

TASMANIA

**CORRECTIONS (MISCELLANEOUS
AMENDMENTS) BILL 2016**

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CORRECTIONS (MISCELLANEOUS AMENDMENTS) BILL 2016

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
23 August 2016

*(Brought in by the Minister for Health, the Honourable
Michael Darrel Joseph Ferguson)*

A BILL FOR

An Act to amend the *Corrections Act 1997* and the *Corrections Regulations 2008*

Be it enacted by Her 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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Corrections (Miscellaneous Amendments) Act 2016*.

2. Commencement

- (1) Except as provided in this section, this Act commences on the day on which this Act receives the Royal Assent.
- (2) Part 3 commences on a day to be proclaimed.

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Part 2 – Corrections Act 1997 Amended

PART 2 – CORRECTIONS ACT 1997 AMENDED

3. Principal Act

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

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by inserting after the definition of *Mental Health Tribunal* the following definition:

migration detainee – see section 83D;

5. Section 83D inserted

After section 83C of the Principal Act, the following section is inserted in Part 9:

83D. Treatment of migration detainees

(1) In this section –

migration detainee means a person who is –

- (a) not an Australian citizen within the meaning of the *Australian Citizenship Act 2007* of the Commonwealth; and

*No. 51 of 1997

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- (b) being detained under the *Migration Act 1958* of the Commonwealth; and
 - (c) not, apart from his or her detention under the *Migration Act 1958* of the Commonwealth, subject to any order of a court by which he or she is remanded or otherwise committed to prison.
- (2) Except as provided by subsection (3) and as may be provided pursuant to subsection (4), the provisions of this Act have the same application to migration detainees as they have to detainees.
 - (3) Paragraphs (c), (d), (e), (f) and (g) of section 42(1) do not apply to migration detainees.
 - (4) Without affecting the generality of section 90(1), the regulations may provide that specified provisions of the regulations have qualified application or no application to migration detainees.

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Part 3 – Corrections Act 1997 Further Amended

**PART 3 – CORRECTIONS ACT 1997 FURTHER
AMENDED**

6. Principal Act

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

7. Section 6 amended (Powers and duties of Director)

Section 6 of the Principal Act is amended by inserting after subsection (3) the following subsections:

- (4) A person who is a correctional officer or State Service corrections employee must comply with the standing orders made by the Director in so far as they apply to such an officer or employee.
- (5) The obligation under subsection (4) is, for correctional officers and State Service corrections employees, taken to be a conduct requirement under section 9 of the *State Service Act 2000*.

8. Section 8A inserted

After section 8 of the Principal Act, the following section is inserted in Part 2:

8A. Surrender of prison service equipment, &c.

- (1) In this section –

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item of identification includes –

- (a) an access pass; and
- (b) a security pass; and
- (c) a tag;

prescribed period means –

- (a) in respect of an item of identification, equipment, clothing or insignia, the 7-day period immediately following the day on which the relevant person ceases to be a correctional officer or State Service corrections employee, or such longer period as the Director, by notice in writing given before or during that 7-day period, may allow the person; and
 - (b) in respect of a firearm or ammunition, the 24-hour period immediately after the relevant person ceases to be a correctional officer or State Service corrections employee.
- (2) This section applies to a person who ceases for any reason to hold an appointment or employment as a

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correctional officer or State Service
corrections employee.

- (3) The person must surrender to the Director, within the prescribed period –
- (a) all firearms and ammunition; and
 - (b) all items of identification, equipment, clothing and insignia –

that were on issue to that person as a
correctional officer or State Service
corrections employee immediately before
he or she ceased to hold that appointment
or employment.

Penalty: Fine not exceeding 20 penalty
units or imprisonment for a term
not exceeding 3 months.

- (4) However, subsection (3) does not apply to the person in respect of an item of identification, equipment, clothing or insignia if it is an item of a kind that, under the standing orders in force at the relevant time, the person may retain on ceasing to hold the relevant appointment or employment.
- (5) If the person fails to surrender an item of identification, equipment, clothing or insignia as required by subsection (3), the Director, as soon as practicable after the prescribed period, is to give the person a notice requiring that the item be

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surrendered to the Director forthwith or within such time as he or she considers reasonable in the circumstances and specifies in the notice.

