decided by the chairperson of the division alone—
- (a) whether a question is a question of fact or of law;
 - (b) any question determined to be a question of law.

S. 64(2)
amended by
Nos 16/1991
s. 16(5),
91/2009
s. 206(1).

S. 64(3)
amended by
No. 91/2009
s. 206(2).

64A Detention and Supervision Order division

- (1) There is to be a Detention and Supervision Order division (*DSO division*) of the Adult Parole Board.
- (2) The chairperson may determine a number of members of the Board (the *DSO panel*) who are eligible to sit as members of the DSO division.

S. 64A
inserted by
No. 91/2009
s. 207.

- (3) The Secretary is not eligible to sit as a member of the DSO division.
- (4) The chairperson may select 3 members of the DSO panel to constitute the DSO division from time to time.
- (5) At least one of the members of the DSO division must be a Judge, retired Judge, Magistrate or retired Magistrate.
- (6) The chairperson may select a member of the DSO division to be the chairperson or acting chairperson of the division.
- (7) The chairperson or acting chairperson of the DSO division may determine the times and places that the division is to meet.
- (8) A question is not to be decided at a meeting of the DSO division unless the chairperson, or acting chairperson, and 2 other members of the division are present.

Note

Section 6 of the **Serious Sex Offenders (Detention and Supervision) Act 2009** provides that the DSO division is to exercise the powers and carry out the functions of the Adult Parole Board under that Act.

S. 65
amended by
No. 16/1991
s. 16(6).

65 Chairperson

The chairperson or, in the chairperson's absence a member appointed under section 61(2)(a), (b) or (c) chosen in accordance with the procedure determined by the chairperson is to preside at meetings of the Board, except where the Board meets as a division of the Board.

66 Meetings

- (1) Subject to section 64A, the Board must meet at such times and places as are fixed by the regulations and at such other times and places as are fixed by the chairperson or acting chairperson.
- (2) The following questions which may arise at a meeting of the Board are to be decided by the person presiding at the meeting alone—
 - (a) whether a question is a question of fact or of law;
 - (b) any question determined to be a question of law.
- (3) The decision of a majority of the members present at a meeting of the Board on a question arising at the meeting (other than a question which under subsection (2) is to be decided by the person presiding at the meeting alone) is the decision of the Board on that matter.
- (4) If there is an equality of votes on a question arising at a meeting of the Board, the person presiding at the meeting has a second or casting vote.
- (5) Subject to section 64A, a question is not to be decided at a meeting of the Board unless the chairperson or acting chairperson and at least 3 other members of the Board are present.
- (6) Subject to the regulations, the Board may regulate its procedure.
- (7) An act or decision of the Board is not invalid simply because of—
 - (a) a vacancy in the office of a member; or
 - (b) a defect or irregularity in the appointment of a member.

S. 66(1)
amended by
No. 91/2009
s. 208(1).

S. 66(5)
amended by
No. 91/2009
s. 208(2).

s. 67

67 Secretary of the Board or member may act on behalf of Board

S. 67(1)
amended by
No. 45/1996
s. 17(Sch. 1
item 45).

- (1) If the Board has heard and determined a matter the Secretary of the Board or a member of the Board may on behalf of the Board sign and issue all necessary orders and documents relating to that matter.
- (2) An order or document signed under subsection (1) has effect as if signed by all the members of the Board.

68 Evidentiary

S. 68(1)
amended by
No. 45/1996
s. 17(Sch. 1
item 46(a)).

- (1) All Courts must take judicial notice of the signature on a document of the Secretary of the Board or a member of the Board if the document is required or authorized to be signed by the Secretary or member under this Division, and must presume that the document was duly signed.

S. 68(2)
amended by
No. 45/1996
s. 17(Sch. 1
item 46(b)).

- (2) A certificate signed by the Secretary of the Board which purports to set out the Board's decision or determination on a matter is evidence of the making of that decision or determination by the Board.

69 Functions of Board

S. 69(1)
amended by
Nos 16/1987
s. 4(3)(Sch. 1
item 7(g)),
41/1993 s. 18,
44/1996 s. 11,
substituted by
No. 53/2003
s. 15.

- (1) The Board has the functions conferred on it by—
 - (a) this Act and the regulations; and

S. 69(1)(ab)
inserted by
No. 1/2005
s. 47(1).

- (ab) the **Serious Sex Offenders Monitoring Act 2005**; and

-
- (ac) the **Serious Sex Offenders (Detention and Supervision) Act 2009**; and
S. 69(1)(ac) inserted by No. 91/2009 s. 209.
- (b) Part 5.6 of the **Children, Youth and Families Act 2005** and regulations made under that Part; and
S. 69(1)(b) substituted by No. 48/2006 s. 42(Sch. item 8.4).
- (c) Subdivision (1A) of Division 2 of Part 3 of the **Sentencing Act 1991** and the regulations made under that Subdivision; and
- (d) Subdivision (1D) of Division 2 of Part 3 of the **Sentencing Act 1991** and the regulations made under that Subdivision.
- (2) In exercising its functions, the Board is not bound by the rules of natural justice.
- (3) A member of the Board is not personally liable for anything done or omitted to be done in good faith—
S. 69(3) substituted by No. 81/2005 s. 6.
- (a) in relation to any function referred to in subsection (1), or in exercising any power in relation to such a function; or
- (b) in the reasonable belief that the act or omission related to the function, or was in the exercise of the power.
- (4) Any liability resulting from an act or omission that would, but for subsection (3), attach to the member of the Board attaches instead to the Board.
S. 69(4) inserted by No. 81/2005 s. 6.
- (5) Subsections (3) and (4) are deemed to apply in respect of anything done, or not done, in good faith before the commencement of section 6 of the **Prisoners (Interstate Transfer) (Amendment) Act 2005** by a member, or former member, of the Board, in his or her capacity as a member of the
S. 69(5) inserted by No. 81/2005 s. 6.
-

Board, in respect of any of his or her functions under—

- (a) the **Community Welfare Services Act 1970** or the **Community Services Act 1970**; and
- (b) Division 10 of Part 4 of the **Children and Young Persons Act 1989**; and
- (c) Subdivision (1A) or (1D) of Division 2 of Part 3 of the **Sentencing Act 1991**; and
- (d) the **Serious Sex Offenders Monitoring Act 2005**.

70 Secretary to supply assistance to Board

S. 70
amended by
No. 44/1991
s. 6(1),
substituted by
No. 45/2001
s. 36,
amended by
No. 91/2009
s. 210 (ILA
s. 39B(1)).

- (1) The Secretary must provide such employees of the Department of Justice and such other assistance to the Board as is necessary to assist the Board—

- (a) in supervising persons released on parole;
and

S. 70(aa)
inserted by
No. 53/2003
s. 16.

- (aa) in supervising persons serving a sentence of imprisonment by way of home detention;
and

S. 70(ab)
inserted by
No. 1/2005
s. 47(2),
amended by
No. 21/2008
s. 6(b).

- (ab) in supervising persons subject to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**; and

- (b) to perform any other of the Board's functions.

S. 70(2)
inserted by
No. 91/2009
s. 210.

- (2) Without limiting subsection (1), the Secretary must provide such employees of the Department of Justice and such other assistance to the Board as is necessary to assist the Board in carrying out its functions under the **Serious Sex Offenders (Detention and Supervision) Act 2009**.

71 Powers to take evidence etc.

Sections 17, 18, 19, 20, 20A, 21, 21A and the Rules and Orders made under section 20(4) of the **Evidence (Miscellaneous Provisions) Act 1958** apply to the Board and its proceedings as if the Board were a body of persons to whom the Governor in Council has issued a commission and the person presiding at meetings of the Board were the President or Chairman of that Commission.

S. 71
amended by
No. 69/2009
s. 54(Sch. Pt 2
item 14.1).

72 Reports

(1) Before 30 September in each year the Board must give to the Minister a report relating to the 12 months ending on 30 June in that year and concerning—

- (a) the number of persons released on parole during that period; and
- (b) the number of persons returned to prison during that period on cancellation of parole; and
- (ba) details of the number of persons placed on home detention orders during the period of the report; and
- (bb) details of the number of persons in respect of whom a home detention order has been revoked and who were returned to prison during that period; and
- (bc) details of the impact of home detention orders on persons residing with offenders; and
- (bd) details of the number of persons in respect of whom an extended supervision order or interim extended supervision order was made under the **Serious Sex Offenders**

S. 72(1)(ba)
inserted by
No. 53/2003
s. 17(1).

S. 72(1)(bb)
inserted by
No. 53/2003
s. 17(1).

S. 72(1)(bc)
inserted by
No. 53/2003
s. 17(1).

S. 72(1)(bd)
inserted by
No. 1/2005
s. 47(3),
amended by
No. 21/2008
s. 6(b).

S. 72(1)(be)
inserted by
No. 1/2005
s. 47(3).

S. 72(1)(bf)
inserted by
No. 91/2009
s. 211(1).

Monitoring Act 2005 during that period;
and

(be) the operation of the **Serious Sex Offenders
Monitoring Act 2005** during that period;
and

(bf) the operation of the **Serious Sex Offenders
(Detention and Supervision) Act 2009**
during that period, including—

- (i) details of the number of persons in respect of whom a detention order or interim detention order was made during that period; and
- (ii) details of the number of persons in respect of whom a supervision order or interim supervision order was made during that period; and
- (iii) details of the number of persons directed during that period to reside in a residential facility; and
- (iv) details of the number of persons in respect of whom an emergency power was exercised under Part 10 of that Act during that period; and
- (v) details of the number of offenders who were required to comply with electronic monitoring under a supervision order or an interim supervision order; and
- (vi) details of any breaches of conditions of a supervision order or interim supervision order by offenders and the actions taken by the Adult Parole Board in respect of those breaches; and
- (vii) details of the number of detention orders or supervision orders completed during the period; and

(viii) the activities of the Adult Parole Board during that period; and

(c) the operation of this Division and Division 4, the activities of the Board and the activities of officers assisting the Board during that period.

S. 72(1)(c) amended by No. 53/2003 s. 17(2).

(2) The Minister must cause the Board's annual report to be laid before the Legislative Council and the Legislative Assembly before the end of the fourteenth sitting day of the Legislative Council or the Legislative Assembly after the annual report has been received by the Minister.

* * * * *

S. 72(3) repealed by No. 65/1997 s. 81(c).

(4) When required by the Minister the Board must give to the Minister a report and recommendation concerning a person who at the time of the report is serving a prison sentence or is the subject of an extended supervision order or interim extended supervision order, or of an application for an extended supervision order or interim extended supervision order, made under the **Serious Sex Offenders Monitoring Act 2005**.

S. 72(4) amended by Nos 1/2005 s. 47(4), 21/2008 s. 6(c).

(4A) When required by the Minister, the Board must give to the Minister a report and recommendations concerning a person who at the time of the report—

S. 72(4A) inserted by No. 91/2009 s. 211(2).

(a) is serving a sentence of imprisonment; or

(b) is the subject of a detention order or interim detention order or supervision order or interim supervision order under the **Serious Sex Offenders (Detention and Supervision) Act 2009**.

s. 73

S. 72(5)
amended by
Nos 53/2003
s. 17(3),
1/2005
s. 47(5),
91/2009
s. 211(3).

- (5) When the Minister requires the Board must give to the Minister a report on a matter stated in the requirement and relating to the operation of this Division or Division 4 or the **Serious Sex Offenders Monitoring Act 2005** or the **Serious Sex Offenders (Detention and Supervision) Act 2009** or the activities of the Board.

S. 72(6)
repealed by
No. 65/1997
s. 81(c).

* * * * *

S. 72(7)
amended by
No. 45/2001
s. 37.

- (7) At the request of the Attorney-General for the Commonwealth the Minister may authorize the Board or the Secretary—
- (a) to make reports and recommendations concerning a person detained in a prison in Victoria under or pursuant to a law of the Commonwealth, to the Attorney-General for the Commonwealth at the intervals and times required by the Attorney-General for the Commonwealth; and
- (b) to exercise a power or perform a function in relation to a person who is or has been detained in a prison in Victoria under or pursuant to a law of the Commonwealth which is a power or function which the Attorney-General for the Commonwealth might exercise or perform in relation to that person.

S. 73
(Heading)
inserted by
No. 1/2005
s. 47(6).

73 Officers subject to Board's directions

S. 73
amended by
Nos 44/1991
s. 6(m),
53/2003 s. 18,
1/2005 s. 47(7)
(LA s. 39B(1)).

- (1) In relation to a parole order or home detention order community corrections officers are subject to the directions of the Board.

- (2) In relation to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**, employees of the Department of Justice provided to the Board under section 70 are subject to the directions of the Board. S. 73(2) inserted by No. 1/2005 s. 47(7), amended by No. 21/2008 s. 6(d).
- (3) The employees provided under section 70 to assist the Adult Parole Board in carrying out functions under the **Serious Sex Offenders (Detention and Supervision) Act 2009** are subject to the directions of the Board in carrying out those functions. S. 73(3) inserted by No. 91/2009 s. 212.

74 Release on parole after service of non-parole period

- (1) The Board may by instrument order that a prisoner serving a prison sentence in respect of which a non-parole period was fixed be released on parole at the time stated in the order (not being before the end of the non-parole period) and, unless the Board revokes the order before the time for release stated in the order, the prisoner must be released at that time. S. 74(1) amended by No. 49/1991 s. 119(7) (Sch. 4 item 3.5).
- (2) The Board may revoke a parole order before the prisoner is released under the order.
- (3) If before a prisoner is released under a parole order the Board determines that the prisoner should be released at a different time than the time stated in the order, the prisoner must be released at that other time (not being before the end of the non-parole period). S. 74(3) amended by No. 49/1991 s. 119(7) (Sch. 4 item 3.5).
- (4) Subject to subsection (5) the terms and conditions of a parole order are those set out in the regulations.

Corrections Act 1986
No. 117 of 1986
Part 8—Temporary Absence from Prison

s. 74A

S. 74(5)
amended by
No. 49/1991
s. 119(4).

(5) The Board may vary the terms and conditions to which a parole order is subject and may include in a parole order any one or more of the conditions to which a pre-release permit is made subject by the regulations or to which, before the repeal of Division 6, such a permit was so made subject.

S. 74(6)
amended by
No. 45/1996
s. 17(Sch. 1
item 47).

(6) If the terms and conditions of a parole order require a prisoner to be under supervision, the Secretary must assign an officer to supervise the prisoner and may from time to time assign other officers to supervise the prisoner in place of the officer first assigned.

(7) A prisoner released on parole must during the parole period comply with the terms and conditions of the parole order.

(8) As soon as possible after making a determination revoking or cancelling a parole order the Board must give a copy of the determination to the prisoner including the reasons for the determination.

S. 74(8A)
inserted by
No. 69/2005
s. 26(2).

(8A) The Board may make a parole order for a person who is detained in an approved mental health service under a hospital security order, but the parole order does not take effect until the person is discharged as a security patient under the **Mental Health Act 1986**.

S. 74(9)
amended by
No. 69/2005
s. 26(3).

(9) In this and the succeeding sections of this Division *prisoner* includes a person serving a sentence of imprisonment and a person who is subject to a hospital security order.

