

TASMANIA

CORRECTIONS AMENDMENT BILL 2013

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CORRECTIONS AMENDMENT BILL 2013

(Brought in by the Minister for Corrections and Consumer Protection, the Honourable Nicholas James McKim)

A BILL FOR

An Act to amend the *Corrections Act 1997*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Corrections Amendment Act 2013*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Principal Act

In this Act, the *Corrections Act 1997** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

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- (a) by inserting “and includes a person declared as a dangerous criminal under section 19 of the *Sentencing Act 1997*” after “imprisonment” in the definition of *prisoner*;
- (b) by inserting the following definition after the definition of *standing orders*:

State Service corrections employee
means a person, other than a
correctional officer or probation
officer, appointed or employed
pursuant to section 5(2);

5. Section 5A inserted

After section 5 of the Principal Act, the following section is inserted in Part 2:

5A. Appointment of interstate correctional officers and probation officers

- (1) The Secretary, with the consent of the employer of a correctional officer or a probation officer employed in another State or a Territory (however described in that State or Territory) may appoint such a correctional officer or probation officer to be a correctional officer or a probation officer for the purposes of this Act if the Secretary considers it is necessary to do so.
- (2) An appointment under subsection (1) is to be –

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- (a) for such period not exceeding 90 days as may be determined by the Secretary; and
- (b) on such terms and conditions as are specified in the instrument of appointment.

6. Section 8 amended (Confidentiality)

Section 8(1) of the Principal Act is amended by omitting “prisoner or a correctional officer” from paragraph (g) of the definition of *confidential information* and substituting “prisoner, a correctional officer or a State Service corrections employee”.

7. Section 10 amended (Official visitors)

Section 10 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “to each prison”;
- (b) by inserting the following subsection after subsection (1):
 - (1A) A person appointed as an official visitor is to be –
 - (a) appointed for a term, not exceeding 3 years, specified in his or her instrument of appointment; and

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- (b) appointed on terms and conditions specified in his or her instrument of appointment; and
 - (c) paid such remuneration and allowances as the Minister may determine.
- (c) by omitting from subsection (2) “one or more prisons” and substituting “all prisons in the State”;
- (d) by omitting subsection (3) and substituting the following subsections:
 - (3) The Minister may appoint a coordinating official visitor.
 - (3A) The coordinating official visitor is to ensure that each prison is visited at least once a month by an official visitor and, for that purpose, may establish a system for the coordination of visits to prisons by official visitors.
- (e) by omitting paragraph (a) from subsection (4) and substituting the following paragraph:
 - (a) visit, either alone or with another visitor, any prison once a month or at any other time; and
- (f) by omitting from subsection (5) “officer or a prisoner or detainee” and

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substituting “officer, a prisoner or detainee or a State Service corrections employee”;

(g) by inserting in subsection (6)(a) “or State Service corrections employees” after “officers”;

(h) by omitting subsection (7) and substituting the following subsections:

(7) The coordinating official visitor, as soon as practicable after 31 December in each year, is to give the Minister a report –

(a) on the inquiries or investigations made under subsection (4); and

(b) on the visits to prisons by official visitors; and

(c) on the activities of official visitors at prisons –

in that year.

(7A) The Minister may, at any time, request the coordinating official visitor to give the Minister a report –

(a) on the inquiries or investigations made under subsection (4); or

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- (b) on the visits to prisons by official visitors; or
- (c) on the activities of official visitors at prisons; or
- (d) on any other matter relating to official visits that the Minister requires.

(i) by inserting in subsection (8) “and a State Service corrections employee” after “officer”.

8. Section 11 amended (Visits by judges, magistrates, &c.)

Section 11(2) of the Principal Act is amended by inserting “and a State Service corrections employee” after “officer”.

9. Section 18 amended (Visitors to give prescribed information)

Section 18 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or a State Service corrections employee” after “a correctional officer”;
- (b) by inserting in subsection (1) “or a State Service corrections employee” after “the correctional officer”;

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- (c) by inserting in subsection (2) “or a State Service corrections employee” after “officer”;
- (d) by inserting in subsection (3) “or a State Service corrections employee” after “subsection (1) to a correctional officer”;
- (e) by inserting in subsection (3) “or a State Service corrections employee” after “information to a correctional officer”;
- (f) by inserting in subsection (3) “or a State Service corrections employee” after “the correctional officer”.

10. Section 24 amended (Prohibition against bringing unauthorised articles and things into prisons)

Section 24(5) of the Principal Act is amended as follows:

- (a) by inserting “or a State Service corrections employee” after “on a correctional officer”;
- (b) by inserting “or a State Service corrections employee” after “employee, a correctional officer”.

11. Section 29 amended (Rights of prisoners and detainees)

Section 29(1)(e) of the Principal Act is amended by inserting “when appearing in court” after “detainee”.

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12. Section 33 amended (Work)

Section 33 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (4) A detainee may volunteer to perform work.

13. Section 34 amended (Payment for prisoners' work, &c.)

Section 34 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):

- (1A) A prisoner or detainee who performs work for which the prisoner or detainee volunteered is entitled to be paid for that work.

- (b) by inserting the following subsection after subsection (3):

- (4) The Director is not liable for any costs associated with the performance by a prisoner of work for which the prisoner volunteered outside the precincts of the prison for a person other than the State.

14. Parts 4A and 4B inserted

After section 34 of the Principal Act, the following Parts are inserted:

PART 4A – USE OF FORCE

34A. Managing use of force

- (1) The Director must ensure, as far as practicable, that the use of force in relation to the management of prisoners and detainees is always –
 - (a) a last resort; and
 - (b) in accordance with this Part.
- (2) The Director must make standing orders or an operating procedure in relation to the use of force, including provision in relation to the following:
 - (a) the circumstances in which, and by whom, force may be used;
 - (b) the kinds of force that may be used.
- (3) The power to make a standing order or an operating procedure includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors.

