

## CLAUSE NOTES

### *Corrections (Miscellaneous Amendments) Bill 2016*

**Clause 1: Short title**

Cites the Bill as the *Corrections (Miscellaneous Amendments) Act 2016*.

**Clause 2: Commencement**

Provides for the Bill to commence on the day on which it receives Royal Assent, except for Part 3 which commences on a day or days to be proclaimed.

**Clause 3: Principal Act**

Provides that the Principal Act to which the amendments apply is the *Corrections Act 1997*.

**Clause 4: Section 3 amended (Interpretation)**

Provides for a definition for 'migration detainee' to be inserted into section 3 of the Principal Act. The definition refers to the new section 83D which is inserted by the Bill.

**Clause 5 Section 83D inserted**

Inserts a new section 83D in Part 9 of the Act.

Inserts a new subsection (1) to provide a definition of 'migration detainee' as a person who is not an Australian citizen within the meaning of the *Australian Citizenship Act 2007*, and who is being detained under the *Migration Act 1958* and who, except for his or her detention under the *Migration Act 1958*, is not subject to any order of a court which remands or commits that person to prison.

Inserts a new subsection (2) to provide that, except for the provisions of subsections (3) and (4), the *Corrections Act* applies to migration detainees in the same way that the Act applies to detainees.

Inserts a new subsection (3) to provide that certain provisions under the Act relating to leave permits for detainees and prisoners do not apply to migration detainees.

Inserts a new subsection (4) to provide that the regulations may provide that specified provisions of the regulations have qualified application or no application to migration detainees.

**Clause 6 Principal Act**

Provides that the *Corrections Act 1997* is the Principal Act.

## **Clause 7**                      **Section 6 amended (Powers and duties of Director)**

Inserts subsection (4) in section 6 of the Act to clarify that correctional officers and State Service corrections employees must comply with standing orders made by the Director for those officers and employees.

Subsection (5) provides that the above requirement imposed on officers and employees to comply with standing orders is taken to be a conduct requirement under section 9 of the *State Service Act 2000*.

## **Clause 8**                      **Section 8A inserted**

Inserts a new section 8A in the Act to require that a person who ceases to hold an appointment or employment as a correctional officer or State service corrections employee, must surrender to the Director of Prisons, all items of identification, equipment, clothing and insignia, and all firearms and ammunition that were on issue to that person immediately before he or she ceased to hold the appointment or employment.

All items and firearms and ammunition must be surrendered within the prescribed period.

The 'prescribed period' is defined as the 7 day period immediately following the day on which the officer or employee ceases to be an officer or employee, or a longer period as determined by a notice in writing given by the Director to the officer or employee before or during the 7 day period. In relation to a firearm or ammunition, the prescribed period is defined as the 24 hour period immediately after the person ceases to be an officer or employee.

Items of identification include access passes, security passes and tags.

A penalty of a fine not exceeding 20 penalty units or imprisonment for a term not exceeding 3 months is provided for for this offence.

Under subsection (4), if the items are of a kind that standing orders that are in force at the relevant time allow the person to retain on ceasing to hold the appointment or employment, the person is not required to surrender those items. This provision does not apply to firearms or ammunition.

Under subsection (5), if the person fails to surrender an item of identification, equipment, clothing or insignia as required, the Director, as soon as practicable after the prescribed period, is to give the person a notice requiring that the item be surrendered to the Director immediately, or within such time that the Director considers is reasonable in the circumstances and which is specified in the notice.

Under subsection (6), the notice is to be given by registered post addressed to the person's place of residence last known to the Director.

Under subsection (7), the Commissioner of Police, at the written request of the Director, may apply to a justice for a warrant to enter and search any place and seize

anything found in the place that is required to be surrendered but which has not been surrendered.

Subsection (8) provides that a justice may issue a warrant if satisfied there are reasonable grounds to believe that there is on or in any place anything that is required to be surrendered but which has not been surrendered.

Under subsection (9), a warrant authorises a police officer to enter and search the place specified in the warrant, and to seize anything that the police officer reasonably believes is required to be surrendered.

Subsection (10) requires that a warrant is to specify the date and time by which the warrant no longer has effect.

Subsection (11) provides that if the occupier of the place is not present or refuses permission, the police officer may execute the warrant using any reasonable force necessary and do anything reasonably required to execute the warrant.