S. 74A
inserted by
No. 14/2004
s. 9.

74A Victim submissions

(1) A person included on the victims register may make a submission to the Board for consideration by the Board in determining to make a parole order under section 74.

-
- (2) A victim submission—
 - (a) must be in writing; and
 - (b) must address matters relating to the person's views about the effect of the potential release of the prisoner on parole on that person; and
 - (c) may include comments from the person as to any terms and conditions to which the parole order may be subject; and
 - (d) must include any other prescribed matters.
 - (3) On receiving notification under section 30A(2) of the release or likely release of a prisoner on parole, a person included on the victims register who wishes to make a victim submission must make that submission within the time specified in the notification.

74B How does the Board deal with victim submissions?

S. 74B
inserted by
No. 14/2004
s. 9.

- (1) Before making a parole order under section 74, the Board—
 - (a) must consider any victim submission it receives in relation to the matter being determined; and
 - (b) may, in its absolute discretion, give that submission such weight as the Board sees fit in determining to make a parole order.
- (2) The Board must not release a victim submission to the prisoner in relation to whom the parole order is being determined unless—
 - (a) the release of the submission is, in the opinion of the Board, essential in the interests of fairness and justice; and
 - (b) before releasing the victim submission, the Board has asked the person who made the victim submission whether he or she—

- (i) consents to the submission being released to the prisoner; or
 - (ii) wishes to amend the submission so that it can be released to the prisoner; or
 - (iii) wishes to withdraw the submission.
- (3) If a person who made a victim submission does not consent to the submission being released to the prisoner, amend the submission so that it can be released to the prisoner or withdraw the submission when asked to do so by the Board under subsection (2)(b), the Board—
- (a) must not release the victim submission to the prisoner; and
 - (b) in considering the victim submission when determining to make a parole order, may reduce the weight it would otherwise have given to the submission if the person who made it had complied with subsection (2)(b).

S. 75
amended by
Nos 16/1987
s. 4(3)(Sch. 1
item 7(h)),
56/1989
s. 286(Sch. 2
item 6) (as
amended by
No. 93/1990
s. 24(h)(iv)),
45/1996
s. 17(Sch. 1
item 48),
48/2006
s. 42(Sch.
item 8.5).

S. 75(b)
amended by
No. 49/1991
s. 119(7)
(Sch. 4
item 3.6).

75 Young offenders—sentence and non-parole period

If, under the **Children, Youth and Families Act 2005**, a person is removed from a remand centre or youth justice centre to a prison, the person or the Secretary may apply to the court that ordered the detention or, if the person was detained under orders of two or more courts, to the Supreme Court, for an order—

- (a) determining a sentence of imprisonment not exceeding the residue of the period of detention; and
- (b) if appropriate, fixing a non-parole period as if the sentence had been imposed when the detention was ordered.

76 Persons on parole deemed still under sentence

If in relation to a prisoner the parole period elapses without the making by the Board of an order cancelling the parole or the commission by the prisoner, whether in Victoria or elsewhere, of an offence for which the prisoner is sentenced to imprisonment for more than three months (whether during or after the parole period), the prisoner is to be regarded as having served a prison sentence and is to be wholly discharged from the sentence, but until the parole period so elapses or until the prisoner is otherwise discharged from the prison sentence the person released on parole is to be regarded as being still under sentence.

77 Cancellation of parole

- (1) If a prisoner is released on parole the Board may at any time before the end of the parole period by order cancel the parole.
- (2) If the Board has cancelled a prisoner's parole it may at any time by a further order revoke the cancellation.
- (3) A parole order revives on the revocation of an order cancelling the parole.
- (4) The Board must not make an order revoking an order cancelling a prisoner's parole if a warrant has been issued under this section unless the Board is satisfied that the warrant will not be executed.
- (5) If the prisoner is sentenced to another prison sentence for more than 3 months in respect of one or more offences committed during the parole period, whether in Victoria or elsewhere, the Board may by order cancel the prisoner's parole, although the parole period may already have elapsed.

S. 77(5)
amended by
No. 81/2005
s. 7(1).

Corrections Act 1986
No. 117 of 1986
Part 8—Temporary Absence from Prison

s. 77

(6) If a prisoner's parole is cancelled or deemed to have been cancelled, the Board may—

S. 77(6)(a)
amended by
Nos 57/1989
s. 3(Sch.
item 35.2),
49/2006
s. 6(2).

(a) authorize any member of the police force, by warrant signed by the Secretary or a member of the Board, to break, enter and search any place where the prisoner is reasonably believed to be and to arrest the prisoner and return the prisoner to prison; or

S. 77(6)(b)
amended by
No. 57/1989
s. 3(Sch.
item 35.2),
substituted by
No. 49/2006
s. 6(3).

(b) whether or not a warrant is issued under paragraph (a), authorise the making of an application to a magistrate for a warrant—

(i) authorising any member of the police force to break, enter and search any place where the prisoner is reasonably believed to be and to arrest the prisoner and return the prisoner to prison; or

(ii) authorising any other officer to arrest the prisoner and return the prisoner to prison.

(7) If a prisoner's parole is cancelled or deemed to be cancelled—

S. 77(7)(a)
amended by
No. 57/1989
s. 3(Sch.
item 35.3).

(a) the original warrant to imprison or other authority for the person's imprisonment is to be regarded as again in force; and

S. 77(7)(b)
substituted by
No. 81/2005
s. 7(2).

(b) any period during which the parole order was in force is not to be regarded as time served in respect of the prison sentence unless subsection (7A) applies.

S. 77(7A)
inserted by
No. 81/2005
s. 7(3).

(7A) The Board may direct that some or all of the period during which a parole order that has been cancelled, or deemed to be cancelled, was in force is to be regarded as time served in respect of the prison sentence.

(8) The Board in determining whether to make vary or cancel a parole order, may arrange for the examination of the prisoner by a registered medical practitioner, psychiatrist or psychologist and may require the registered medical practitioner, psychiatrist, psychologist or any other person whom the Board believes may be able to do so, to give a report in writing to the Board.

S. 77(8)
amended by
Nos 23/1994
s. 118(Sch. 1
item 14.5
(a)(b)), 97/2005
s. 182(Sch. 4
item 13.4),
13/2010
s. 51(Sch.
item 16.5).

78 Prisoners may be released on parole more than once

The Board may again release a prisoner on parole although the prisoner's parole has been cancelled on a previous occasion or on previous occasions in respect of the same prison sentence but if the prisoner has been sentenced to another prison sentence the Board must not release the prisoner on parole until the prisoner has served the non-parole period or, if no non-parole period is fixed, the prison sentence.

S. 78
amended by
No. 49/1991
s. 119(7)
(Sch. 4
item 3.7).

* * * * *

S. 79
amended by
Nos 57/1989
s. 3(Sch.
item 35.4),
45/1996
s. 17(Sch. 1
item 49(a)(b)),
repealed by
No. 65/1997
s. 81(c).

Pt 8 Div. 6
(Heading and
ss 80–84)
amended by
No. 57/1989
s. 3(Sch.
items 35.5,
35.6),
repealed by
No. 44/1991
s. 5(1), new
Pt 8 Div. 6
(Heading and
ss 79–79H)
inserted by
No. 49/2006
s. 7.

New s. 79
inserted by
No. 49/2006
s. 7.

S. 79A
inserted by
No. 49/2006
s. 7.

Division 6—Change of name applications by prisoners released on parole

79 Application of Division

This Division applies despite anything to the contrary in the **Births, Deaths and Marriages Registration Act 1996**.

79A Definitions

In this Division—

change of name application means an application by or on behalf of a prisoner on parole for registration of a change of the prisoner's name;

prisoner on parole means a prisoner released on parole that is not subsequently cancelled or deemed to have been cancelled;

Victorian Registrar means Registrar of Births, Deaths and Marriages under the **Births, Deaths and Marriages Registration Act 1996**.

79B Applications for change of name by or on behalf of a prisoner on parole

S. 79B
inserted by
No. 49/2006
s. 7.

- (1) In this section, *Registrar* means—
- (a) the Victorian Registrar; or
 - (b) an authority responsible under a law of another State or a Territory for the registration of births, deaths and marriages.

- (2) A prisoner on parole must not make a change of name application to a Registrar without having first obtained the written approval of the Board.

Penalty: 5 penalty units.

- (3) A person must not make a change of name application to a Registrar on behalf of a prisoner on parole unless the written approval of the Board is first obtained.

Penalty: 5 penalty units.

79C Approval by Board

S. 79C
inserted by
No. 49/2006
s. 7.

- (1) Subject to subsection (2), the Board may only approve a change of name application if the Board is satisfied that the change of name is in all the circumstances necessary or reasonable.
- (2) The Board must not approve a change of name application if the Board is satisfied that the change of name would, if registered, be reasonably likely—
- (a) to be regarded as offensive by a victim of crime or an appreciable sector of the community; or
 - (b) to be used to evade or hinder supervision of the prisoner on parole during the parole period.

s. 79D

S. 79D
inserted by
No. 49/2006
s. 7.

79D Approval to be notified in writing

If the Board approves a change of name application, the Board must—

- (a) as soon as practicable, give written notice of the approval to the person who made the application; and
- (b) if the prisoner on parole consents, give a copy of the written notice of approval to the Victorian Registrar.

S. 79E
inserted by
No. 49/2006
s. 7.

79E Registration of change of name

(1) The Victorian Registrar must not register a change of name under the **Births, Deaths and Marriages Registration Act 1996** if—

- (a) the Victorian Registrar knows that—
 - (i) the application for the change of name is made by or on behalf of a prisoner on parole; and
 - (ii) the change of name relates to the name of the prisoner on parole; and
- (b) the Victorian Registrar has not received a copy of the notice of approval of the Board to the application under section 79D.

(2) If the Victorian Registrar does not register a change of name because of the operation of subsection (1), the Victorian Registrar must give written notice of the application to the Secretary of the Board.

79F Registrar may correct Register

S. 79F
inserted by
No. 49/2006
s. 7.

Without limiting section 43 of the **Births, Deaths and Marriages Registration Act 1996**, the Victorian Registrar may correct the Register under that section if—

- (a) the name of a prisoner on parole on the Register was changed because of a change of name application; and
- (b) the Board had not approved that change of name application under section 79C.

79G Lapse of application on cancellation of parole

S. 79G
inserted by
No. 49/2006
s. 7.

A change of name application under this Division by or on behalf of a prisoner on parole lapses if—

- (a) the prisoner's parole is cancelled or deemed to be cancelled under section 77; and
- (b) the Victorian Registrar has not registered the change of name before that cancellation.

79H Information-sharing between the Secretary and the Victorian Registrar

S. 79H
inserted by
No. 49/2006
s. 7.

Despite any other law to the contrary—

- (a) the Secretary may notify the Victorian Registrar of the name (including any other name by which he or she is or has previously been known), date of birth and residential address or addresses of any prisoner on parole; and
- (b) if the Secretary has given notification under paragraph (a) in respect of a prisoner on parole, the Secretary must notify the Victorian Registrar as soon as practicable of any cancellation or deemed cancellation of that prisoner's parole.

s. 79I

Pt 8 Div. 7
(Heading and
ss 79I–79K)
inserted by
No. 49/2006
s. 7.

Division 7—Warrants

S. 79I
inserted by
No. 49/2006
s. 7.

79I Execution of warrants

A warrant issued under this Part must be executed by the use of the original warrant or by the use of a copy of the original warrant, including a copy transmitted by facsimile machine.

S. 79J
inserted by
No. 49/2006
s. 7.

79J Recall and cancellation of warrants

- (1) A warrant issued under section 60M(10), 60R(2)(b) or 77(6)(a) by the Board may be recalled and cancelled by the Board.
- (2) A warrant issued under section 77(6)(b) by a magistrate may be recalled and cancelled by that magistrate or any other magistrate.
- (3) If a warrant has been recalled and cancelled, a fresh warrant may be issued for the same purpose as that for which the recalled warrant was issued.

S. 79K
inserted by
No. 49/2006
s. 7.

79K Duplicate warrants

- (1) If a warrant issued under section 60M(10), 60R(2)(b) or 77(6)(a) by the Board or a warrant issued under section 77(6)(b) by a magistrate is lost or destroyed before it is executed, the Board or a magistrate, as the case may be, may issue a duplicate warrant if satisfied by evidence on oath or by affidavit of the loss or destruction of the original warrant.
- (2) A duplicate warrant must bear on its face the word "Duplicate" and may be executed in all respects as if it were the original warrant.
- (3) When a duplicate warrant is issued, the original warrant becomes null and void and must, if located, be returned—

-
- (a) in the case of a warrant issued by the Board,
to the Secretary of the Board;
 - (b) in the case of a warrant issued by a
magistrate, to the principal registrar of the
Magistrates' Court.
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Pt 8A
(Heading and
ss 80–84E)
inserted by
No. 94/1994
s. 22.

PART 8A—INTERSTATE LEAVE OF ABSENCE FOR PRISONERS

New s. 80
inserted by
No. 94/1994
s. 22.

80 Definitions

In this Part—

corresponding Director in relation to a participating State, means the officer responsible for the administration of prisons in that State;

interstate law means a law that under an Order in force under section 81 is declared to be an interstate law for the purposes of this Part;

participating State means any State in which an interstate law is in force;

permit means a custodial interstate community permit issued under this Part;

S. 80 def. of
permit
amended by
No. 2/2005
s. 8(4).

State includes the Australian Capital Territory and the Northern Territory.

New s. 81
inserted by
No. 94/1994
s. 22,
substituted by
No. 38/2003
s. 5.

81 Interstate laws

The Governor in Council may, by Order published in the Government Gazette, declare that a law of a State other than Victoria is an interstate law for the purposes of this Part.

82 Custodial interstate community permit

The Secretary may issue a custodial interstate community permit to a prisoner for leave to travel to a participating State—

- (a) to visit a person with whom the prisoner has had a long standing personal relationship if that person is seriously ill or in acute personal need; or
- (b) to attend the funeral of a person with whom the prisoner had a long standing personal relationship; or
- (c) for any other compassionate purpose (including, in the case of an Aboriginal prisoner, to enable the prisoner to be present at an occasion of special significance to the prisoner's immediate or extended family).

S. 82
(Heading)
inserted by
No. 2/2005
s. 8(5)(a).
New s. 82
inserted by
No. 94/1994
s. 22,
amended by
Nos 45/1996
s. 17(Sch. 1
item 50),
2/2005
s. 8(5)(b).

S. 82(c)
amended by
No. 38/2003
s. 6.

83 Effect of permit

(1) A permit issued to a prisoner—

- (a) authorises the prisoner to be absent from the prison for the purpose and for the period stated in the permit; and
- (b) if the Secretary requires the prisoner to be escorted while absent from the prison, authorises the escort officer appointed to escort the prisoner to take and keep physical custody of the prisoner for the purpose of escorting the prisoner to the participating State (whether or not across another State) and within the participating State for the purpose set out in the permit and returning the prisoner to the prison from which leave of absence was given; and

New s. 83
inserted by
No. 94/1994
s. 22.

S. 83(1)(a)
amended by
Nos 45/2001
s. 18(a),
38/2003
s. 7(a).

S. 83(1)(b)
amended by
Nos 45/2001
s. 18(a),
38/2003
s. 7(b).

s. 84

(c) is subject to the conditions set out in the regulations and any other conditions stated in the permit.