- (6) The notice under subsection (5) is to be given by registered post addressed to the person's place of residence last known to the Director.
- (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 do either or both of the following:
 - (a) seize any firearm or ammunition found in the place that ought to have been surrendered to the Director pursuant to subsection (3) but has not been so surrendered;
 - (b) seize any item of identification, equipment, clothing or insignia found in the place that ought to have been surrendered to the Director pursuant to subsections (3) and (5) but has not been so surrendered.
- (8) A justice may issue a warrant if satisfied that there are reasonable grounds for believing that there is on or in any place either or both of the following:

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- (a) a firearm or ammunition, or both, that ought to have been surrendered to the Director pursuant to subsection (3) but has not been so surrendered;
 - (b) an item of identification, equipment, clothing or insignia that ought to have been surrendered to the Director pursuant to subsections (3) and (5) but has not been so surrendered.
- (9) A warrant is to authorise a police officer to –
 - (a) enter and search the place specified in the warrant; and
 - (b) seize any thing that the police officer reasonably believes is required to be surrendered to the Director under this section.
- (10) A warrant is to specify the date on which, and time by which, the warrant ceases to have effect.
- (11) If the occupier of the place is not present or refuses permission, the police officer may –
 - (a) proceed to execute the warrant using any reasonable force necessary; and

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- (b) do anything reasonably required to execute the warrant.

9. Section 20 amended (Formal searches)

Section 20 of the Principal Act is amended as follows:

- (a) by omitting “carried out by an electronic or mechanical device” from the definition of *formal search* in subsection (1);
- (b) by inserting the following subsection after subsection (3):
 - (4) In carrying out a formal search, a correctional officer may employ –
 - (a) such assistance as he or she believes on reasonable grounds to be necessary for the purpose; and
 - (b) such means as he or she believes on reasonable grounds to be necessary for the purpose including, but not limited to, scanning devices and detection devices.

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10. Section 22 amended (Searches and examinations)

Section 22 of the Principal Act is amended as follows:

(a) by omitting subsections (1) and (2) and substituting the following subsections:

(1) The Director may, for the security or good order of the prison or the prisoners or detainees, at any time order a correctional officer or State Service corrections employee to –

(a) search or examine, or search and examine, any part of the prison; or

(b) search or examine, or search and examine, any vehicle, equipment, container or other thing in the prison; or

(c) conduct any search or examination, or search and examination, under this subsection at random.

(1A) The Director may, for the security or good order of the prison or the prisoners or detainees, at any time order a correctional officer to –

(a) search or examine, or search and examine, a

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prisoner or detainee, a visitor to the prison, a correctional officer or any person appointed or employed for the purposes of this Act or any other person in the prison; or

- (b) instead of or as well as a formal search required under section 20, require a person wishing 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 under the person's control; or
 - (c) conduct any search or examination, or search and examination, under this subsection at random.
- (2) If a person other than a prisoner, detainee, correctional officer or State Service corrections employee refuses to submit to a search or examination, or search and examination, under this section while inside the prison, the Director may order the person to leave the prison immediately.

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- (b) by omitting from subsection (4) “search or examination” and substituting “search or examination, or search and examination,”;
- (c) by omitting subsection (5) and substituting the following subsection:
 - (5) In carrying out a search or examination, or search and examination, pursuant to an order of the Director given under this section, a correctional officer or State Service corrections employee may employ –
 - (a) such assistance as he or she believes on reasonable grounds to be necessary for the purpose; and
 - (b) such means as he or she believes on reasonable grounds to be necessary for the purpose including, but not limited to, scanning devices and detection devices.

11. Section 22A inserted

After section 22 of the Principal Act, the following section is inserted in Division 2:

22A. Use of detector dogs

(1) In this section –

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, include the handling of a detector dog;

search means –

- (a) a formal search carried out by a correctional officer under section 20; or
- (b) 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.

(2) A correctional officer or State Service corrections employee who is carrying out a search may be accompanied and assisted by –

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- (a) a detector dog; and
 - (b) whether or not the officer or employee is a detector dog handler, a detector dog handler.
- (3) If subsection (2) applies, the detector dog may be used in such manner as the persons carrying out or assisting with the search think fit having regard to the nature of the search and the specific capabilities of the detector dog.
- (4) A person must not, without lawful excuse, do anything that is likely to impede or interfere with the effective use of a detector dog in a search.

Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 12 months.

- (5) To avoid doubt, it is immaterial for the purposes of subsection (4) whether the impeding or interference occurs during the relevant search or at any time before the relevant search.
- (6) A person must not, 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.

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Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 12 months.

- (7) To avoid doubt, it is immaterial for the purposes of subsection (6) whether the striking, injuring, maiming or killing occurs during the relevant search or immediately before or immediately after the relevant search.
- (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 merely because a detector dog –
 - (a) entered or was present at a prison; or
 - (b) initiated or inadvertently made contact with a prisoner, detainee, visitor or other person; or
 - (c) initiated or inadvertently made contact with anything in a prisoner's, detainee's, visitor's or other person's possession.