#### **Clause 9                      Section 20 amended (Formal searches)**

Updates the Act by removing references to being “carried out by an electronic or mechanical device” in the definition of “formal search” in subsection (1) and inserts a new subsection (4) to clarify that, for the purpose of carrying out a formal search, a correctional officer may employ such assistance and means that he or she believes on reasonable grounds to be necessary for the purpose, including but not limited to scanning and detection devices.

#### **Clause 10                  Section 22 amended (Searches and examinations)**

Existing subsections (1) and (2) of section 22 of the Act are omitted and replaced with the following provisions.

Subsection (1) provides that for the security or good order of the prison or prisoners or detainees, the Director may at any time order a correctional officer or State Service corrections employee to search or examine or search and examine, any part of the prison, any vehicle, equipment, container or other thing in the prison.

Subsection (1A) also provides that for the security or good order of the prison or prisoner or detainees, the Director may at any time, order a correctional officer to search or examine, or search and examine a prisoner or detainee, a visitor to the prison, a correctional officer or any person appointed or employed for the purposes of the Act or any other person in the prison.

Instead of or as well as a formal search under section 20 of the Act, the Director may also order a correctional officer to require a person who wishes to enter the prison to submit to a search or examination or search and examination of the person and of anything in the person’s possession or control.

A search or examination or search and examination under subsection (1) or (1A) may be conducted at random.

Under subsection (2), if a person (other than a prisoner, detainee, correctional officer or State Service corrections employee) who has been required to submit to a search or examination or search and examination, refuses to submit while inside the prison, the Director may order the person to leave the prison immediately.

The clause also clarifies that the references in subsection (4) of section 22 mean “search or examination or search and examination” rather than “search or examination” alone.

For the purpose of carrying out a search or examination or search and examination under section 22, a correctional officer or State Service corrections employee may employ such assistance and means that he or she believes on reasonable grounds to be necessary for the purpose, including but not limited to scanning and detection devices.

#### **Clause 11                      Section 22A inserted**

Inserts a new section 22A including the following definitions:

- ‘detector dog’ means a dog that has been, or is being trained by a State or Commonwealth law enforcement agency to detect particular substances or items.
- ‘detector dog handler’ means a person whose duties, whether as a police officer, correctional officer or otherwise, includes the handling of a detector dog.
- ‘search’ means a formal search carried out by a correctional officer under section 20, or a search or examination or search and examination carried out by a correctional officer or State Service corrections employee pursuant to an order of the Director given under section 22 of the Act.
- Subsection (2) provides that a correctional officer or State Service corrections employee who is carrying out a search may be accompanied and assisted by a detector dog and a detector dog handler.
- Under subsection (3), a detector dog may be used in such manner as the persons carrying out or assisting with the search think fit given the nature of the search and the capabilities of the detector dog.
- Subsection (4) makes it an offence for a person to, without lawful excuse, do anything that is likely to impede or interfere with the effective use of a detector dog in a search. A penalty of 20 penalty units or imprisonment for a term not exceeding 12 months is provided for.
- Subsection (5) makes it clear that if a person impedes or interferes with the use of a detector dog, it is irrelevant whether that conduct occurs during or before the search.
- Subsection (6) makes it an offence for a person to, without lawful excuse, strike, injure, maim or kill a detector dog that accompanies and assists a correctional officer or State Service corrections employee in carrying out a search. A penalty of 20 penalty units or imprisonment for a term not exceeding 12 months is provided for.

- Subsection (7) makes it clear that if a person strikes, injures, maims or kills a detector dog, it is irrelevant whether that conduct occurs during or immediately before or after the search.
- Under subsection (8), neither the Crown nor any correctional officer, State Service corrections employee or detector dog handler is liable to any action, liability, claim or demand because a detector dog entered or was present at a prison, or initiated or inadvertently made contact with any person or any person's possession.

**Clause 12 Section 23 amended (Seizure)**

Section 23 of the Act is amended to make the seizure provisions consistent with the new terminology and changes that have been made under section 20 and 22.