S. 83(2)
amended by
No. 38/2003
s. 7(c).

(2) The period stated in a permit must not exceed 7 days.

S. 83(3)
amended by
Nos 45/1996
s. 17(Sch. 1
item 51),
45/2001
s. 18(b)(i)(ii).

(3) Subject to section 6B, a prisoner who is authorised to be absent from prison under a permit continues in the legal custody of the Secretary while absent.

S. 83(4)
amended by
No. 45/1996
s. 17(Sch. 1
item 51),
repealed by
No. 38/2003
s. 7(d).

* * * * *

New s. 84
inserted by
No. 94/1994
s. 22.

84 Variation or revocation of permit

S. 84(1)
amended by
No. 45/1996
s. 17(Sch. 1
item 52).

- (1) The Secretary may before the prisoner is allowed to be absent from the prison under a permit or at any time during the period of the permit—
- (a) vary or revoke any condition of the permit or impose any additional condition; or
 - (b) subject to section 83(2), vary the period of the permit; or
 - (c) revoke the permit.
- (2) The revocation of a permit or the varying or revocation of a condition or the varying of the period of the permit or the imposing of an additional condition under this section takes effect immediately.

84A Breach of permit

A prisoner who fails without reasonable excuse to comply with any conditions of a permit is guilty of an offence and liable to imprisonment for a term of not more than 3 years.

S. 84A
inserted by
No. 94/1994
s. 22.

84B Notice to participating State and transit States

S. 84B
inserted by
No. 94/1994
s. 22.

- (1) The Secretary must give notice in writing to the corresponding Director and the chief officer of police of a participating State of the issue of a permit permitting a prisoner to travel to that State and of the period of the permit.
- (2) The Secretary must give notice in writing to the chief officer of police of any other State through which a prisoner is to travel by land to reach the participating State of the issue of a permit permitting the prisoner to travel to the participating State and of the period of the permit.

S. 84B(1)
amended by
No. 45/1996
s. 17(Sch. 1
item 53).

S. 84B(2)
amended by
No. 45/1996
s. 17(Sch. 1
item 53).

84C Effect of permit issued under interstate law

S. 84C
inserted by
No. 94/1994
s. 22.

- (1) If—
 - (a) under an interstate law a permit is issued permitting a person imprisoned in a participating State to travel to Victoria; and
 - (b) pursuant to that permit an escort brings the person to Victoria—

S. 84C(1)(a)
amended by
No. 38/2003
s. 8.

the escort, while in Victoria, is authorised to hold, take and keep custody of the person for the purpose of escorting the prisoner for the purposes set out in the permit and returning the prisoner to the participating State.

(2) If—

- (a) under an interstate law a permit is issued permitting a person imprisoned in a participating State (the first State) to travel to another participating State (the second State); and
- (b) in the course of escorting the person to the second State or returning the person to the first State pursuant to the permit, an escort brings the person into Victoria—

the escort, while in Victoria, is authorised to hold, take and keep custody of the person for the purpose of escorting the person to the second State and returning him or her to the first State.

84D Apprehension of prisoner who escapes or fails to return etc.

- (1) A person in the custody of an escort pursuant to section 84C who escapes from that custody may be apprehended without warrant by the escort, any member of the police force or any other person.

- (1A) A person who enters Victoria under a permit issued by a participating State permitting the person to travel without an escort to, or through, Victoria may be apprehended without warrant in Victoria by any member of the police force or anyone else if the person fails—

- (a) to return to the participating State as required by the terms of the permit; or
- (b) to comply with any other term of the permit.

S. 84D
(Heading)
inserted by
No. 38/2003
s. 9(1).

S. 84D
inserted by
No. 94/1994
s. 22.

S. 84D(1A)
inserted by
No. 38/2003
s. 9(2).

(2) If—

- (a) a person is apprehended under subsection (1) or (1A); or
- (b) a person in custody under section 84C has attempted to escape—

the person may be taken before the Magistrates' Court.

S. 84D(2) substituted by No. 38/2003 s. 9(3).

(2A) The Magistrates' Court may, despite the terms of any permit issued under an interstate law, by warrant—

- (a) order the person to be returned to the participating State in which the permit was issued; and
- (b) for that purpose, order the person to be delivered to an escort.

S. 84D(2A) inserted by No. 38/2003 s. 9(3).

(3) Subsections (1), (1A), (2) and (2A) do not apply to a person to whom section 47 of the Crimes Act 1914 of the Commonwealth applies.

S. 84D(3) amended by No. 38/2003 s. 9(4).

(4) A warrant under subsection (2A) may be executed according to its tenor.

S. 84D(4) amended by No. 38/2003 s. 9(5).

(5) A person who is the subject of a warrant issued under subsection (2A) may be detained in the custody of the Secretary as a prisoner until he or she is delivered into the custody of an escort in accordance with the warrant or until the expiration of a period of 7 days from the issuing of the warrant, whichever first occurs.

S. 84D(5) amended by Nos 45/1996 s. 17(Sch. 1 item 54), 38/2003 s. 9(5).

(6) If a person who is the subject of a warrant issued under subsection (2A) is not, in accordance with the warrant, delivered into the custody of an escort within a period of 7 days from the issuing of the warrant, the warrant has no further effect.

S. 84D(6) amended by No. 38/2003 s. 9(5).

s. 84E

S. 84D(7)
amended by
No. 38/2003
s. 9(5).

- (7) A reference in subsection (2A), (5) or (6) to an escort in relation to a person who was, at the time of his or her escape or attempted escape, being escorted under a permit issued in a participating State is a reference to—
- (a) the escort who had the custody of that person pursuant to that permit; or
 - (b) a prison officer or a member of the police force of the participating State; or
 - (c) a person appointed by the corresponding Director of the participating State by instrument in writing to be an escort for the purpose of escorting that person to the participating State—
- or any 2 or more of them.

S. 84E
inserted by
No. 94/1994
s. 22.

84E Escape from custody—penalty

- (1) Any person who being in custody under a permit, escapes or attempts to escape from that custody while he or she is not within Victoria or the participating State to or from which he or she was being escorted under that permit is guilty of an indictable offence and is liable to imprisonment for a term not exceeding 7 years, to be served after the expiration of any term of imprisonment, penal servitude or detention to which he or she was subject at the time of his or her escape or attempt to escape.
- (2) Without limiting the generality of section 479C of the **Crimes Act 1958**, that section applies to a person—
- (a) who is in custody under a permit; and

(b) who escapes from that custody while he or she is not within Victoria or the participating State to or from which he or she was being escorted under that permit—

in the same way as it applies to a person who escapes from lawful custody while undergoing a sentence involving deprivation of liberty in Victoria.

(3) Subsections (1) and (2) do not apply to a person to whom section 47 of the Crimes Act 1914 of the Commonwealth applies.

84EA Liability for prisoners on leave

S. 84EA
inserted by
No. 38/2003
s. 10.

- (1) The State of Victoria is liable for any loss or damage sustained by any person in a participating State that is caused by an act or omission of a prisoner or an escort officer while in the participating State under, or for the purposes of, a permit.
- (2) Nothing in this section affects any right of action the State of Victoria may have against the prisoner or escort officer for the damage or loss.

Pt 8B
(Heading and
ss 84F–84P)
inserted by
No. 45/1996
s. 3.

PART 8B—PRISON INDUSTRIES

Division 1—Prison industry sites and prison industries

S. 84F
inserted by
No. 45/1996
s. 3.

84F Appointment of prison industry sites

- (1) The Minister may by Order appoint any place outside a prison under Part 3 as a prison industry site for the purposes of this Act.
- (2) The Minister may by Order revoke the appointment of a place as a prison industry site.
- (3) An Order under this section comes into operation on its making or on a later date stated in the Order.
- (4) The Minister must within 7 days after the making of an Order under this section publish a copy of the Order in the Government Gazette.

S. 84G
inserted by
No. 45/1996
s. 3.

84G Secretary may carry on business for prison industries

- (1) The Secretary may, for or in connection with the management of prison industries and prison industry sites—
 - (a) carry on a business, or businesses, of manufacturing or producing goods, providing services or farming;
 - (b) train prisoners or offenders in the trades and professions associated with any of those businesses;
 - (c) sell goods and services manufactured, produced or provided in the course of any of those businesses;
 - (d) sell produce and stock grown or reared on farms.

- (2) The Secretary may, for and on behalf of the Crown, enter into an agreement with any person for any purpose in connection with the Secretary's functions under subsection (1).

84H Secretary may direct prisoners and offenders to work

S. 84H inserted by No. 45/1996 s. 3.

- (1) The Secretary may direct any prisoner or offender other than—

S. 84H(1) substituted by No. 91/2009 s. 213.

- (a) a prisoner on remand; or
(b) a prisoner who is a person in respect of whom a detention order or an interim detention order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009** has been made—

to work in any prison industry or work program approved by the Secretary.

- (2) A prisoner or offender must comply with a direction of the Secretary under this section.

* * * * *

Pt 8B Div. 2 (Heading and ss 84I–84P) inserted by No. 45/1996 s. 3, amended by Nos 46/1998 s. 7(Sch. 1), 108/2004 s. 117(1) (Sch. 3 item 45.6), 80/2006 s. 26(Sch. item 20.2). repealed by No. 21/2008 s. 5.

PART 9—COMMUNITY CORRECTIONS

Division 1—Definitions

85 Definitions

In this Part—

S. 85 def. of
*act of
misconduct*
amended by
No. 45/1996
s. 17(Sch. 1
item 55(a)).

act of misconduct means an offender's
contravention of this Act, the regulations, or
a direction of the Secretary, a Regional
Manager or an officer, which is declared by
the regulations to be an act of misconduct;

S. 85 def. of
*community
corrections
programme*
amended by
No. 45/1996
s. 17(Sch. 1
item 55(b)).

community corrections programme means a
programme or series of programmes
approved by the Secretary under this Part;

S. 85 def. of
officer
amended by
Nos 11/1993
s. 7(1)(f),
23/1994
s. 118(Sch. 1
item 14.6),
24/2006
s. 6.1.2(Sch. 7
item 10.2),
13/2010
s. 51(Sch.
item 16.6).

officer means a person who is—

- (a) a Regional Manager; or
- (b) a community corrections officer; or
- (c) a volunteer who is working at a
location; or
- (d) an employee in the public service or the
teaching service or a member of the
staff of a TAFE institute who is
working at a location;
- (e) a member of a prescribed class of
persons who works at a location as a
psychiatrist, registered medical
practitioner, dentist, nurse, midwife or
health worker;

region means an area or several areas designated
under this Part.

**Division 2—Establishment of community corrections centres
and regional centres**

86 Community corrections centres

- (1) The Governor in Council may by order appoint any premises or place to be a community corrections centre.
- (2) An order establishing a community corrections centre may include a statement restricting the number of offenders who may attend the centre.
- (3) An order establishing a community corrections centre comes into operation on its making or on a later date stated in the order.
- (4) The Minister must within 7 days after the making of an order under subsection (1) publish a copy of the order in the Government Gazette.
- (5) A place, establishment or institution which was an attendance centre under section 42 of the **Penalties and Sentences Act 1981** as in force immediately before the commencement of item 18 of Schedule 4 of the **Penalties and Sentences Act 1985** is deemed to be appointed a community corrections centre under this section.

87 Regions

- (1) The Secretary may in accordance with the regulations by instrument published in the Government Gazette designate what areas in Victoria are regions.
- (2) An instrument declaring a region may include a statement restricting the number of offenders who may be supervised at locations in the region.

S. 87(1)
amended by
No. 45/1996
s. 17(Sch. 1
item 56).

88 Regional centres

- (1) The Governor in Council may by order appoint a community corrections centre to be a regional centre.

- (2) An order under subsection (1) comes into operation on its making or on a later date stated in the order.
- (3) The Minister must within 7 days after the making of an order under subsection (1) publish a copy of the order in the Government Gazette.

Division 3—Officers

89 Officers subject to Regional Manager's directions

An officer—

- (a) who is an officer within the meaning of paragraph (e) of the definition of *officer* in section 85 and is working in a region, is subject to the directions relating to the security of locations in the region given by the Regional Manager of the region; and
- (b) who is an officer within the meaning of paragraph (a), (b), (c) or (d) of the definition of *officer* in section 85 is working in a region, is subject to the directions of the Regional Manager of the region.

90 Powers and duties of officers

S. 90(1)
amended by
No. 45/1996
s. 17(Sch. 1
item 57).

- (1) An officer must, when required by the Secretary, make reports and returns and keep records and give those reports, returns and records to the Secretary or to any person or body stated in the requirement.

S. 90(2)
amended by
No. 45/1996
s. 17(Sch. 1
item 57).

- (2) An officer must, when required by the Secretary—
 - (a) report to a court concerning an offender or a person who comes before the court for sentencing or where the court is considering giving a person a bond; and

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- (b) report to the Adult Parole Board concerning an offender.
- (3) An officer working at a location—
- (a) must not jeopardize the security or the good order of the location; and
 - (b) must report immediately to the Regional Manager anything which might reasonably be thought to jeopardize the security or the good order of the location.
- (4) In relation to officers within the meaning of paragraph (e) of the definition of *officer* in section 85—
- (a) subsections (1) and (2) apply as if they referred to reports, returns and records concerning the security of locations only; and
 - (b) subsection (3) applies as if it did not include references to good order.
- (5) An officer in charge of a location or part of a location must take all reasonable steps for the security and management of, and the safety and welfare of offenders at the location or part of the location.
- (6) An officer may give such directions to offenders as are necessary for the management good order or security of a location.
- (7) A Regional Manager or a community corrections officer may use reasonable force to compel an offender to obey a direction, if he or she believes on reasonable grounds that the use of force is necessary—
- (a) to prevent the offender or another person being killed or seriously injured; or
 - (b) to prevent serious damage to property.
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S. 90(7)
amended by
No. 81/2005
s. 8(a)(b).

s. 91

(8) If a community corrections officer uses force to compel an offender to obey a direction, the officer must report the fact to the Regional Manager as soon as possible.

S. 90(9)
amended by
No. 45/1996
s. 17(Sch. 1
item 57).

(9) The Regional Manager must as soon as possible report to the Secretary—

(a) the use of force by the Regional Manager to compel an offender to obey a direction; and

(b) the use of force by a community corrections officer, if that officer has reported the fact to the Regional Manager.

S. 91
amended by
No. 35/2002
s. 8(3) (ILA
s. 39B(1)).

91 Disclosure of information

(1) Except for the extent necessary to perform official duties, an officer must not disclose to any person except—

(a) a court; or

(b) the Minister; or

(c) the Secretary; or

S. 91(1)(c)
amended by
No. 45/1996
s. 17(Sch. 1
item 58).

(d) a Regional Manager; or

(e) with the authority of the Minister, Secretary or a Regional Manager; or

S. 91(1)(e)
amended by
No. 45/1996
s. 17(Sch. 1
item 58).

(f) the Ombudsman or the Ombudsman's officers—

information gained because of the officer's position as an officer or contained in a record, return or report prepared by the officer under this Act.

Penalty: 5 penalty units.