12. Section 23 amended (Seizure)

Section 23 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “searches under sections 20 and 22” and

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substituting “a formal search pursuant to section 20 or a search or examination, or search and examination, pursuant to an order of the Director given under section 22(1) or (1A),”;

(b) by inserting the following subsection after subsection (1):

(1A) In carrying out a search or examination, or search and examination, pursuant to an order of the Director given under section 22(1), a State Service corrections employee may seize any thing found in the course of the search or examination or search and examination which the State Service corrections employee believes on reasonable grounds jeopardises or is likely to jeopardise the security or good order of the prison or the safety of persons in the prison.

(c) by omitting subsection (2) and substituting the following subsection:

(2) A correctional officer or State Service corrections employee who seizes any thing pursuant to subsection (1) or (1A) is to immediately inform the Director.

(d) by omitting from subsection (3) “under” and substituting “pursuant to”.

13. Section 25A inserted

After section 25 of the Principal Act, the following section is inserted in Division 2:

25A. Power of arrest

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), section 15(3), section 18(2), section 18(4), section 19(2), section 22A(4), section 22A(6) or section 22(3).

14. Sections 34AA, 34AB and 34AC inserted

After section 34 of the Principal Act, the following sections are inserted in Part 4:

34AA. Hire of extra equipment

- (1) The Director may, on request, allow a prisoner or detainee to hire equipment and items additional to the standard equipment and items with which the prisoner or detainee is issued.
- (2) The additional equipment or items may be hired on such conditions and for such hiring fee as the Director determines.
- (3) The hiring fee –
 - (a) is not to exceed the reasonable cost of providing and, if

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applicable, operating the
additional equipment or items;
and

(b) may be a nominal fee.

(4) The Director may recover the hiring fee from moneys that the Director holds on the prisoner's or detainee's behalf.

34AB. Business activities

(1) In this section –

conduct a business includes making
preparations to conduct a
business.

(2) A prisoner must not conduct a business in or from prison without the consent of the Director, given specifically for that business.

(3) In determining whether to give consent for a prisoner to conduct a business in or from prison, the Director may have regard to such matters as he or she thinks fit in the circumstances, including –

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

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- (b) whether there is any risk that any person could use the business for unlawful ends; and
 - (c) whether the conduct of the business could disrupt prison routine or compromise its management, good order or security; and
 - (d) whether the business is one that would be reasonably practicable and manageable to conduct in a prison environment; and
 - (e) the regulatory requirements of conducting the business, and associated compliance and legal capacity issues; and
 - (f) whether conducting a business of a like kind was the basis for, or a relevant factor in, previous unlawful conduct of the prisoner; and
 - (g) whether there could be rehabilitative benefits for the prisoner.
- (4) The Director, if in his or her absolute discretion he or she considers it appropriate to do so, may withdraw a consent given under this section at any time.

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- (5) No liability attaches to the Director or the Crown in respect of any consent given by the Director in good faith to a prisoner under this section or the withdrawal by the Director of any such consent.

34AC. Change of name

- (1) In this section –

change of name application means an application to a Registrar for the registration of a change of a prisoner's or detainee's name;

make an application, includes causing or allowing the application to be made on one's behalf;

Register means the Tasmanian Register or the equivalent Register of another State or a Territory;

Registrar means –

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

Tasmanian Register means the Register of Births, Deaths and

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Marriages under the *Births, Deaths and Marriages Registration Act 1999*;

Tasmanian Registrar means the Registrar of Births, Deaths and Marriages appointed or employed under section 4 of the *Births, Deaths and Marriages Registration Act 1999*.

- (2) A prisoner or detainee must not make a change of name application without the consent of the Director, given specifically for that application.
- (3) In determining whether to give consent for a prisoner or detainee to make a change of name application, the Director may have regard to such matters as he or she thinks fit in the circumstances, including –
 - (a) whether the proposed change of name could reasonably be expected to excite adverse community reaction, particularly from victims of crime; and
 - (b) whether there is any risk that the proposed change of name could be used for unlawful or improper ends (including disguise or evasion); and
 - (c) whether the proposed change of name could disrupt prison

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routine or compromise its management, good order or security; and

- (d) whether the prisoner or detainee has previously changed his or her name or has any history of using aliases; and
 - (e) whether, so far as the Director is aware, every complaint or information alleging an offence by the prisoner or detainee against the law of any State or Territory or the Commonwealth has been finally dealt with.
- (4) The Director is to notify the relevant prisoner or detainee of a consent or refusal of consent under subsection (2), and, in the latter case, the reasons for the refusal, as soon as practicable after that determination is made.
- (5) The Director is to notify the relevant Registrar and the secretary of the Board of a consent under subsection (2), together with relevant particulars, as soon as practicable after that determination is made.
- (6) The Tasmanian Registrar is not to register a change of name if he or she is aware that the applicant for the change is a prisoner or detainee and the Tasmanian

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Registrar has not received the requisite notification under subsection (5).

