DRAFT SECOND READING SPEECH

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Corrections (Miscellaneous Amendments) Bill 2016

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I move that the Bill now be read for a second time.

As Members may be aware, the *Corrections Act 1997* provides for the establishment, management and security of prisons, the welfare of prisoners and detainees, the granting of parole to prisoners, the administration of services, and related matters.

The Act also contains specific provisions relating to the custody and treatment of prisoners and detainees, use of force, transfer, removal, temporary absence and leave for prisoners and detainees, and prison discipline including prison offences.

The prison regime established under the Act primarily applies to prisoners and detainees. Essentially, prisoners are persons who have been sentenced to a term of imprisonment and persons who have been declared dangerous criminals, and detainees are persons who have been remanded or otherwise committed to prison.

From time to time, amendments to legislation are required to improve the operation of the legislation. This Bill makes a range of amendments to clarify or improve the operation of the *Corrections Act*. The majority of these amendments address issues and concerns which have been raised by the Director of Prisons.

A consultation draft of the Bill was released for public comment and sent to a range of stakeholders, including key government agencies and a range of external stakeholders including the legal profession, prisoner support services, victim advocates and unions.

Comments on the Bill were received from a variety of sources including government agencies, the Prisoner's Legal Service and the Community and Public Sector Union. The views of stakeholders were taken into account when finalising the Bill.

I will now briefly outline these changes and the reason behind each of the changes.

Migration Detainees – Clause 5

Clause 5 of the Bill amends the *Corrections Act* to apply certain provisions of that Act to non-citizens who are detained in a Tasmanian prison under the Commonwealth *Migration Act*.

Currently under section 254 of the *Migration Act*, the Tasmania Prison Service is required under Australian law to detain non-citizens.

However, because the *Corrections Act* only applies to prisoners and detainees, but not to migration detainees, the prison regime provided for under the *Corrections Act* does not apply to migration detainees.

In order to ensure migration detainees can be properly managed within the prison environment, and in the interests of the good order and security of the prison, it is vital that migration detainees also be subject to the prison regime. Generally these are people who have completed a sentence of imprisonment and are due to be deported or are subject to other migration processes.

It should be noted that there are no plans for the Tasmania Prison Service to become a detention centre for refugees. Essentially, the amendments are likely to apply to people who have recently finished serving a sentence of imprisonment for crimes, including crimes of violence and drug related crime, where the Australian government has subsequently determined that their visas should be cancelled. In these circumstances, the person may need to be held for a period post completion of their sentence, and before being deported or otherwise dealt with under the *Migration Act*.

The Bill also amends the *Corrections Regulations* to provide that in relation to a migration detainee, any biometric data collected, photographs or images taken and electronic or other records that are made under regulation 25 of the *Corrections Regulations*, are to be destroyed as soon as practicable after the migration detainee is no longer being detained by the Tasmania Prison Service.

Compliance with Standing Orders – Clause 7

Under section 6(3) of the Act, standing orders may be made for the management and security of prisons, and for the welfare, protection and discipline of prisoners and detainees.

Clause 7 of the Bill clarifies that correctional officers and State Service corrections employees must comply with all standing orders made by the Director under section 6(3) of the *Corrections Act*.

Clause 7 also provides that a failure to comply with standing orders may be taken to be a conduct requirement under section 9 of the *State Service Act*. In effect this means that non-compliance with standing orders may give rise to a breach of the State Service Code of Conduct and formal action may be undertaken in accordance with the requirements of section 10(3) of the *State Service Act*.

As members may be aware, the *State Service Act* establishes a framework for dealing with breaches of the State Service Code of Conduct, and Employment Direction Number 5 establishes procedures for the investigation and determination of whether an employee has breached the State Service Code of Conduct.

Therefore any alleged non-compliance with a standing order will be dealt with in accordance with this employment direction. This ensures that officers and employees will be afforded natural justice in the event of an alleged breach of a standing order.

Return of equipment issued by the Tasmania Prison Service – Clause 8

Clause 8 of the Bill also provides that when a correctional officer or State Service employee leaves their employment with the Tasmania Prison Service, they must surrender to the Director all firearms and ammunition, and all items of identification,

equipment, clothing and insignia that were on issue to the person immediately before they ceased holding the appointment or employment.