- (2) Subsection (1) does not prevent an officer from recording, accessing, disclosing, communicating or making use of any information referred to in that subsection on a computerised database in the performance of official duties if the Minister has given written authority under subsection (3) that applies to the officer. **S. 91(2) inserted by No. 35/2002 s. 8(3).**
- (3) The Minister may, by instrument in writing, authorise officers, or classes of officers, specified in the authority, to record, access, disclose, communicate or make use of, for the performance of their official duties, information, or classes of information, of a kind referred to in subsection (1) on a computerised database specified in the authority that is able to be accessed by—
- (a) officers; or
 - (b) persons holding a position within the meaning of section 30, other than as volunteers; or
 - (c) members of the police force.
- (4) Nothing in this section prevents the recording or accessing and using of health information within the meaning of the **Health Records Act 2001** in accordance with that Act. **S. 91(4) inserted by No. 35/2002 s. 8(3).**

92 Additional duties of Regional Manager

- (1) The Regional Manager of a region is responsible for the management good order and security of the locations in the region.
- (2) The Regional Manager of a region must take reasonable steps to ensure that officers working in the region have access to information as to what their powers and duties are and what provision is made by or under this Act and the **Sentencing Act 1991** concerning locations and offenders. **S. 92(2) amended by No. 49/1991 s. 119(7) (Sch. 4 item 3.8).**

- (3) The Regional Manager of a region must give all necessary directions to ensure that—
- (a) officers within the meaning of paragraph (e) of the definition of *officer* in section 85 and who are working in or assigned to the region, comply with the provisions of this Act, and the regulations concerning the security of locations; and
 - (b) other officers working in or assigned to the region comply with this Act, the regulations, and the **Sentencing Act 1991**.

S. 92(3)(b)
amended by
No. 49/1991
s. 119(7)
(Sch. 4
item 3.8).

Division 4—Discipline of offenders

93 Additional directions by community corrections officers

- (1) A community corrections officer may give directions (not inconsistent with any correctional order) to an offender concerning the work which the offender is to undertake at a location and the times at which an offender is to attend a location and the reports which the offender is to make as to attendance and work done.
- (2) A direction under subsection (1) must not unreasonably interfere with work being done by an offender, education being undertaken by an offender or the practice by an offender of a religion.

94 Regional Manager may deal with acts of misconduct

- (1) The Regional Manager of a region must in accordance with the regulations record any alleged act of misconduct committed by an offender at a location in the region and the action taken by the Regional Manager.

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- (2) If the Regional Manager of a region suspects that an offender has committed an act of misconduct at a location in the region the Regional Manager must immediately make proper investigation of the matter.
 - (3) During an investigation the Regional Manager must give the offender an opportunity to make submissions about the alleged act of misconduct.
 - (4) If after completing an investigation and considering any submissions made by an offender the Regional Manager determines that the offender has committed an act of misconduct but that the act is so trivial that action should not be taken against the offender for breach of a community-based order, the Regional Manager may caution or reprimand the offender and need take no further action.
 - (5) If the Regional Manager determines that the offender has committed an act of misconduct by failing to do satisfactory work at a location, the Regional Manager may by instrument direct that the period during which the offender has not worked satisfactorily is not to be regarded as a period during which the offender has done work for the purposes of this Act.
 - (6) The Regional Manager must give to the offender a copy of a direction made under subsection (5).
 - (7) At an offender's request the Secretary may by notice in writing given to the Regional Manager vary or revoke the Regional Manager's direction under this section.

S. 94(7)
amended by
No. 45/1996
s. 17(Sch. 1
item 59).

Division 5—Community corrections programmes

95 Approval of community corrections programmes

S. 95(1)
amended by
No. 45/1996
s. 17(Sch. 1
item 60).

- (1) The Secretary may by instrument approve programmes of activities as community corrections programmes in which offenders may take part.
- (2) Community corrections programmes may include, but are not limited to, any of the following—
 - (a) community, voluntary or charitable work;
 - (b) programmes for the treatment of alcoholics or drug dependent persons;
 - (c) living at or attending locations;
 - (d) counselling;
 - (e) work at a hospital, home for aged or infirm persons or an educational institution;
 - (f) work at a home or institution for socially disadvantaged or disabled persons;
 - (g) work on Crown land;
 - (h) educational programmes;
 - (i) personal development programmes.
- (3) A community corrections programme may include a requirement for offenders to report on the activities in which they take part.
- (4) The Regional Manager of a region may determine for each offender under the Regional Manager's supervision an individual programme of activities including activities which are part of a community corrections programme.

Division 6—Management and administration of locations

96 Officer subject to directions of Principal of training institution

- (1) An officer attending a training institution is subject to the direction of the Principal of that institution.
- (2) In this section *training institution* means an institution for the training of officers established or conducted in accordance with the regulations.

97 Secretary may nominate person to act as Regional Manager

- (1) If a Regional Manager is absent from a region or the position of Regional Manager is vacant the Secretary may nominate a community corrections officer to act as Regional Manager while the Regional Manager is absent or the position of Regional Manager is vacant.
- (2) A community corrections officer nominated to act as Regional Manager has the functions powers and duties of a Regional Manager while so acting.

S. 97(1)
amended by
No. 45/1996
s. 17(Sch. 1
item 61).

98 Management of region in Regional Manager's temporary absence

- (1) If a Regional Manager is to be absent temporarily from a region the Regional Manager may nominate a community corrections officer to be in charge of the region during the Regional Manager's absence.
- (2) If the Regional Manager is absent from the region and has not nominated a community corrections officer to be in charge of the region and the Secretary has not nominated a community corrections officer to act as Regional Manager, the most senior ranking community corrections officer then on duty is in charge of the region.

S. 98(2)
amended by
No. 45/1996
s. 17(Sch. 1
item 62).

s. 99

S. 98(3)
amended by
No. 45/1996
s. 17(Sch. 1
item 62).

- (3) A community corrections officer in charge of a region has the functions powers and duties of the Regional Manager until the Regional Manager returns or the Secretary nominates a person to act as Regional Manager.

99 Photographing

S. 99(1)
amended by
No. 35/2002
s. 7(5).

- (1) As soon as possible after an offender's reception into a community corrections centre a community corrections officer may take photographs of the offender and may take the offender's fingerprints.

S. 99(2)
amended by
No. 35/2002
s. 7(6).

- (2) For the purposes of identifying the offender and completing records concerning offenders an officer may at any time after an offender's reception into a community corrections centre take photographs of the offender or take the offender's fingerprints or both.

S. 99(3)
amended by
No. 35/2002
s. 7(7).

- (3) An officer may give to an offender all necessary directions to ensure the taking of accurate photographs and fingerprints.

100 Search

- (1) A Regional Manager may at any time, order a community corrections officer to—
- (a) search any part of a community corrections centre in the region; or
 - (b) search and examine an officer, an offender, a visitor or any other person in a community corrections centre; or
 - (c) search and examine anything in a community corrections centre; or

(d) require a person wishing to enter a community corrections centre to submit to search and examination of the person and anything in the person's possession or under the person's control—

if the Regional Manager believes that the search is necessary for the security or good order of the community corrections centre or the offenders in it.

- (2) If a person other than an officer or an offender refuses to submit to a search under this section the Regional Manager may order the person to leave the community corrections centre immediately.
- (3) A person who disobeys a Regional Manager's order under subsection (2) is guilty of an offence.
Penalty: 5 penalty units.
- (4) A community corrections officer may, if necessary use reasonable force to compel a person to obey an order to leave a community corrections centre.
- (5) A community corrections officer is not liable for injury or damage caused in carrying out searches or using force in accordance with this section.
- (6) A Regional Manager may at any time order a search under this section to be terminated.

101 Seizure

- (1) In carrying out searches under section 100 a community corrections officer may seize anything found in a community corrections centre, whether in a person's possession or not, which the community corrections officer believes on reasonable grounds jeopardizes or is likely to jeopardize the security or good order of the community corrections centre or the safety of persons in it.

- (2) A community corrections officer who seizes anything under subsection (1) must immediately inform the Regional Manager.
- (3) The Regional Manager must deal in accordance with the regulations with anything, which is not a drug of dependence, seized under this section.

102 Delegation

A Regional Manager may by instrument delegate to an officer or class of officers any function or power of the Regional Manager under this Act, except this power of delegation, and the powers declared by the regulations to be powers which a Regional Manager cannot delegate.

103 Access to community corrections centres and locations

- (1) The Regional Manager of a region may authorize any person to enter a location.
- (2) An authority under subsection (1) is subject to the conditions determined by the Regional Manager and stated in the authority.
- (3) A person who is authorized to enter a location and who, whilst at the location—
 - (a) contravenes this Act, or the regulations; or
 - (b) contravenes a direction given by the Regional Manager; or
 - (c) contravenes a condition to which the authority to enter is subject; or
 - (d) does anything which, in the Regional Manager's opinion, threatens the good order or security of the location—

must, if ordered by the Regional Manager, leave the location immediately.

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- (4) A person who disobeys an order to leave a location is guilty of an offence.

Penalty: 10 penalty units.

104 Offender subject to Secretary's directions

- (1) An offender is subject to the Secretary's directions while the offender is at a location, taking part in a community corrections programme or is being transferred from one location to another, from a location to a place where a community corrections programme is conducted, or from that place to a location.
- (2) The Secretary may, if not inconsistent with the correctional order relating to an offender, direct the offender to attend a location or to take part in a community corrections programme.
- (3) An offender who disobeys a direction given by the Secretary under this section is guilty of an offence.

S. 104(1)
amended by
No. 45/1996
s. 17(Sch. 1
item 63(b)).

S. 104(2)
amended by
No. 45/1996
s. 17(Sch. 1
item 63(a)).

S. 104(3)
amended by
No. 45/1996
s. 17(Sch. 1
item 63(a)).

Penalty: 5 penalty units.

s. 104A

Pt 9A
(Heading and
ss 104A–
104D)
inserted by
No. 45/1996
s. 11.

PART 9A—SEARCH AND SEIZURE IN POLICE GAOLS

S. 104A
inserted by
No. 45/1996
s. 11.

104A Definitions

In this Part—

charged person means—

- (a) a person who has been charged with an offence who is detained in a police gaol; or
- (b) a person who is detained in a police gaol on the order of a court;

detained person means any person who is detained in a police gaol;

officer in charge means a member of the police force for the time being in charge of a police gaol;

police officer means a member of the police force.

S. 104B
inserted by
No. 45/1996
s. 11.

104B Formal searches in police gaols

- (1) A person who wishes to enter or remain in a police gaol as a visitor must, if asked, submit to a formal search.
- (2) In this section *formal search* means a search to detect the presence of drugs, weapons or metal articles carried out by an electronic or mechanical device.
- (3) If, when asked, a person does not submit to a formal search, a police officer may prohibit the person from entering the police gaol or if the person is in the police gaol, order the person to leave the police gaol immediately.

104C Search powers

S. 104C
inserted by
No. 45/1996
s. 11.

- (1) For the good order or security of a police gaol or detained persons, the officer in charge of the police gaol may, at any time, exercise any of the following powers or order a police officer to exercise any of the following powers—
 - (a) search any part of the police gaol; or
 - (b) search and examine any charged person, a visitor to the police gaol, a police officer or any other person in the police gaol;
 - (c) search and examine any thing in the police gaol or held by the police on behalf of a detained person;
 - (d) as well as the formal search required by section 104B, require a person wishing to enter a police gaol to submit to a search and examination of the person and of any thing in the person's possession or under the person's control; or
 - (e) conduct any search under paragraph (a), (b), (c), or (d) at random.
- (2) Subsections (1)(b) and (1)(d) do not apply to a visitor to a police gaol or person wishing to enter a police gaol who is—
 - (a) a judge of the Supreme Court or County Court; or
 - (b) a magistrate; or
 - (c) a relative or friend of a detained person; or
 - (d) visiting a detained person who is a child within the meaning of the **Children, Youth and Families Act 2005**.

S. 104C(2)(d)
amended by
No. 48/2006
s. 42(Sch.
item 8.6).

s. 104C

- (3) The officer in charge of a police gaol may search or examine or order a police officer to search or examine a detained person (other than a charged person) if the officer in charge believes on reasonable grounds that the search or examination is necessary—
- (a) for the security or good order of the police gaol; or
 - (b) for the safety of persons at the police gaol (whether in custody or not); or
 - (c) to locate a weapon, or any thing that may be used in the escape of a person from a police gaol; or
 - (d) to locate any thing connected with, or affording evidence of, the commission of the offence for which the person is detained in the police gaol;
- (4) If a person, other than a detained person or a police officer, refuses to submit to be searched under this section while inside the police gaol, the officer in charge of the police gaol may order the person to leave the police gaol immediately.
- (5) A person must comply with an order under subsection (4).
- Penalty: 5 penalty units.
- (6) The officer in charge of a police gaol may at any time make an order terminating a search under this section.

104D Seizure

S. 104D
inserted by
No. 45/1996
s. 11.

- (1) In carrying out searches under sections 104B and 104C, a police officer may seize any one or more of the following—
 - (a) any thing found in the police gaol, whether in a person's possession or not, which the police officer believes on reasonable grounds jeopardises or is likely to jeopardise the security or good order of the police gaol or the safety of persons in the police gaol;
 - (b) any thing found on a detained person or in a detained person's possession, other than a thing which the detained person is authorised to wear or to possess under the regulations or a direction of the officer in charge of the police gaol;
 - (c) any thing which a detained person is authorised to wear or possess under the regulations or a direction of the officer in charge of the police gaol which the police officer believes on reasonable grounds jeopardises or is likely to jeopardise the security of the police gaol or the safety of persons in the police gaol;
 - (d) any thing which the police officer believes on reasonable grounds is connected with, or affords evidence of, the commission of the offence for which the person is detained in the police gaol.
- (2) A police officer who seizes any thing under subsection (1) must immediately inform the officer in charge of the police gaol.

Corrections Act 1986
No. 117 of 1986
Part 9A—Search and Seizure in Police Gaols

s. 104D

- (3) The officer in charge of a police gaol must deal in accordance with the regulations with any thing, which is not a drug of dependence, and is seized under this section.
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**PART 9B—PROVISIONS CONCERNING MONITORED
SERIOUS SEX OFFENDERS**

Pt 9B
(Heading and
ss 104E–
104N)
inserted by
No. 81/2005
s. 9.

Division 1—Preliminary matters

104E Definitions

S. 104E
inserted by
No. 81/2005
s. 9.

In this Part—

monitored person means a person who is subject to—

S. 104E def. of
*monitored
person*
amended by
No. 21/2008
s. 6(e),
substituted by
No. 91/2009
s. 214.

- (a) an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**; or
- (b) a supervision order or interim supervision order under the **Serious Sex Offenders (Detention and Supervision) Act 2009**;

officer has the same meaning as in section 85.

Division 2—Monitored people at community corrections centres

104F Application of this Division

S. 104F
inserted by
No. 81/2005
s. 9,
substituted by
No. 91/2009
s. 215.

- (1) This Division applies if a relevant person or body instructs or directs a monitored person to attend a community corrections centre for the purposes of that Act.
- (2) In this section, *relevant person or body* means—
 - (a) in the case of a person who is subject to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**, the Secretary, acting under section

s. 104G

16(1) of the **Serious Sex Offenders Monitoring Act 2005**; or

- (b) in the case of a person who is subject to a supervision order or interim supervision order under the **Serious Sex Offenders (Detention and Supervision) Act 2009**, the Adult Parole Board, acting under a condition of that order imposed under section 16(2)(b) of the **Serious Sex Offenders (Detention and Supervision) Act 2009**.