34B. Authorised use of force

- (1) A correctional officer may use force that is necessary and reasonable for this Act, including for any of the following:
 - (a) to compel compliance with a direction given in relation to a prisoner or detainee by the Director;
 - (b) to act under section 28;
 - (c) to prevent or stop the commission of an offence or disciplinary breach;
 - (d) to prevent the escape of a prisoner or detainee;
 - (e) to prevent unlawful damage, destruction or interference with property;
 - (f) to defend the correctional officer or someone else;
 - (g) to prevent a prisoner or detainee from inflicting self-harm;
 - (h) any other thing prescribed by the regulations.
- (2) However, a correctional officer may use force only if the correctional officer believes, on reasonable grounds, that the purpose for which force may be used cannot be achieved in another way.

34C. Application of force

- (1) A correctional officer may use force under this Part only if the correctional officer –
 - (a) gives a clear warning of the intended use of force; and
 - (b) allows enough time for the warning to be observed; and
 - (c) uses no more force than is necessary and reasonable in the circumstances; and
 - (d) uses force, as far as practicable, in a way that reduces the risk of causing death or grievous bodily harm.
- (2) However, a correctional officer need not comply with subsection (1)(a) or (b) if, in urgent circumstances, the correctional officer believes, on reasonable grounds, that doing so would create a risk of injury to the correctional officer, the prisoner or detainee or any other person.

34D. Use of restraints or weapons

- (1) The use of force under this Part includes the use of restraints and weapons.
- (2) The Director must ensure, as far as practicable, that the use of force involving a restraint or weapon is

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proportionate to the circumstances, and in particular that –

- (a) the circumstances are sufficiently serious to justify the use; and
 - (b) the kind of restraint or weapon is appropriate in the circumstances; and
 - (c) the restraint or weapon is used appropriately in the circumstances.
- (3) The Director must also ensure that restraints and weapons are only used under this Part –
- (a) by correctional officers trained to use them; and
 - (b) in accordance with standing orders or an operating procedure that applies to their use.
- (4) The Director must take all steps to ensure that potentially lethal force is not used under this Part unless the actions of a prisoner or detainee or other person are likely to cause death or serious injury.
- (5) In applying force under this Part, a correctional officer may use a restraint or weapon, including any of the following:
- (a) body contact, impact and restraint;

- (b) a mechanical restraining device;
- (c) a baton;
- (d) riot control equipment;
- (e) a chemical agent;
- (f) an electro-muscular disruption device or a conducted electrical weapon;
- (g) a distraction device;
- (h) a firearm;
- (i) any other thing prescribed by the regulations.

34E. Medical examination after use of force

If force has been used under this Part, the Director must ensure that a prisoner or detainee affected by the use of force is examined as soon as practicable and that appropriate medical health care is available to the prisoner or detainee.

34F. Reporting use of force

- (1) The Director must keep a record of any incident involving the use of force under this Part that causes injury or death to anyone.
- (2) The record must contain details of the incident, including the circumstances, the

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reason for the decision to use force and the force used.

- (3) The Director must give a copy of the record to the coordinating official visitor as soon as practicable after the incident.

**PART 4B – USE OF MECHANICAL RESTRAINTS
NOT REQUIRING FORCE**

34G. Application of Part

This Part applies when a mechanical restraint is used in circumstances where the prisoner does not object to, or resist, the use of the restraint.

34H. Managing the use of mechanical restraints

- (1) The Director must make a standing order or operating procedure in relation to the use of mechanical restraints, including provision in relation to the following:
 - (a) the circumstances in which, and by whom, mechanical restraints may be used;
 - (b) the kinds of mechanical restraints that may be used.
- (2) The power to make a standing order or operating procedure includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors.

34I. Authorised use of mechanical restraints

- (1) A correctional officer may use a mechanical restraint only in accordance with a standing order or operating procedure.
- (2) A correctional officer may use a mechanical restraint on a prisoner or detainee for all or any of the following purposes:
 - (a) to prevent the commission of an offence or disciplinary breach;
 - (b) to prevent the escape of a prisoner or detainee;
 - (c) to prevent the prisoner or detainee from accessing an area to which they are not permitted access;
 - (d) to prevent unlawful damage, destruction or interference with property;
 - (e) to prevent a prisoner or detainee from inflicting self-harm;
 - (f) for any other purpose prescribed by the regulations.
- (3) A correctional officer may use mechanical restraints only if the correctional officer believes, on reasonable grounds, that no other less

restrictive method of control is applicable or appropriate in the circumstances.

- (4) The health and wellbeing of a prisoner must be considered before a mechanical restraint is applied.
- (5) A correctional officer must remove a mechanical restraint from a prisoner as soon as the restraint is no longer required for any of the purposes set out in subsection (2).
- (6) A mechanical restraint must not be used for the purpose of punishment.

15. Section 42 amended (Leave permits)

Section 42 of the Principal Act is amended by omitting subsection (6) and substituting the following subsection:

- (6) A leave permit may authorise a number of absences within the period of 60 days from its granting but no one absence is to be more than one week.

16. Section 61 amended (Penalties which may be imposed on prisoner or detainee)

Section 61(c) of the Principal Act is amended by inserting “or to recover the cost of any property owned by the State that is lost by the prisoner or detainee” after “State”.

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17. Schedule 1 amended (Prison offences)

Schedule 1 to the Principal Act is amended by inserting in column 2 of item 13 in Part 2 “or recklessly or carelessly losing any prison property” after “property”.

18. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.