This clause makes it clear to former staff that there are obligations and consequences for failing to return government property. It also protects the community from this sort of equipment falling into the wrong hands and being used for illicit purposes.

It should be noted that this provision is not intended to apply to personal items such as socks and boots. However, it is intended to apply to items and equipment such as security passes, uniforms with insignia and equipment such as handcuffs and other tactical equipment.

The Bill provides that certain processes must be followed before a warrant is sought by the Director and ensures that former staff members are given sufficient notice of the requirement to return items and equipment.

Specifically, once an officer or employee leaves their employment, they must return the equipment or items within 7 days, unless a longer period is specified by a notice in writing given by the Director. In respect to firearms and ammunition however, the property must be returned within 24 hours.

If the items are not returned within the specified period, the Director is required to give the person further notice requesting that the items be returned immediately, or within such time as the Director considers reasonable in the circumstances.

As members may appreciate, there are already many laws in place that provide for police officers to apply to a justice for a warrant, and for warrants to be issued to enable police officers to enter premises and to search for and seize property.

This Bill provides that the Director may request the Commissioner of Police to apply for a warrant to enter premises, and to search for and seize the relevant items, but only if items are not handed back or returned as required.

Further, the Bill provides that a justice may issue a warrant if he or she is satisfied that there are reasonable grounds for believing that the relevant item is on or in a place, and the item ought to have been surrendered but has not be surrendered. These grounds must be satisfied before a justice may issue a warrant.

This clause has been included in the Bill as there is currently no formal mechanism in the Act to provide for the recovery of issued items where a former correctional officer or corrections employee refuses or fails to return the relevant items. The lack of such a mechanism poses a security risk to the prison and to public safety, particularly if items and equipment end up in the wrong hands.

It should be noted that a similar provision exists under the *Police Service Act* which requires police officers to return issued equipment when they leave the Police Service.

Formal search powers – Clause 9

Currently section 20 of the Act provides that a person who wishes to enter or remain in a prison as a visitor must, if asked by a correctional officer, submit to a formal search. A formal search is defined as a search to detect the presence of drugs, weapons or metal articles carried out by an electronic or mechanical device.

This section only applies to visitors and does not permit the use of force. The Bill does not change this aspect of section 20. This section has also been interpreted by the Tasmania Prison Service to allow the physical touching of a person, for example to allow for a pat down search and an inspection of a person's ears or mouth, but not any other body cavity.

The effect of the amendment is to clarify that a correctional officer may employ such assistance or means as he or she believes on reasonable grounds to be necessary for the purpose of a search, including but not limited to scanning and detection devices.

This amendment will provide correctional officers with greater clarity around the use of formal search powers and will provide more flexibility because the provision will no longer be limited to formal searches carried out by an electronic or mechanical device.

The amendment will also result in wording which is more closely aligned with the wording in the general search provisions under section 22 of the Act.

General search powers – Clause 10

Currently under the Act, section 22 provides for correctional officers to:

- search any part of the prison;
- search and examine a prisoner, detainee, visitor, correctional officer or any person appointed or employed for the purposes the Act or any other person in the prison;
- search and examine any thing in the prison; and
  require a person who wishes to enter a prison to submit to a search and examination of the person and of any thing in the person's possession or control.

As section 22 currently only provides for searches to be conducted by correctional officers, clause 10 of the Bill now provides that State Service corrections employees may also search or examine, or search and examine any part of a prison, any vehicle, equipment, container or other thing in the prison. This clause does not however, extend the power of corrections employees to the searching of persons.

The Bill also provides that a corrections employee:

- may conduct such a search or examination or search and examination at random;
- may employ such assistance and means as he or she believes on reasonable grounds to be necessary; and
- may seize anything found in the course of the search or examination or search and examination, which the 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.

It is important to note that section 22 of the Act currently only refers to 'things'. Clause 10 of the Bill now also makes it clear that correctional officers and corrections employees have the power to search a vehicle, equipment, container or other thing in the prison. Clause 10 also clarifies that a correctional officer or corrections employee may employ such assistance and 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.