S. 104G
inserted by
No. 81/2005
s. 9.

104G Obligations of the officer in charge of the centre

The officer in charge of the community corrections centre must take all reasonable steps for the security and management of, and the safety and welfare of, the monitored person at the centre.

S. 104H
inserted by
No. 81/2005
s. 9.

104H Monitored person must comply with certain directions

While at the community corrections centre, the monitored person must comply with any direction given by an officer that is necessary for the management, good order or security of the centre.

Penalty: 5 penalty units.

S. 104I
inserted by
No. 81/2005
s. 9.

104I Officers may use force to enforce directions in certain circumstances

- (1) The Regional Manager or a community corrections officer may use reasonable force to compel the monitored person, while at the community corrections centre, to obey a direction if he or she believes on reasonable grounds that the use of force is necessary—
- (a) to prevent the person or another person being killed or seriously injured; or
- (b) to prevent serious damage to property.

- (2) If a community corrections officer uses force to compel the person to obey a direction, he or she must report that fact to his or her Regional Manager as soon as possible.
- (3) The Regional Manager must as soon as possible report to the Secretary—
 - (a) the use of force by the Regional Manager to compel the monitored person to obey a direction; and
 - (b) any use of force by a community corrections officer to compel the monitored person to obey a direction that has been reported to the Regional Manager.

104J Officers to give reports if required

S. 104J
inserted by
No. 81/2005
s. 9.

- (1) An officer must, when required by the Secretary—
 - (a) report to a court concerning the monitored person; and
 - (b) report to the Adult Parole Board concerning the person.
- (2) In relation to officers within the meaning of paragraph (e) of the definition of *officer* in section 85, subsection (1) applies as if it only referred to reports concerning the monitored person that relate to the security of the centre.

104K Photographing

S. 104K
inserted by
No. 81/2005
s. 9.

- (1) While the monitored person is at a community corrections centre, an officer may at any time take photographs of the person for the purposes of identifying the person, or of completing records concerning the person.
- (2) An officer may give to the person all necessary directions to ensure the taking of accurate photographs.

s. 104L

S. 104K(3)
substituted by
No. 91/2009
s. 216.

- (3) Any direction given under subsection (2) is deemed to be—
- (a) in the case of a person who is subject to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**, a lawful direction of the Secretary under section 16(1) of that Act for the purposes of section 15(3) of that Act; or
 - (b) in the case of a person who is subject to a supervision order or interim supervision order under the **Serious Sex Offenders (Detention and Supervision) Act 2009**, a lawful direction of the Adult Parole Board given under section 119 of that Act.

Division 3—Provisions applying to monitored people receiving visits from officers

S. 104L
inserted by
No. 81/2005
s. 9,
substituted by
No. 91/2009
s. 217.

104L Application of this Division

- (1) This Division applies if a relevant person or body instructs or directs a monitored person to receive visits from an officer for the purposes of that Act.
- (2) In this section, *relevant person or body* means—
 - (a) in the case of a person who is subject to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**, the Secretary, acting under section 16(1) of the **Serious Sex Offenders Monitoring Act 2005**; or
 - (b) in the case of a person who is subject to a supervision order or interim supervision order under the **Serious Sex Offenders (Detention and Supervision) Act 2009**, the Adult Parole Board, acting under a condition imposed under section 16(2)(d) of the

Serious Sex Offenders (Detention and Supervision) Act 2009.

104M Officers to give reports if required

S. 104M
inserted by
No. 81/2005
s. 9.

- (1) The officer must, when required by the Secretary—
 - (a) report to a court concerning the monitored person; and
 - (b) report to the Adult Parole Board concerning the person.
- (2) Subsection (1) does not apply to officers within the meaning of paragraph (e) of the definition of *officer* in section 85.

Division 4—Obligations of regional managers

104N Regional Manager to ensure that officers have access to certain information

S. 104N
inserted by
No. 81/2005
s. 9.

- (1) The Regional Manager of a region must take reasonable steps to ensure that officers working in the region have access to information as to what their powers and duties are under, and as to what provision is made by or under, this Act, the **Serious Sex Offenders (Detention and Supervision) Act 2009** and the **Serious Sex Offenders Monitoring Act 2005** concerning monitored people to whom this Part applies.
- (2) The Regional Manager of a region must give all necessary directions to ensure that officers working in, or assigned to, the region comply with this Act, the regulations, the **Serious Sex Offenders (Detention and Supervision) Act 2009** and the **Serious Sex Offenders Monitoring Act 2005** in relation to the monitored people to whom this Part applies.

S. 104N(1)
amended by
No. 91/2009
s. 218(1).

S. 104N(2)
amended by
No. 91/2009
s. 218(2).

Corrections Act 1986

No. 117 of 1986

Part 9B—Provisions Concerning Monitored Serious Sex Offenders

s. 104N

(3) In this section, *region* means an area, or several areas, designated under Part 9 as a region.

PART 9C—PRISONER COMPENSATION QUARANTINE FUNDS

Pt 9C
(Heading and
ss 104O–
104ZN)
inserted by
No. 50/2008
s. 3.

Division 1—Introductory

104O Definitions

S. 104O
inserted by
No. 50/2008
s. 3.

In this Part—

agreement includes compromise and acceptance of an offer of compromise;

award of damages means damages—

- (a) awarded pursuant to a judgment of a court; or
- (b) paid or payable in accordance with an agreement between the parties to the agreement;

civil wrong means an act or omission of the State—

- (a) that gives rise to a claim by a prisoner against the State; and
- (b) that occurred while the claimant was a prisoner detained in custody in a prison; and
- (c) that arose out of and in connection with his or her detention in custody in a prison;

claim means a claim brought in tort, in contract or under statute or otherwise;

court includes tribunal;

criminal act has the meaning given in section 104Q;

damages includes any form of monetary compensation;

family member has the same meaning as in section 30A;

initial quarantine period, in relation to a prisoner compensation quarantine fund, means the period of 12 months following the publication in the Government Gazette of the notice in respect of the fund under section 104Y;

prisoner includes former prisoner;

prisoner compensation quarantine fund has the meaning given in section 104V;

quarantine period, in relation to a prisoner compensation quarantine fund relating to a prisoner, means—

- (a) the initial quarantine period; and
- (b) the period ending on the final determination of all legal proceedings by victims against the prisoner which are commenced within the initial quarantine period and which are notified to the Secretary under section 104ZE(1);

State includes—

- (a) the Secretary; and
- (b) a contractor responsible for the management or operation of a prison; and
- (c) any employee of the Crown or of a person referred to in paragraph (a) or (b);

victim has the meaning given in section 104R.

104P Application

S. 104P
inserted by
No. 50/2008
s. 3.

- (1) This Part applies in respect of an award of damages to a prisoner in respect of a claim made by or on behalf of the prisoner against the State for a civil wrong.
- (2) This Part does not apply to a claim by or on behalf of a prisoner arising from and in connection with the prisoner's detention while on remand.
- (3) This Part does not apply to an award of damages to a prisoner in respect of a claim of false imprisonment.
- (4) This Part does not affect (and is subject to) any obligation imposed on the State or the Secretary by or under an enactment of the State or the Commonwealth to pay some other person money owed or due to or held on account of the prisoner.

104Q Meaning of *criminal act*

S. 104Q
inserted by
No. 50/2008
s. 3.

- (1) In this Part, *criminal act* means conduct that, on the balance of probabilities, would constitute an offence.
- (2) The definition of criminal act applies whether or not a prisoner whose conduct is alleged to constitute an offence has been, will be or is capable of being proceeded against or convicted of the offence.

104R Meaning of *victim*

S. 104R
inserted by
No. 50/2008
s. 3.

In this Part *victim* means—

- (a) a person who has had a criminal act committed against him or her;
- (b) a family member of a person who has had a criminal act committed against that person.

s. 104S

Division 2—Awards of damages to prisoners

S. 104S
inserted by
No. 50/2008
s. 3.

104S Agreements must be approved by court

An agreement between the State and a prisoner for the payment of damages for a civil wrong is of no effect until it has been approved by a court.

S. 104T
inserted by
No. 50/2008
s. 3.

104T Determination of amounts for medical and legal costs

- (1) An award of damages for a civil wrong must specify the amounts, if any, awarded or agreed in respect of—
 - (a) existing and future medical costs; and
 - (b) legal costs.
- (2) If the parties to an agreement between the State and a prisoner for the payment of damages for a civil wrong are unable to agree on any amount to be specified under subsection (1), the court must specify the amounts to be specified in the agreement for the purposes of that subsection and the agreement is varied accordingly.

S. 104U
inserted by
No. 50/2008
s. 3.

104U Matters to be considered by court

- (1) This section applies to—
 - (a) an award of damages by a court for a civil wrong; and
 - (b) an agreement between the State and a prisoner for the payment of damages for a civil wrong.
- (2) The court must not make the award or approve the agreement unless the court is satisfied—
 - (a) that section 104T(1) has been complied with; and

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- (b) that, in all the circumstances, the amounts specified for the purposes of section 104T(1) are appropriate portions of the total amount payable under the award or agreement having regard to—
- (i) the claim; and
 - (ii) the loss or damage suffered by the prisoner; and
 - (iii) the need to ensure as far as possible that victims are not deprived of an opportunity to enforce a successful claim for damages against a prisoner.
- (3) If legal costs are to be assessed and paid under an order made on taxation, the legal costs are taken under this Part to be specified in the award of damages.

Division 3—Payment of money to prisoner compensation quarantine fund

104V Damages awarded to prisoner to be paid to prisoner compensation quarantine fund

S. 104V
inserted by
No. 50/2008
s. 3.

- (1) The amount of any award of damages to a prisoner in respect of a civil wrong must be paid by the State to the Secretary immediately after the damages are awarded.
- (2) The amount to be paid under subsection (1) does not include any amount specified in the award of damages made or approved by the court as attributable to—
 - (a) existing and future medical costs; and
 - (b) legal costs.

s. 104W

- (3) An amount paid to the Secretary under subsection (1)—
 - (a) must be held in trust for the prisoner by the Secretary during the quarantine period and until the final payment is made out of the prisoner compensation quarantine fund in accordance with this Part; and
 - (b) may be paid out of the prisoner compensation quarantine fund only as authorised by this Part.
- (4) Money held by the Secretary in trust for a prisoner under this Part constitutes a *prisoner compensation quarantine fund*.
- (5) This section does not apply if the amount that would, but for this subsection, be required to be paid to the Secretary under subsection (1) does not exceed \$10 000.

S. 104W
inserted by
No. 50/2008
s. 3.

104W Prisoner compensation quarantine funds

- (1) A prisoner compensation quarantine fund consists of—
 - (a) any amount held by the Secretary in trust for a prisoner under this Part; and
 - (b) any interest earned on that money.
- (2) The Secretary must deposit all money in a prisoner compensation quarantine fund into an interest-bearing account with an ADI.
- (3) The following may be paid out of the prisoner compensation quarantine fund—
 - (a) amounts required to be paid out to any person in accordance with section 104ZG or 104ZH;
 - (b) amounts required to be paid out in accordance with section 104ZJ in respect of the prisoner;

- (c) the costs of administration of the fund (including any taxes payable in respect of the fund).
- (4) The Secretary may only pay out of a prisoner compensation quarantine fund the costs of administration of the fund if that payment would not decrease the level of the fund below the amount of damages paid into the fund.
- (5) The Secretary is responsible for the administration of the prisoner compensation quarantine fund.

Division 4—Notice of prisoner compensation quarantine fund

104X Victim may ask to be notified of award of damages to prisoner

S. 104X
inserted by
No. 50/2008
s. 3.

- (1) A victim in relation to a criminal act by a prisoner may apply to the Secretary to be notified of an award of damages to the prisoner.
- (2) An application must be in writing.

104Y Notice to victims published

S. 104Y
inserted by
No. 50/2008
s. 3.

- (1) The Secretary must publish a notice advising of an award of damages to a prisoner as soon as practicable after the amount of damages is paid to the Secretary under section 104V.
- (2) The notice must—
 - (a) state that the award of damages has been made to the prisoner in a claim against the State but must not state the amount of the award of damages;
 - (b) state the name of the prisoner and any other names by which the prisoner is known;
 - (c) state that money in that award has been paid to a prisoner compensation quarantine fund;

s. 104Z

- (d) state the initial quarantine period for that fund;
 - (e) invite victims in relation to criminal acts of the prisoner to seek further information from the Secretary about the fund;
 - (f) contain contact details for seeking that further information.
- (3) The notice must be published—
- (a) in the Government Gazette; and
 - (b) in a daily newspaper circulating generally in Victoria; and
 - (c) a daily newspaper circulating generally in Australia.
- (4) The Secretary may also publish the notice on the Internet.

S. 104Z
inserted by
No. 50/2008
s. 3.

104Z Notice to victims directly

The Secretary may forward a copy of the notice under section 104Y in respect of an award of damages to a prisoner to any victim who has applied to the Secretary under section 104X to be notified of an award of damages in respect of the prisoner.

S. 104ZA
inserted by
No. 50/2008
s. 3.

104ZA Applications for information

- (1) A victim in relation to a criminal act by a prisoner may apply to the Secretary for information about a prisoner compensation quarantine fund with respect to that prisoner within the initial quarantine period in respect of that fund.
- (2) The Secretary by written notice may disclose the following information to the applicant if the Secretary is satisfied that the applicant is a victim in relation to a criminal act of a prisoner—

-
- (a) the amount of the award paid into the prisoner compensation quarantine fund in respect of the prisoner;
 - (b) the start of the initial quarantine period;
 - (c) the end of the initial quarantine period if no legal proceedings are notified under section 104ZE(1);
 - (d) any other information that the Secretary from time to time believes will assist the victim to make an informed decision as to whether to bring proceedings against the prisoner.
- (3) The notice must include a statement advising the victim—
- (a) that the information is disclosed solely for use by the victim in deciding whether or not to bring legal proceedings; and
 - (b) that the victim should consider seeking independent legal advice; and
 - (c) that the information provided by the Secretary does not constitute legal advice or a recommendation to bring or not to bring legal proceedings; and
 - (d) of the effect of sections 104ZC and 104ZD.

104ZB Disclosure of information by Secretary authorised

The provision of information by the Secretary under section 104Y, 104Z or 104ZA—

- (a) is authorised despite any agreement to which the Secretary or the State is a party that would otherwise prohibit or restrict the disclosure of information concerning an award of damages; and
- (b) does not constitute a contravention of such an agreement.

S. 104ZB
inserted by
No. 50/2008
s. 3.

s. 104ZC

S. 104ZC
inserted by
No. 50/2008
s. 3.

104ZC Confidentiality of information

A person to whom information is provided under section 104Y, 104Z or 104ZA by the Secretary must treat that information in an appropriate manner that respects the confidentiality of that information.