**Clause 13 Section 25A inserted**

Where the Act was previously silent on this issue, this clause inserts a new section 25A to clarify that a police officer may arrest a person without warrant, if the police officer believes on reasonable grounds that the person has committed an offence under section 12(3) (visits), section 15(3) (exclusion of visitors for security reasons), section 18(2) and (4) (visitors to give prescribed information), section 19(2) (Director may refuse or terminate visits for security reasons), section 22(3) (search) and section 22A(4) and (6) (use of detector dogs).

**Clause 14 Sections 34AA, 34AB and 34AC inserted**

Inserts a new section 34AA in the Act to provide for the Director to allow a prisoner or detainee, on request, to hire equipment and items that are additional to the standard equipment and items issued.

Under subsection (2), the additional equipment and items may be hired on such conditions and hiring fee that the Director determines.

Subsection (3) specifies that the hiring fee is not to exceed the reasonable cost of providing and operating the equipment or items. The fee may be a nominal amount.

Subsection (4) provides that the Director may recover the hiring fee from monies held by the Director on behalf of the prisoner or detainee.

Inserts a new section 34AB to provide that a prisoner must not conduct a business in or from prison without the consent of the Director to conduct that business.

Subsection (1) defines 'conduct a business' to include making preparations to conduct a business, for example applying for an Australian Business Number.

Subsection (3) provides that in determining whether to give consent, the Director may consider any such matters as he or she thinks fit in the circumstances. This includes:

- whether the conduct of the business could reasonably be expected to excite adverse community reaction, particularly from victims of crime;

- whether there is any risk that any person could use the business for unlawful ends;
- whether the conduct of the business could disrupt prison routine or compromise its management, good order or security;
- whether it would be reasonably practicable and manageable to conduct the relevant business in a prison environment;
- the regulatory requirements, compliance and legal capacity issues associated with conducting the business;
- whether conducting that type of business was the basis for or a relevant factor in the unlawful conduct of the prisoner; and
- whether there could be rehabilitative benefits for the prisoner.

Subsection (4) provides that the Director has absolute discretion to withdraw his or her consent to conduct the business at any time.

If the Director gives consent in good faith or withdraws his or her consent to conduct a business, no liability attaches to the Director or the Crown.

This clause also inserts a new section 34AC to provide that a prisoner or detainee must not make a change of name application without the consent of the Director.

Subsection (1) inserts the following definitions:

- 'change of name application' means an application to a Registrar for the registration of change of a prisoner's or detainee's name.
- 'make' an application, includes causing or allowing the application to be made on a prisoner or detainee's behalf.
- 'Register' means the Tasmania Register or equivalent register in another State or Territory.
- 'Registrar' means the Tasmanian Registrar or an authority responsible under a law of another State or Territory for the registration of births, deaths and marriages.
- 'Tasmanian Register' means the Register of Births, Deaths and Marriages under the *Births, Deaths and Marriages Registration 1999*.
- 'Tasmanian Registrar' means the Registrar of Births, Deaths and Marriages appointed or employed under the *Births, Deaths and Marriages Registration Act 1999*.

Subsection (3) provides that the Director, in determining whether to give consent to a name change application, may consider such matters he or she thinks fit in the circumstances, including the following:

- whether the proposed name change could reasonably be expected to excite adverse community reaction, particularly from victims of crime;

- whether there is any risk the proposed name change could be used for unlawful or improper ends (including disguise or evasion);
- whether the proposed name change could disrupt prison routine or compromise its management, good order or security;
- whether the prisoner or detainee has previously changed his or her name or has any history of using aliases; and
- whether every complaint or information that the Director is aware of, which alleges an offence by the prisoner or detainee against the law of any State or Territory or the Commonwealth, has been finally dealt with.

Subsection (4) requires that the Director, as soon as practicable after a determination is made, is to notify the relevant prisoner or detainee of a consent or refusal of consent to a name change, and in the case of a refusal the reasons for the refusal.

Subsection (5) requires that the Director is to notify a relevant Registrar and the Secretary of the Parole Board if he or she has given consent to a name change, along with the particulars. This is to be done as soon as practicable after the consent is given.

Subsection (6) provides that the Tasmanian Registrar is not to register a name change if he or she is aware that the applicant is a prisoner or detainee and notification of the name change has not been received by the Registrar.

Subclause (7) provides that if a prisoner or detainee succeeds in having his or her name registered in any State or Territory without the required consent from the Director, the Director may apply to the relevant Registrar to correct the Register by cancelling the relevant entry.