Various provisions in the Bill now also clarify that searches and examinations are not always required to be done contemporaneously. For instance, in some circumstances it may only be necessary for an officer or employee to conduct a search of thing, for example the search of a delivery box. In other circumstances it may only be necessary to conduct an examination of a thing, for example, mail.

Whereas in other cases it may be necessary to conduct both a search and examination. For example in the case of a cell, if it is suspected that drugs are present, it may be necessary to search both the cell and to examine any container or article that might be used to secrete drugs.

Detector Dogs – Clause 11

Clause 11 of the Bill inserts a new Section 22A into the Act to clarify that a correctional officer or State Service corrections employee who is carrying out a formal search under section 20, or a search or examination or search and examination under section 22 of the Act, may be accompanied and assisted by a detector dog and a detector dog handler.

The Bill incorporates a definition of detector dog as a dog that has been or is being trained by a State or Commonwealth law enforcement agency to detect particular substances or items. A detector dog handler is defined as a person whose duties, whether as a police officer, correctional officer or otherwise, include the handling of a detector dog.

The Bill makes it an offence for a person to do anything that is likely to impede or interfere with the effective use of a detector dog in a search, without lawful excuse.

The Bill also makes it an offence for a person to 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, without lawful excuse.

Further, the Bill provides that the Crown or a correctional officer, a corrections employee or a detector dog handler are not liable for the inadvertent actions of a detector dog.

It should be noted that this clause is based on similar provisions in the *Police Service Act* which relate to the use of detector dogs.

Power to arrest without warrant – Clause 13

The Bill now also provides for a power of arrest without warrant, if a police officer believes on reasonable grounds that the person has committed any of the following offences:

- section 12 (visits);
- section 15 (exclusion of visitors for security reasons);
- section 18 (visitors to give prescribed information);
- section 19 (Director may refuse or terminate visits for security reasons);
- section 22 (search); and
- section 22A (use of detector dogs).

Currently there is no power of arrest without warrant for these offences under the Act. The inclusion of this provision will ensure that where there is a risk that an offender may destroy evidence or continue with the offending behaviour, the offender can be removed quickly from prison grounds by police. This amendment will remove the existing uncertainty for police and prison staff, and will enhance the security and safety of the prison.

Hire of equipment – Clause 14 – New section 34AA

The Bill also makes provision for the Director to allow a prisoner or detainee to hire equipment and items additional to the standard equipment and items with which the prisoner or detainee is normally issued.

In a modern prison environment, prisoners and detainees are encouraged to work and earn money. Some prisoners and detainees save money and they may wish to spend it on items which are not necessarily provided for by the prison. This provision will clarify that prisoners and detainees may hire non-standard equipment and items, such as game consoles and lap-tops.

The Bill also provides that additional equipment or items may be hired on such conditions and for a hiring fee as the Director determines, that the hiring fee is not to exceed the reasonable cost of providing and where relevant, operating the equipment or items, and that the fee may be a nominal fee. The Bill also makes provision for the Director to recover the hiring fee from monies held on behalf of the prisoner or detainee.

Business activities – Clause 14 – New Section 34AB

A new section 34AB is inserted into the Act by the Bill to provide that a prisoner must not conduct a business in or from prison without the consent of the Director. It should be noted that the Bill defines 'conduct a business' as including making preparations to conduct a business.

This provision recognises that in some cases it is appropriate to allow a prisoner to conduct a business because it will assist with the prisoner's rehabilitation and maintenance of connections with the community. Whereas in other cases, allowing a prisoner to conduct a business would be inappropriate because it would be offensive to

victims of crime. For example, if the prisoner is allowed to continue to operate the same business, such as a nightclub, which was used to facilitate the crime for which he or she is imprisoned.