S. 104ZD
inserted by
No. 50/2008
s. 3.

104ZD Offence to disclose information

- (1) A person to whom information is disclosed under section 104Y, 104Z or 104ZA must not disclose that information to any other person except for the purposes of, or in connection with, the taking and determination of legal proceedings by the person against the prisoner concerned.

Penalty: 60 penalty units.

- (2) A person (other than a person to whom information is disclosed under section 104Y, 104Z or 104ZA) who becomes aware of any information disclosed to a person under section 104Y, 104Z or 104ZA must not use that information or disclose it to any person.

Penalty: 60 penalty units, in the case of a natural person;

1200 penalty units, in the case of a body corporate.

- (3) Nothing in subsection (1) prevents a person from disclosing information to a lawyer in the course of consulting that lawyer for legal advice.
- (4) Subsections (1) and (2) do not apply to information that is in the public domain.

104ZE Notice to Secretary by victim

S. 104ZE
inserted by
No. 50/2008
s. 3.

- (1) A victim who within the initial quarantine period for a prisoner compensation quarantine fund relating to a prisoner commences legal proceedings for the recovery of damages against the prisoner in respect of a criminal act by the prisoner against the victim may give written notice to the Secretary of that fact.
- (2) A victim may give written notice to the Secretary of the final determination of the legal proceedings notified by the victim under subsection (1) and of any amount awarded to the victim in those proceedings within 14 days after the final determination of the proceedings.

104ZF Notice to Secretary by creditors

S. 104ZF
inserted by
No. 50/2008
s. 3.

- (1) Any person who has a judgment debt against the prisoner or who is entitled under any enactment to payment of an amount by the prisoner and who has not recovered that judgment debt or been paid that amount may give notice to the Secretary of that fact.
- (2) A notice under subsection (1) must—
 - (a) be in writing; and
 - (b) be accompanied by a copy of any relevant document that substantiates the facts set out in the notice; and
 - (c) be given during the quarantine period.
- (3) The Secretary may require a person who has given a notice under this section to provide any further information that the Secretary reasonably requires to substantiate the facts set out in the notice.

Division 5—Payments out of prisoner compensation quarantine fund

S. 104ZG
inserted by
No. 50/2008
s. 3.

104ZG Payments out of fund where legal proceedings notified

- (1) This section applies if the Secretary has received a notice under section 104ZE(1) in respect of legal proceedings against a prisoner to whom a prisoner compensation quarantine fund relates.
- (2) The Secretary must not pay any money out of the prisoner compensation quarantine fund to any person until the end of the quarantine period for the fund.
- (3) The Secretary must, within 45 days after the end of the quarantine period, pay out of the prisoner compensation quarantine fund to the persons entitled to payment any amounts required to satisfy—
 - (a) any award against the prisoner that was notified to the Secretary under section 104ZE(2); and
 - (b) any judgment debt against, or entitlement to be paid by, the prisoner that was notified to the Secretary under section 104ZF—that the Secretary is satisfied is a valid claim on the prisoner.
- (4) If the amount in the prisoner compensation quarantine fund is not sufficient to pay the amounts required to be paid out under subsection (3), the Secretary must make payments from the fund under that subsection on a pro rata basis having regard to any priority of payment required by law.

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- (5) If any amount remains in the prisoner compensation quarantine fund after all amounts are paid out under subsection (3), the Secretary must pay the remaining amount to or at the direction of the prisoner within, or as soon as practicable after the end of, the period of 45 days after the end of the quarantine period.

104ZH Payments out of fund where notice from creditor received

S. 104ZH
inserted by
No. 50/2008
s. 3.

- (1) This section applies if the Secretary has been given notice by a person under section 104ZF in respect of a prisoner and has not been notified under section 104ZE(1) of legal proceedings against that prisoner.
- (2) The Secretary must not pay any money out of the prisoner compensation quarantine fund to any person until the end of the initial quarantine period for the fund.
- (3) The Secretary must, within 45 days after the end of the initial quarantine period, pay out of the prisoner compensation quarantine fund to the persons entitled to payment any amounts required to satisfy any judgment debt against, or entitlement to be paid by, the prisoner—
- (a) that was notified to the Secretary under section 104ZF during the initial quarantine period; and
 - (b) that the Secretary is satisfied is a valid claim on the prisoner.
- (4) If the amount in the prisoner compensation quarantine fund is not sufficient to pay the amounts required to be paid out under subsection (3), the Secretary must make payments from the fund under that subsection on a pro rata basis having regard to any priority of payment required by law.

s. 104ZI

- (5) If any amount remains in the prisoner compensation quarantine fund after all amounts are paid out under subsection (3), the Secretary must pay the remaining amount to or at the direction of the prisoner within, or as soon as practicable after the end of, the period of 45 days after the end of the initial quarantine period.

S. 104ZI
inserted by
No. 50/2008
s. 3.

104ZI Restriction not to affect payment of administration costs

Sections 104ZG and 104ZH do not prevent the payment out of a prisoner compensation quarantine fund of any amount for the costs of administration of the fund (including payment of taxes in respect of the fund) authorised under section 104W and those costs are payable out of the fund before payment of any other amounts under sections 104ZG and 104ZH.

S. 104ZJ
inserted by
No. 50/2008
s. 3.

104ZJ Payments out of fund where no notice given

- (1) This section applies if no notice is given to the Secretary under section 104ZE(1) or section 104ZF in relation to the prisoner to whom a prisoner compensation quarantine fund relates within the initial quarantine period.
- (2) The Secretary must pay all money in the prisoner compensation quarantine fund to or at the direction of the prisoner within 45 days after the end of the initial quarantine period.

S. 104ZK
inserted by
No. 50/2008
s. 3.

104ZK Payments taken to be payments at direction of prisoner

The payment by the Secretary of an amount out of a prisoner compensation quarantine fund in accordance with this Part is taken to be a payment at the direction of the prisoner and operates as a discharge, to the extent of the payment, of any liability of the State or the Secretary to pay the amount to the prisoner as damages.

104ZL When are legal proceedings finally determined

S. 104ZL
inserted by
No. 50/2008
s. 3.

- (1) Subject to subsection (2), in this Part legal proceedings are not finally determined if—
 - (a) any period for bringing an appeal in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal); or
 - (b) any appeal in respect of the legal proceedings is pending.
- (2) In this Part, legal proceedings are taken to be finally determined if the legal proceedings are settled or discontinued.

Division 6—General

104ZM Offence to provide false or misleading information

S. 104ZM
inserted by
No. 50/2008
s. 3.

A person must not give information to the Secretary under this Part that the person believes to be false or misleading in any material particular.

Penalty: 60 penalty units.

104ZN Annual report

S. 104ZN
inserted by
No. 50/2008
s. 3.

The Secretary must provide an annual written report on the operation of this Part to the Minister and the Attorney-General.

s. 104ZO

Pt 9D
(Heading and
ss 104ZO–
104ZW)
inserted by
No. 55/2009
s. 4.

PART 9D—ACCIDENT COMPENSATION

S. 104ZO
inserted by
No. 55/2009
s. 4.

104ZO Definition

In this Part, *Authority* means the Victorian WorkCover Authority established under the **Accident Compensation Act 1985**.

S. 104ZP
inserted by
No. 55/2009
s. 4.

104ZP Application of Part

This Part applies to a person who is—

- (a) an offender who is required or directed by or under a correctional order, a provision of the **Sentencing Act 1991**, or Part 9 of this Act to work or to take part in a program of activities; or
- (b) a volunteer who is working in a prison or at a location; or
- (c) a person who is required or directed by or under a diversion program under section 128A of the **Magistrates' Court Act 1989** to work or to take part in a program of activities.

S. 104ZQ
inserted by
No. 55/2009
s. 4.

104ZQ When is compensation payable?

Compensation is payable under this Part if a person suffers personal injury (including death) or loss of or damage to property belonging to the person or in the person's possession or control while the person is engaged—

- (a) in working or taking part in a program of activities referred to in section 104ZP(a) or (c); or

- (b) if the person is a volunteer, in working in a prison or at a location.

104ZR Compensation for personal injuries

S. 104ZR
inserted by
No. 55/2009
s. 4.

- (1) Compensation for personal injury (including death) is to be paid in accordance with and subject to the **Accident Compensation Act 1985** to those persons to whom, or for whose benefit, compensation would be payable under that Act if—
- (a) the injured person were a worker employed by the Crown; and
 - (b) the personal injury had arisen out of or in the course of the employment—
- within the meaning of that Act.
- (2) For the purpose of assessing the amount of compensation, the average weekly earnings of the injured person is to be computed on the following basis but so that any relevant maximum limits imposed by the **Accident Compensation Act 1985** are not exceeded—
- (a) by reference to the injured person's employment by any employer or employers during the relevant period before the accident; or
 - (b) if the injured person was not then working under a contract of service, on any basis that is best calculated to give the appropriate compensation for the injured person's loss of earning capacity.
- (3) For the purposes of enabling the return to work of the injured person, the Authority may—
- (a) prepare a return to work plan under the **Accident Compensation Act 1985**;

s. 104ZS

- (b) approve a provider of occupational rehabilitation services for the purposes of a return to work plan prepared under paragraph (a);
 - (c) provide alternative assistance or programs to the injured person or in respect of the employment of the injured person.
- (4) Any costs and expenses incurred as a result of subsection (3) are to be paid by the Authority under section 104ZW(2) as if the costs and expenses were a payment of compensation and section 104ZW(3) applies accordingly.
- (5) In this section, *injured person* means—
- (a) an offender or person who suffers personal injury (including death) while engaged in working or taking part in a program of activities referred to in section 104ZP(a) or (c); or
 - (b) a volunteer who suffers personal injury (including death) while engaged in working in a prison or at a location.

S. 104ZS
inserted by
No. 55/2009
s. 4.

104ZS Compensation for loss of or damage to property

Compensation payable for loss of or damage to property is to be such that the Minister considers reasonable in the circumstances and is to be paid to the owner of the property or any person who has an interest in it.

S. 104ZT
inserted by
No. 55/2009
s. 4.

104ZT Jurisdiction

If any question or matter arises under this Part, the County Court and the Magistrates' Court have, under this Act, the same jurisdiction to hear and determine the question or matter as if it were a question or matter arising under the **Accident Compensation Act 1985** and that Act applies with the necessary adaptations and modifications.

104ZU Authority to represent Crown

In all proceedings under this Part, the Authority represents the Crown and has the same powers, rights and authorities as the Authority has under the **Accident Compensation Act 1985** in regard to the corresponding matter relating to a worker under that Act.

S. 104ZU
inserted by
No. 55/2009
s. 4.

104ZV Compensation otherwise payable

If a person is entitled to compensation in respect of personal injury otherwise than in accordance with this Part, there is payable to that person the amount, if any, by which the amount of compensation in respect of the injury determined under this Part exceeds the amount to which the person is entitled.

S. 104ZV
inserted by
No. 55/2009
s. 4.

104ZW Payments

- (1) The Authority is entitled to the reimbursement of its reasonable costs and expenses incurred in representing the Crown under section 104ZU.
- (2) The Authority must make any payment of compensation under this Part out of the WorkCover Authority Fund under the **Accident Compensation Act 1985**.
- (3) There is to be paid into the WorkCover Authority Fund out of the Consolidated Fund, which is to the necessary extent appropriated accordingly—
 - (a) the amounts to be reimbursed under subsection (1); and
 - (b) the amount of any payments under subsection (2).

S. 104ZW
inserted by
No. 55/2009
s. 4.

PART 10—GENERAL

105 Proceedings for offences

S. 105(1)
amended by
No. 45/1996
s. 17(Sch. 1
item 64).

(1) The Secretary or an officer within the meaning of Part 5 or Part 9 authorized by the Secretary may take proceedings for offences against this Act or the regulations.

S. 105(2)
amended by
No. 45/1996
s. 17(Sch. 1
item 64).

(2) For the purposes of subsection (1), the Secretary may authorize officers generally, a class of officers or a particular officer.

S. 105A
inserted by
No. 14/2004
s. 10.

105A Offences by bodies corporate

- (1) If, in proceedings for an offence against this Act, it is necessary to establish the intention or knowledge of a body corporate, it is sufficient to show that an officer, employee or agent of the body corporate had that intention or knowledge.
- (2) If an offence against this Act committed by a body corporate is proved to have been committed with the consent or connivance of a person who is a director, manager, secretary or other officer of the body corporate, that person is deemed to have committed the offence also and is liable to be proceeded against and punished accordingly.
- (3) This section applies only with respect to an offence alleged to have been committed after the commencement of section 10 of the **Corrections (Further Amendment) Act 2004**.

S. 106
amended by
Nos 16/1987
s. 4(3)(Sch. 1
item 7(i)),
45/1996
s. 17(Sch. 1
item 65(a)(b)).

106 Judicial notice of signatures

If by or under this Act or the **Community Services Act 1970** the Secretary or an officer within the meaning of Part 5 or Part 9 of this Act is required or authorized to sign a document, all courts must take judicial notice of the Secretary's or the officer's signature on that document.

107 Construction of references

In—

- (a) an Act other than this Act; or
- (b) a subordinate instrument other than a subordinate instrument made under this Act; or
- (c) a document which is not an Act or a subordinate instrument—

a reference to "the Director of Children's Welfare", "the Director-General of Social Welfare", "the Director-General of Community Services", "the Director of Probation and Parole", "the Chief Probation Officer" or "the Chief Parole Officer" is—

- (d) if the matter to which the reference relates is after the commencement of this section or by virtue of the **Community Services (Director-General of Corrections) Act 1983** within the responsibilities of the Secretary, deemed to refer to the Secretary; and
- (e) if the matter to which the reference relates is after the commencement of section 17 of the **Corrections (Amendment) Act 1996** within the responsibilities of the Secretary, deemed to refer to the Secretary.

S. 107 amended by Nos 16/1987 s. 4(3)(Sch. 1 item 7(j)), 45/1996 s. 17(Sch. 1 item 66(a)(b)).

S. 107(d) amended by No. 46/1998 s. 7(Sch. 1).

S. 107(e) inserted by No. 45/1996 s. 17(Sch. 1 item 66(b)).

108 Apprehension of escaped prisoners

A prison officer or any member of the police force—

- (a) may arrest a person who has escaped from the legal custody of the Secretary or the Chief Commissioner of Police; and
- (b) must deliver the person to a prison or police gaol as soon as possible after the arrest.

S. 108 repealed by No. 11/1993 s. 4(4), new s. 108 inserted by No. 45/2001 s. 19.

s. 109

S. 109
amended by
No. 31/1994
s. 3(Sch. 1
item 14).

109 Grants by Minister

Out of the moneys available for the purpose the Minister may make grants to organizations which, in the Minister's opinion, promote the welfare of prisoners or offenders or provide treatment or help of any other kind for prisoners or offenders.

S. 110
amended by
No. 49/1991
s. 119(7)
(Sch. 4
item 3.9),
substituted by
No. 50/1994
s. 124,
amended by
No. 35/2002
s. 9,
repealed by
No. 55/2009
s. 5.²

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111 Sheriff's power not affected

This Act does not affect any function power or duty in relation to prisons or the confinement or release of prisoners which a sheriff has under another Act or a rule of law or practice.