Under subsection (8) if the Tasmanian Registrar receives an application from the Director requesting that he or she correct the Register and cancel an entry, the Registrar is to correct the Register, unless prevented from doing so by a court order.

Subsection (9) provides that if there is any inconsistency between the provisions of section 34AC and the *Births, Deaths and Marriages Registration Act 1999*, the provisions of section 34AC prevail.

#### **Clause 15                      Section 34B amended (Authorised use of force)**

Amends section 34B(1) of the Act by inserting a new paragraph (ab) to clarify that a correctional officer may use force that is necessary and reasonable to carry out a search or examination, or search and examination pursuant to an order of the Director given under Section 22 of the Act.

#### **Clause 16                      Section 42 amended (Leave permits)**

Inserts a new subsection 8A in section 42 of the Act, to clarify that a correctional officer who is not a custodian of a person who is granted a leave permit under the Act, may return the person to a prison. This applies if the correctional officer believes on reasonable grounds that the person has failed to comply or is likely to fail to comply with a condition or restriction to which a leave permit is subject.

Subsections (9) and (10) of section 42 of the Act are amended to give effect to the new subsection 8A by clarifying that these subsections now apply to a correctional officer who is not a custodian of the person who has been granted a leave permit under section 42.

**Clause 17                      Section 87C inserted**

Inserts a new section 87C in Part 9 of the Act to provide that a health official may disclose to the Director such health information about a prisoner or detainee as the Director reasonably requires for the treatment, care and rehabilitation of the prisoner or detainee.

Subsection (1) inserts the following definitions:

- 'health information' concerning a prisoner or detainee, means information about that prisoner or detainee's health or medical treatment.
- 'health official' means any of the following: the Chief Forensic Psychiatrist, the chief executive officer of a Tasmanian Health Organisation, a person prescribed by the regulations, and a member of a class of persons prescribed by the regulations.

Subsection (3) provides that a health official who discloses health information under this section:

- does not incur any criminal, civil or administrative liability;
- is not taken to have breached any rule of law or practice that would prohibit the person from making the disclosure;
- is not taken to have broken any professional or other oath, or breached any professional or other code, standard or guideline of ethics or etiquette that might bar the person from, or condemn the person for making the disclosure; and
- is not liable to condemnation or disciplinary action by any professional body or other person.

Subsection (4) provides that the provisions of subsection (3) have effect, despite the provisions of the *Person Information Protection Act 2004* or any other law relating to the confidentiality or privacy of information.

Subsection (5) provides that the Director is not to use health information that is disclosed to him or her, except for the purposes of determining and managing the prisoner's or detainee's treatment, care and rehabilitation.

**Clause 18                      Section 90 amended (Regulations)**

Amends section 90(2)(c) of the Act to insert the phrase 'searches or examinations, or searches and examinations' which is consistent with the terminology adopted in the amendments which are made to sections 20 and 22 of the Act.

**Clause 19                      Schedule 1 amended (Prison offences)**

Amends Schedule 1 of the Act by extending to detainees, the prison offence (item 18) of having in the prisoner's possession anything that is not authorised.



Amends Schedule I by inserting the new prison offences introduced by these amendments, including:

- striking, injuring, maiming or killing, without lawful excuse, a detector dog;
- impeding or interfering, without lawful excuse, with a detector dog;
- conducting a business in or from prison without the Director's consent; and
- Making or causing or allowing the making of a change of name application without the Director's consent.

#### **Clause 20      Principal Regulations**

Provides that the Principal Regulations to which the amendments apply are the *Corrections Regulations 2008*.

#### **Clause 21                      Regulation 26 amended (Destruction of records on acquittal, &c.)**

Amends the *Corrections Regulations 2008* by providing that biometric data, photos, images, electronic records or other records made under regulation 25 are to be destroyed as soon as practicable after a migration detainee is released under the *Migration Act 1958*.

#### **Clause 22                      Further amendment, &c of *Corrections Regulations 2008***

Provides clarification that the provisions of the *Corrections Regulations 2008* which are amended by the Bill can subsequently be amended or rescinded by future regulations.

#### **Clause 23:                      Repeal of Act**

This is a standard repeal provision to remove the empty shell of the Bill after all of its provisions have been transferred and have come into effect in the Principal Act.