- (7) If a prisoner or detainee succeeds by any means in having a change of name registered in any State or Territory without being given the requisite consent under subsection (2), the Director may apply to the relevant Registrar to correct the relevant Register by cancelling the relevant entry.
- (8) On receipt of an application under subsection (7), the Tasmanian Registrar, unless prevented from so doing by an order of a court, is to correct the Tasmanian Register accordingly.
- (9) In the event of any inconsistency between the provisions of this section and those of the *Births, Deaths and Marriages Registration Act 1999*, the provisions of this section prevail.

15. Section 34B amended (Authorised use of force)

Section 34B(1) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (ab) to carry out a search or examination, or search and examination, pursuant to an order of the Director given under section 22;

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16. Section 42 amended (Leave permits)

Section 42 of the Principal Act is amended as follows:

(a) by inserting the following subsection after subsection (8):

(8A) If any correctional officer who is not a custodian of a person to whom a leave permit is granted believes on reasonable grounds that the person has failed to comply with a condition or restriction to which the permit is subject or that he or she is likely to so fail to comply, the correctional officer may return that person to a prison.

(b) by omitting subsections (9) and (10) and substituting the following subsections:

(9) For the purposes of subsection (8) or (8A), a custodian or a correctional officer may request any person to give such assistance as the custodian or correctional officer may require.

(10) A request made by a custodian or correctional officer to a person pursuant to subsection (9) is sufficient warrant to that person to assist the custodian or correctional officer in accordance with the terms of the request.

17. Section 87C inserted

After section 87B of the Principal Act, the following section is inserted in Part 9:

87C. Disclosure of critical health information by health officials

(1) In this section –

health information, concerning a prisoner or detainee, means information about his or her health or medical treatment;

health official means any of the following:

- (a) the Chief Forensic Psychiatrist;
 - (b) the chief executive officer of a Tasmanian Health Organisation within the meaning of the *Tasmanian Health Organisations Act 2011*;
 - (c) a person prescribed by the regulations;
 - (d) a member of a class of persons prescribed by the regulations.
- (2) A health official may disclose to the Director such health information about a prisoner or detainee as the Director

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reasonably requires for the treatment, care and rehabilitation of the prisoner or detainee.

- (3) A health official who discloses health information about a prisoner or detainee pursuant to subsection (2) –
- (a) does not, by reason of the disclosure, incur any criminal, civil or administrative liability; and
 - (b) is not, by reason of the disclosure –
 - (i) taken to have breached any rule of law or practice that would otherwise prohibit the person from making the disclosure; or
 - (ii) 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 otherwise bar the person from, or condemn the person for, making the disclosure; or
 - (iii) liable to condemnation or disciplinary action by any

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professional body or other person.

- (4) Subsection (3) has effect despite the *Personal Information Protection Act 2004* or any other law relating to the confidentiality or privacy of information.
- (5) The Director is not to use health information disclosed to him or her pursuant to subsection (2) except for the purposes of determining and managing the relevant prisoner's or detainee's treatment, care and rehabilitation.

18. Section 90 amended (Regulations)

Section 90(2)(c) of the Principal Act is amended by omitting “searches” and substituting “searches or examinations, or searches and examinations,”.

19. Schedule 1 amended (Prison offences)

Part 2 of Schedule 1 to the Principal Act is amended as follows:

- (a) by inserting “or detainee’s” after “prisoner’s” in column 2 of item 18 in the table;
- (b) by inserting after item 35 the following:
 - 35A. Striking, injuring, maiming or killing, without lawful excuse, a detector dog.

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- 35B. Impeding or interfering, without lawful excuse, with a detector dog.
- 35C. Conducting a business in or from prison without the Director's consent.
- 35D. Making, or causing or allowing the making of, a change of name application without the Director's consent.

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Part 4 – Corrections Regulations 2008 Amended

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**PART 4 – CORRECTIONS REGULATIONS 2008
AMENDED**

20. Principal Regulations

In this Part, the *Corrections Regulations 2008** are referred to as the Principal Regulations.

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

Regulation 26 of the Principal Regulations is amended as follows:

- (a) by omitting from paragraph (b) “imprisoned.” and substituting “imprisoned; or”;
- (b) by inserting the following paragraph after paragraph (b):
 - (c) in the case of a migration detainee, he or she is released under the *Migration Act 1958* of the Commonwealth.

*S.R. 2008, No. 82

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Part 5 – Miscellaneous

PART 5 – MISCELLANEOUS

22. Further amendment, &c., of *Corrections Regulations 2008*

The amendment by this Act of provisions of the *Corrections Regulations 2008* does not bar the subsequent amendment or rescission of those provisions by regulation.

23. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which all of the provisions of this Act commence.