S. 111A
inserted by
No. 94/1994
s. 23,
amended by
No. 26/1997
s. 16(1).

111A Supreme Court—limitation of jurisdiction

- (1) It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court from—
 - (a) entertaining actions for compensation in respect of which section 8D provides that no compensation is payable; and
 - (b) entertaining actions for liability in relation to a matter in respect of which section 9CB provides that there is no liability.

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|---|---|
| (2) It is the intention of section 9CB as amended by the Police and Corrections (Amendment) Act 1997 to alter or vary section 85 of the Constitution Act 1975 . | S. 111A(2)
inserted by
No. 26/1997
s. 16(2). |
| (3) It is the intention of section 9CB as amended by the Corrections (Custody) Act 2001 to alter or vary section 85 of the Constitution Act 1975 . | S. 111A(3)
inserted by
No. 45/2001
s. 20. |
| (3A) It is the intention of section 9CB, as amended by the Corrections (Amendment) Act 2003 , to alter or vary section 85 of the Constitution Act 1975 . | S. 111A(3A)
inserted by
No. 38/2003
s. 11. |
| (4) It is the intention of section 55E to alter or vary section 85 of the Constitution Act 1975 . | S. 111A(4)
inserted by
No. 45/2001
s. 20. |

112 Regulations

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| (1) The Governor in Council may, subject to disallowance by Parliament, make regulations for or with respect to any of the following matters— | |
| (a) the management, good order and security of prisons and locations and the discipline and welfare of prisoners and offenders, the privileges of prisoners and the procedures for hearing and dealing with prison offences and acts of misconduct by offenders; | |
| (aa) the management, good order and security of police gaols and the discipline and welfare of people detained in them, and the procedures for hearing and dealing with offences and acts of misconduct committed by people detained in police gaols; | S. 112(1)(aa)
inserted by
No. 15/1989
s. 30(1). |
| (b) the establishment of training institutions for officers under Part 5 or Part 9; | S. 112(1)(b)
amended by
No. 16/1991
s. 17(a). |
| (ba) the training, discipline and conduct of officers; | S. 112(1)(ba)
inserted by
No. 16/1991
s. 17(b). |
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Corrections Act 1986
No. 117 of 1986
Part 10—General

s. 112

S. 112(1)(c)
amended by
No. 15/1989
s. 30(2).

(c) the medical and dental testing and treatment (including vaccination) of prisoners, offenders and people detained in police gaols;

S. 112(1)(d)
amended by
No. 15/1989
s. 30(3).

(d) the manner of dealing with property belonging to, sent to, or delivered for prisoners and people detained in police gaols and restrictions on the storage in a prison of property belonging to prisoners and people detained in police gaols;

(e) the classification of prisoners;

S. 112(1)(f)
amended by
No. 15/1989
s. 30(4).

(f) how and for what purposes prisoners and people detained in police gaols may be placed under restraint and how, where, for how long and in what circumstances prisoners and people detained in police gaols or classes of prisoners and people detained in police gaols may be separated from each other;

(g) searches under this Act, and the manner of dealing with property seized, including the forfeiture of property to the Crown;

(h) the work to be done by, or made available for prisoners and offenders, the remuneration (if any) for that work, the issue possession and use of tools and equipment by prisoners and offenders, and the payment of gratuities to prisoners or offenders where no work is available;

S. 112(1)(ha)
inserted by
No. 45/1996
s. 6.

(ha) access to and operation of prison industries and prison industry sites;

S. 112(1)(i)
amended by
No. 45/1996
s. 16.

(i) the moneys which may be paid to or received by prisoners or held for prisoners by officers at a prison, the extent to which and the purposes for which prisoners may spend or

use moneys earned or received by them or held for them and the extent to which moneys held for a prisoner must be retained until the release of the prisoner from custody and the procedures for investment of those retained moneys and providing that prisoners are not entitled to any interest or other proceeds from the investment of those retained moneys;

- (j) communication by or with prisoners and people detained in police gaols, visits to prisons and police gaols and the facilities and accommodation to be provided for families, children and close friends of prisoners;

S. 112(1)(j)
amended by
No. 15/1989
s. 30(5)(a)(b).

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S. 112(1)(k)
amended by
No. 45/2001
s. 21,
repealed by
No. 53/2007
s. 19(1).

- (l) the circumstances in which dogs may be approved for use by prison officers in accordance with this Act;

- (m) the notices returns and information to be given and the records and registers to be kept for the purposes of this Act;

- (ma) the establishment and keeping of a victims register;

S. 112(1)(ma)
inserted by
No. 14/2004
s. 11.

- (mb) the manner of application for registration by persons wishing to be included on the victims register;

S. 112(1)(mb)
inserted by
No. 14/2004
s. 11.

- (mc) the manner and circumstances in which a person may be removed from the victims register;

S. 112(1)(mc)
inserted by
No. 14/2004
s. 11.

Corrections Act 1986
No. 117 of 1986
Part 10—General

s. 112

- S. 112(1)(md)
inserted by
No. 14/2004
s. 11.
- (md) matters to be included in victim submissions;
- S. 112(1)(me)
inserted by
No. 50/2008
s. 6.
- (me) matters to be included in applications and notices under Part 9C;
- S. 112(1)(n)
amended by
Nos 44/1991
s. 6(n),
53/2003 s. 19.
- (n) parole orders, home detention orders and the procedure of the Parole Board;
- S. 112(1)(o)
amended by
No. 15/1989
s. 30(6).
- (o) authorized absences by prisoners and the transfer of prisoners and people detained in police gaols;
- (p) the ways in which a sheriff may carry out a function power or duty in relation to prisons or the confinement or release of prisoners;
- (q) the removal of prisoners from prison in the interests of justice, and the custody of prisoners whilst absent from prison;
- S. 112(1)(r)
substituted by
No. 44/1991
s. 4(2).
- (r) the reduction of the length of a sentence of imprisonment or of the non-parole period, if one has been fixed in respect of the sentence, on account of good behaviour while the person serving the sentence is suffering disruption or deprivation—
- (i) during an industrial dispute or emergency existing in the prison or police gaol in which the sentence is being served; or
- (ii) in other circumstances of an unforeseen and special nature;
- (s) the issue of authorities under section 15, the conditions to which authorities are subject, and the manner and circumstances in which
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- persons may exercise the powers which they are authorized to exercise;
- (sa) the establishment of bodies for the purpose of carrying out functions under the regulations;
- (t) prescribing forms;
- (u) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
- (a) may be of general or limited application; and
- (b) may differ according to differences in time place or circumstances; and
- (c) may confer discretions or powers or impose duties in connection with the regulations on the Secretary, a Governor, a Regional Manager, an officer employed in the administration of this Act, a volunteer, a prisoner or an offender; and
- (d) may confer power on the Secretary, a Governor or a Regional Manager to grant exemption from the regulations, to impose conditions subject to which the exemption is granted and to revoke or vary the exemption; and
- (e) may apply or incorporate by reference any document formulated in accordance with the regulations and concerning the conduct of officers under Part 5 or Part 9, prisoners or offenders, the privileges of prisoners or the routine of a prison or a location; and
- (f) may impose penalties not exceeding 10 penalty units for contravention of the regulations.
- S. 112(1)(sa) inserted by No. 53/2007 s. 19(2).
- S. 112(2)(c) amended by No. 45/1996 s. 17(Sch. 1 item 67).
- S. 112(2)(d) amended by No. 45/1996 s. 17(Sch. 1 item 67).

s. 112A

S. 112(3)
amended by
No. 45/1996
s. 17(Sch. 1
item 67).

- (3) If a Governor or a Regional Manager grants or varies an exemption under a power conferred by the regulations the Governor or the Regional Manager must as soon as possible report details of the exemption or variation to the Secretary.

S. 112(4)
amended by
No. 45/1996
s. 17(Sch. 1
item 67).

- (4) The Secretary may by instrument given to the Governor or Regional Manager revoke or vary an exemption granted by the Governor or Regional Manager.

S. 112(5)
repealed by
No. 45/1996
s. 7(d).

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S. 112A
inserted by
No. 53/2007
s. 20.

112A Additional regulation-making powers—firearms

Without limiting section 112, the Governor in Council may, subject to disallowance by Parliament, make regulations for or with respect to—

- (a) the manner and circumstances in which an escort officer may be issued with a firearm, including circumstances relating to—
- (i) the classification of prisoners and prisons;
 - (ii) firearms training;
 - (iii) cases of emergency;
- (b) without limiting paragraph (a), conferring discretion on the Secretary or a Governor to issue a firearm to an escort officer in circumstances where the Secretary or Governor reasonably believes that a firearm is necessary for the security or good order of the prison or for the safety of a prisoner, an escort officer or other persons;
- (c) the carrying and storage of firearms issued to escort officers;

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- (d) the use of firearms by escort officers while acting in the course of their duties as escort officers in circumstances where the escort officer believes on reasonable grounds that the use of the firearm is the only practicable way to prevent the escape of a prisoner from custody;
 - (e) the use of firearms by escort officers while acting in the course of their duties as escort officers in circumstances where the escort officer reasonably believes that the use of the firearm is the only practicable way to prevent death or serious injury being caused to—
 - (i) a person in the prison; or
 - (ii) an officer (within the meaning of Part 5), or an escort officer, acting in the course of his or her duties outside a prison; or
 - (iii) a prisoner outside a prison.

112B Validation of regulations

Any regulations made, or purported to have been made, under section 112 and in force, or purportedly in force, immediately before the commencement of sections 19 and 20 of the **Justice Legislation Amendment Act 2007** that would have been validly made if section 112A had been in operation at the time the relevant regulations were made or purported to have been made have, and are deemed to always have had, the same force and effect as they would have had if section 112A had been operation at that time.

S. 112B
inserted by
No. 53/2007
s. 20.

PART 11—TRANSITIONAL PROVISIONS

113 Act to apply to prison sentences etc. before date of commencement

S. 113(1)
amended by
No. 16/1987
s. 4(3)(Sch. 1
item 7(k)).

- (1) This Act applies to all prisoners, whether or not they were sentenced before or after the commencement of this section, and whether or not at the date of the commencement of this section there is in force in relation to them a parole order or a pre-release permit under the **Community Services Act 1970**.

S. 113(2)
amended by
No. 16/1987
s. 4(3)(Sch. 1
item 7(k)).

- (2) A pre-release permit issued under the **Community Services Act 1970** and in force immediately before the date of commencement of this section has effect as if it were a pre-release permit issued under Part 8 of this Act.

S. 113(3)
amended by
No. 16/1987
s. 4(3)(Sch. 1
item 7(k)).

- (3) An order made by the Adult Parole Board under the **Community Services Act 1970** and in force at the date of commencement of this section has effect as if it were an order made under this Act by the Adult Parole Board established by this Act.
- (4) A permit or order which under this section has effect as if it were made under this Act may be enforced, varied, amended, cancelled or revoked under the provisions of this Act which relate to permits or orders of that kind.
- (5) This Act applies to an offender, whether the correctional order to which the offender is subject is made before or after the date of commencement of this section.

114 Transitional provisions—legal custody

- (1) Any person who immediately before the commencement of section 4 of the **Corrections (Custody) Act 2001** was deemed under section 4 to be in the custody of the Secretary, is, on and after that commencement, deemed to be in the legal custody of the Secretary under Part 1A until custody ceases in accordance with that Part.
- (2) Any person who immediately before the commencement of section 12 of the **Corrections (Custody) Act 2001** was deemed under section 11 to be in the custody of the Chief Commissioner of Police, is, on and after that commencement, deemed to be in the legal custody of the Chief Commissioner of Police under Part 1A until custody ceases in accordance with that Part.

S. 114 amended by No. 16/1987 s. 4(3)(Sch. 1 item 7(l)), repealed by No. 11/1995 s. 3(2)(Sch. 2), new s. 114 inserted by No. 45/2001 s. 22.

115 Transitional provisions—Criminal Justice Legislation (Miscellaneous Amendments) Act 2002

- (1) The amendments to this Act made by section 7 of the **Criminal Justice Legislation (Miscellaneous Amendments) Act 2002** apply to fingerprints taken after the commencement of that section.
- (2) The amendments to this Act made by section 8 of the **Criminal Justice Legislation (Miscellaneous Amendments) Act 2002** apply to information whether obtained before or after the commencement of that section.

S. 115 inserted by No. 35/2002 s. 10.

115A Transitional provisions—change of name applications

- (1) This Act as amended by Part 2 of the **Corrections and Major Crime (Investigative Powers) Acts (Amendment) Act 2004** applies to any change of name application received by the Registrar before the commencement of that Part, if the change of name had not been registered before that commencement.

S. 115A inserted by No. 97/2004 s. 5.

(2) In this section—

change of name application has the same meaning as in section 47G;

Registrar means the Registrar of Births, Deaths and Marriages under the **Births, Deaths and Marriages Registration Act 1996**.

115B Transitional provision—Corrections and Other Justice Legislation (Amendment) Act 2006

S. 115B
inserted by
No. 49/2006
s. 8.

(1) This Act as amended by section 6 of the **Corrections and Other Justice Legislation (Amendment) Act 2006** applies to warrants issued by the Adult Parole Board or a magistrate on or after the commencement of section 6 of that Act.

(2) Division 6 of Part 8, as inserted by section 7 of the **Corrections and Other Justice Legislation (Amendment) Act 2006**, applies to any change of name application received by the Registrar before the commencement of section 7 of that Act, if the change of name had not been registered before that commencement.

(3) In subsection (2)—

change of name application has the same meaning as in section 79A;

Registrar means the Registrar of Births, Deaths and Marriages under the **Births, Deaths and Marriages Registration Act 1996**.

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- (4) Division 7 of Part 8, as inserted by section 7 of the **Corrections and Other Justice Legislation (Amendment) Act 2006**, applies to—
- (a) warrants issued on or after the commencement of section 7 of that Act; and
 - (b) warrants issued before the commencement of section 7 of that Act that have not been executed on that commencement.

116 Transitional provision—victims register

S. 116
inserted by
No. 53/2007
s. 21.

- (1) The inclusion on the victims register, immediately before the commencement of section 15 of the **Justice Legislation Amendment Act 2007**, of the name of a person that is included by reason of the fact that he or she was the victim of a person convicted or found guilty of an offence under section 318(1) or 319(1) of the **Crimes Act 1958**, is not to be taken to be affected by that commencement.
- (2) The amendments made to this Act by section 15 of the **Justice Legislation Amendment Act 2007** apply to any application for inclusion on the victims register received by the Secretary and not finally determined immediately before the commencement of that section.

117 Transitional provision—Corrections Amendment Act 2008

S. 117
inserted by
No. 50/2008
s. 7.

- (1) Part 9C applies to an award of damages made to a prisoner against the State on or after the commencement of the **Corrections Amendment Act 2008** even if the legal proceedings were commenced by the prisoner before that commencement.
- (2) Words used in subsection (1) have the same meanings as they have in Part 9C.

S. 118
inserted by
No. 55/2009
s. 6.

118 Transitional provision—Justice Legislation Further Amendment Act 2009

Part 9D does not apply to a claim by a person referred to in section 110 (as in force immediately before its repeal) under the **Accident Compensation Act 1985** that was made but not finalised before the commencement of section 4 of the **Justice Legislation Further Amendment Act 2009**. Section 110 (as in force before its repeal) continues to apply to that claim.

SCHEDULES

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Sch. 1
amended by
No. 16/1987
s. 4(3)(Sch. 1
item 7(m)),
repealed by
No. 11/1993
s. 7(1)(g).

SCHEDULE 2

S.10.

NAMES OF PRISONS

<i>Column 1</i>	<i>Column 2</i>
<i>Old Name</i>	<i>New Name</i>
Ararat Prison	Her Majesty's Prison, Ararat.
Her Majesty's Prison, Bendigo	Her Majesty's Prison, Bendigo.
Her Majesty's Prison, Beechworth	Her Majesty's Prison, Beechworth.
Castlemaine Prison	Her Majesty's Prison, Castlemaine.
Her Majesty's Prison, Dhurringile	Her Majesty's Prison, Dhurringile.
Fairlea Female Prison	Her Majesty's Prison, Fairlea.
Her Majesty's Prison, Geelong	Her Majesty's Prison, Geelong.
Morwell River Reforestation Prison	Her Majesty's Prison, Morwell River.
Her Majesty's Prison, Pentridge	Her Majesty's Prison, Pentridge.
Her Majesty's Metropolitan Reception Prison	Her Majesty's Metropolitan Reception Prison.
Sale Prison	Her Majesty's Prison, Sale.
Won Wron Reforestation Prison	Her Majesty's Prison, Won Wron.

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 18 September 1986

Legislative Council: 20 November 1986

The long title for the Bill for this Act was "A Bill for an Act to make provision for the administration and management of correctional services, to make consequential amendments to certain Acts and for other purposes."

The **Corrections Act 1986** was assented to on 23 December 1986 and came into operation as follows:

Sections 1–3, 5, 6, 10, 59, 60, Divisions 1, 5, 6 of Part 8, section 113, Schedule 1 items 2, 5(2)(5), Schedule 2 on 6 May 1987: Government Gazette 6 May 1987 page 1004; Parts 2, 4–7, 9, 10, Divisions 2, 3 of Part 8, sections 4, 11, Schedule 1 items 1, 3–5(1)(3)(4)(6)–(9) on 1 March 1988: Government Gazette 24 February 1988 page 363; section 114 was never proclaimed, repealed by No. 11/1995.

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Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Corrections Act 1986** by Acts and subordinate instruments.

Community Services Act 1987, No. 16/1987

Assent Date: 12.5.87
Commencement Date: S. 4(3)(Sch. 1 item 7) on 22.2.89: Government Gazette 22.2.89 p. 386
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Crimes (Amendment) Act 1987, No. 70/1987

Assent Date: 24.11.87
Commencement Date: S. 8 on 1.9.88: Government Gazette 31.8.88 p. 2598
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Crimes (Fingerprinting) Act 1988, No. 38/1988

Assent Date: 24.5.88
Commencement Date: S. 7(1)(a) on 1.1.90: Government Gazette 20.12.89 p. 3290
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

State Superannuation Act 1988, No. 50/1988

Assent Date: 24.5.88
Commencement Date: S. 93(2)(Sch. 2 Pt 2 item 7) on 1.7.88: Government Gazette 1.6.88 p. 1487
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Police Regulation (Amendment) Act 1989, No. 15/1989

Assent Date: 16.5.89
Commencement Date: Ss 29, 30 on 16.5.89: s. 2(1)
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Children and Young Persons Act 1989, No. 56/1989 (as amended by No. 93/1990)

Assent Date: 14.6.89
Commencement Date: S. 286(Sch. 2 item 6) on 31.1.91: Special Gazette (No. 9) 31.1.91 p. 2
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

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Endnotes

Corrections (Prison Management and Prisoners) Act 1991, No. 16/1991

Assent Date: 23.4.91
Commencement Date: 1.10.91: Government Gazette 25.9.91 p. 2650
Current State: All of Act in operation

Corrections (Remissions) Act 1991, No. 44/1991 (as amended by No. 11/1993)

Assent Date: 18.6.91
Commencement Date: All of Act (*except* s. 6(k)) on 22.4.92: Government Gazette 15.4.92 p. 898; s. 6(k) never proclaimed, repealed by No. 11/1993 s. 7(2)
Current State: All of Act in operation

Sentencing Act 1991, No. 49/1991

Assent Date: 25.6.91
Commencement Date: 22.4.92: Government Gazette 15.4.92 p. 898
Current State: All of Act in operation

Corrections (Management) Act 1993, No. 11/1993 (as amended by No. 45/1996)

Assent Date: 11.5.93
Commencement Date: Ss 1, 2 on 11.5.93: s. 2(1); rest of Act (*except* ss 5, 6) on 18.6.93: Government Gazette 17.6.93 p. 1534; ss 5, 6 never proclaimed, repealed by No. 49/2006 s. 9
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Sentencing (Amendment) Act 1993, No. 41/1993

Assent Date: 1.6.93
Commencement Date: S. 18 on 15.8.93: Government Gazette 12.8.93 p. 2244
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: S. 118(Sch. 1 item 14) on 1.7.94: Government Gazette 23.6.94 p. 1672
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 3(Sch. 1 item 14) on 7.7.94: Government Gazette 7.7.94 p. 1878—see **Interpretation of Legislation Act 1984**
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Accident Compensation (Amendment) Act 1994, No. 50/1994

Assent Date: 15.6.94
Commencement Date: S. 124 on 24.6.94: Special Gazette (No. 37) 24.6.94 p. 2—see **Interpretation of Legislation Act 1984**
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

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Corrections (Amendment) Act 1994, No. 94/1994

Assent Date: 13.12.94
Commencement Date: Ss 1, 2 on 13.2.94: s. 2(1); rest of Act on 12.1.95:
Government Gazette 12.1.95 p. 15
Current State: All of Act in operation

Statute Law Revision Act 1995, No. 11/1995

Assent Date: 26.4.95
Commencement Date: 26.4.95
Current State: All of Act in operation

Miscellaneous Acts (Omnibus Amendments) Act 1996, No. 22/1996

Assent Date: 2.7.96
Commencement Date: Ss 3, 4 on 2.7.96: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Corrections Act 1986**

**Children and Young Persons (Miscellaneous Amendments) Act 1996,
No. 44/1996**

Assent Date: 26.11.96
Commencement Date: 26.11.96: s. 2
Current State: All of Act in operation

Corrections (Amendment) Act 1996, No. 45/1996

Assent Date: 26.11.96
Commencement Date: Ss 1, 2 on 26.11.96: s. 2(1); rest of Act (*except*
ss 11–13) on 6.2.97: Government Gazette 6.2.97
p. 257; ss 11–13 on 20.12.97: Government Gazette
18.12.97 p. 3612
Current State: This information relates only to the provision/s
amending the **Corrections Act 1986**

Police and Corrections (Amendment) Act 1997, No. 26/1997

Assent Date: 20.5.97
Commencement Date: Ss 9–16 on 22.5.97: Government Gazette 22.5.97
p. 1131
Current State: This information relates only to the provision/s
amending the **Corrections Act 1986**

Crimes (Mental Impairment and Unfitness to be Tried) Act 1997, No. 65/1997

Assent Date: 18.11.97
Commencement Date: S. 81 on 18.4.98: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Corrections Act 1986**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Corrections Act 1986**

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Crimes (Questioning of Suspects) Act 2000, No. 86/2000

Assent Date: 5.12.00
Commencement Date: 6.12.00: s. 2
Current State: All of Act in operation

Corrections (Custody) Act 2001, No. 45/2001

Assent Date: 27.6.01
Commencement Date: Ss 3–37 on 1.3.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Statute Law Further Amendment (Relationships) Act 2001, No. 72/2001

Assent Date: 7.11.01
Commencement Date: S. 3(Sch. item 4) on 20.12.01: Government Gazette 20.12.01 p. 3127
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Sentencing (Amendment) Act 2002, No. 2/2002

Assent Date: 26.3.02
Commencement Date: Ss 12, 13 on 2.5.02: Government Gazette 2.5.02 p. 789
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Criminal Justice Legislation (Miscellaneous Amendments) Act 2002, No. 35/2002

Assent Date: 18.6.02
Commencement Date: Ss 7–10 on 19.6.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Corrections (Amendment) Act 2003, No. 38/2003

Assent Date: 11.6.03
Commencement Date: 12.6.03: s. 2
Current State: All of Act in operation

Corrections and Sentencing Acts (Home Detention) Act 2003, No. 53/2003

Assent Date: 16.6.03
Commencement Date: Ss 11–19 on 1.1.04: s. 2(5); ss 20, 21 never proclaimed, repealed by No. 79/2006 s. 15
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Corrections (Further Amendment) Act 2004, No. 14/2004

Assent Date: 18.5.04
Commencement Date: 30.8.04: s. 2(2)
Current State: All of Act in operation

Drugs, Poisons and Controlled Substances and Therapeutic Goods (Victoria) Acts (Amendment) Act 2004, No. 74/2004

Assent Date: 9.11.04
Commencement Date: S. 21 on 10.11.04: s. 2
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

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Corrections and Major Crime (Investigative Powers) Acts (Amendment) Act 2004, No. 97/2004

Assent Date: 14.12.04
Commencement Date: Ss 3–5 on 15.12.04: s. 2(2)
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 45) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Serious Sex Offenders Monitoring Act 2005, No. 1/2005

Assent Date: 1.3.05
Commencement Date: S. 47 on 26.5.05 : Government Gazette 26.5.05 p. 1069
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Corrections (Transition Centres and Custodial Community Permits) Act 2005, No. 2/2005

Assent Date: 5.4.05
Commencement Date: Ss 3–8 on 1.8.05: s. 2(3)
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.05.05
Commencement Date: S.18(Sch. 1 item 22) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Sentencing and Mental Health Acts (Amendment) Act 2005, No. 69/2005

Assent Date: 11.10.05
Commencement Date: S. 26 on 1.10.06: s. 2(3)
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Prisoners (Interstate Transfer) (Amendment) Act 2005, No. 81/2005

Assent Date: 22.11.05
Commencement Date: Ss 6, 7(2)(3), 8, 9 on 23.11.05: s. 2(1); s. 7(1) on 23.2.06: Government Gazette 23.2.06 p. 366
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Health Professions Registration Act 2005, No. 97/2005

Assent Date: 7.12.05
Commencement Date: S. 182(Sch. 4 item 13) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

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Terrorism (Community Protection) (Amendment) Act 2006, No. 5/2006

Assent Date: 7.3.06
Commencement Date: S. 14 on 9.3.06: s. 2(2)
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Disability Act 2006, No. 23/2006

Assent Date: 16.5.06
Commencement Date: S. 235 on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Education and Training Reform Act 2006, No. 24/2006

Assent Date: 16.5.06
Commencement Date: S. 6.1.2(Sch. 7 item 10) on 1.7.07: Government Gazette 28.6.07 p. 1304
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: S. 90 on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006

Assent Date: 15.8.06
Commencement Date: S. 42(Sch. item 8) on 23.4.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Corrections and Other Justice Legislation (Amendment) Act 2006, No. 49/2006

Assent Date: 15.8.06
Commencement Date: Ss 3, 4, 6–8 on 16.8.06: s. 2(1); s. 5 on 1.10.06: s. 2(3)
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 20) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 14) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Corrections Act 1986**

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Endnotes

Justice Legislation Amendment Act 2007, No. 53/2007

Assent Date: 17.10.07
Commencement Date: Ss 16, 17 on 1.7.05: s. 2(2); s. 18 on 18.10.07: s. 2(1);
ss 15, 21 on 1.12.07: s. 2(4); ss 19, 20 on 1.5.08:
s. 2(5)
Current State: This information relates only to the provision/s
amending the **Corrections Act 1986**

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 12) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Corrections Act 1986**

Justice Legislation Amendment Act 2008, No. 21/2008

Assent Date: 2.6.08
Commencement Date: Ss 3–5 on 3.6.08: s. 2(1); s. 6 on 3.6.08: Special
Gazette (No. 148) 3.6.08 p. 1
Current State: This information relates only to the provision/s
amending the **Corrections Act 1986**

Corrections Amendment Act 2008, No. 50/2008

Assent Date: 23.9.08
Commencement Date: 24.9.08: s. 2
Current State: All of Act in operation

Family Violence Protection Act 2008, No. 52/2008

Assent Date: 23.9.08
Commencement Date: Ss 238–241 on 8.12.08: Special Gazette (No. 339)
4.12.08 p. 1
Current State: This information relates only to the provision/s
amending the **Corrections Act 1986**

Stalking Intervention Orders Act 2008, No. 68/2008

Assent Date: 18.11.08
Commencement Date: Ss 67, 68 on 8.12.08: Special Gazette (No. 339)
4.12.08 p. 1
Current State: This information relates only to the provision/s
amending the **Corrections Act 1986**

Justice Legislation Further Amendment Act 2009, No. 55/2009

Assent Date: 22.9.09
Commencement Date: Ss 3–6 on 30.10.09: Government Gazette 29.10.09
p. 2729
Current State: This information relates only to the provision/s
amending the **Corrections Act 1986**

**Criminal Procedure Amendment (Consequential and Transitional Provisions)
Act 2009, No. 68/2009**

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 33) on 1.1.10: Government Gazette
10.12.09 p. 3215
Current State: This information relates only to the provision/s
amending the **Corrections Act 1986**

Corrections Act 1986
No. 117 of 1986

Endnotes

**Statute Law Amendment (Evidence Consequential Provisions) Act 2009,
No. 69/2009**

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 2 item 14) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Corrections Act 1986**

Serious Sex Offenders (Detention and Supervision) Act 2009, No. 91/2009

Assent Date: 15.12.09
Commencement Date: Ss 201–218 on 1.1.10: Government Gazette 24.12.09
p. 3397
Current State: This information relates only to the provision/s
amending the **Corrections Act 1986**

**Statute Law Amendment (National Health Practitioner Regulation) Act 2010,
No. 13/2010**

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 16) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Corrections Act 1986**

Health and Human Services Legislation Amendment Act 2010, No. 29/2010

Assent Date: 8.6.10
Commencement Date: S. 52 on 1.7.10: Special Gazette (No. 235) 23.6.10 p. 1
Current State: This information relates only to the provision/s
amending the **Corrections Act 1986**

Personal Safety Intervention Orders Act 2010, No. 53/2010

Assent Date: 7.9.10
Commencement Date: S. 222 on 1.12.10: Government Gazette 14.10.10
p. 2405
Current State: This information relates only to the provision/s
amending the **Corrections Act 1986**

Justice Legislation Further Amendment Act 2010, No. 64/2010

Assent Date: 28.9.10
Commencement Date: S. 15 on 28.10.10: Government Gazette 28.10.10
p. 2583
Current State: This information relates only to the provision/s
amending the **Corrections Act 1986**

3. Explanatory Details

¹ S. 32(5): Note 1 in the **Corrections Act 1986**, No. 117/1986 reads:

Section 32(5): Persons apprehended under section 32(5) are to be treated as if apprehended under section 459 of the **Crimes Act 1958**. This means that the provisions of the Crimes Act dealing with the period for which the apprehended person can be held and the bringing of the apprehended person before the court apply.

² S. 110: The amendment proposed by section 97(Sch. item 33.2) of the **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009**, No. 68/2009 is not included in this publication because section 110 was repealed before this amendment came into operation.