In determining whether or not to consent to the prisoner conducting the business, the Bill provides that the Director may have regard to such matters as he or she thinks fit in the circumstances, including the following matters:

- 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 the business is one that would be reasonably practicable and manageable to conduct in a prison environment;
- the regulatory requirements of conducting the business and associated compliance and legal capacity issues;
- whether conducting a business of that kind was the basis for, or a relevant factor in, previous unlawful conduct of the prisoner; and
- whether there could be rehabilitative benefits for the prisoner.

If the Director does consent to a prisoner conducting a business, the Director still has discretion to withdraw the consent at any time.

Further, the new section 34AB provides that the Director and the Crown are not liable for the activities of the business where consent to operate the business is given in good faith or where consent is withdrawn.

Change of Name – Clause 14 – New Section 34AC

The Bill also inserts into the Act a new section 34AC. Section 34AC provides that a prisoner or detainee must not make a change of name application without the consent of the Director.

While some prisoners and detainees may wish to change their name for entirely genuine reasons, in other cases a change of name may be sought for example, to avoid prosecution or detection by law enforcement agencies, or even with the intention of causing distress to a victim. When a change of name does occur, certain things may also flow from that name change. For example, court documents may no longer match up with the name of the prisoner or detainee who is being held.

This amendment will provide more control around the use of name changes by prisoners and detainees, and will minimise the risk of name changes occurring in inappropriate circumstances.

In determining whether or not to give consent to the prisoner making the change of name application, the Bill provides that the Director may have regard to such matters as he or she thinks fit in the circumstances, including the following matters:

- whether the proposed name change could reasonably be expected to excite adverse community reaction, particularly from victims of crime;
- whether there is any risk that 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 a history of using aliases; and
- whether, as 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 finally been dealt with.

In the interests of natural justice, the Director is required to notify the relevant prisoner or detainee of the consent or refusal of consent, and where consent is refused, the reasons for the refusal. This must be done as soon as practicable after the Director makes a decision to consent or refuse to consent to a name change.

If the Director decides to consent to a name change, the Director is also required to notify the Secretary of the Parole Board, the Registrar of Births, Deaths and Marriages or the relevant authority in another State or Territory of this consent, along with the particulars. The relevant Registrar may be either the Registrar of Births, Deaths and Marriages in Tasmania or an authority responsible under a law of another State or Territory for the registration of births, deaths and marriages.

This allows for other jurisdictions to be notified of name changes for example, in cases where a prisoner or detainee has been transferred to Tasmania from that other jurisdiction. Notifications to those parties must be made as soon as practicable after the decision to consent to the name change is made.

The Bill also prevents the Registrar of Births, Deaths and Marriages from registering a name change, if the Registrar is aware that the applicant is a prisoner or detainee and the relevant notification has not been received. Further, the Bill also provides that the Director may apply to the relevant Registrar (whether the Registrar is in Tasmania or is an authority in another State or Territory), to correct the relevant register by cancelling the entry if a prisoner or detainee succeeds in having a name change registered in any State or Territory without the required consent. The Registrar of Births, Deaths and Marriages in Tasmania is required to correct the Tasmanian register if he or she receives an application from the Director. However, this does not apply if there is an order of a court which prevents the correction.

Finally, if there is any inconsistency between these provisions and the provisions of the *Births, Deaths and Marriages Registration Act,* the provisions made by this amendment will prevail.

Use of Force – Clause 15

In 2014, part 4A was inserted into the Act for the purpose of regulating the use of force under the Act. When this amendment was made, not all relevant provisions relating to the use of force under the Act were captured by the 2014 amendment.

Specifically, in respect to the use of force under the Act, section 22(5) currently provides that for the purpose of searching or examining a person or thing under section 22, a correctional officer may use such force, means and assistance as he or she considers reasonably necessary for the purpose.

The Bill amends the Act by removing the reference to the use of force in section 22 and clarifying that the Part 4A provisions around the use of force apply to a search or examination or search and examination carried out under section 22 of the Act. This will ensure that there is consistency around the use of force provisions in the Act.

Leave Permits – Clause 16

Section 42 of the Act currently provides that a custodian of a person to whom a leave permit is granted, may return the person to prison (without the need for a warrant) in certain circumstances. This provision is not problematic, where the custodian is also a correctional officer, but it is problematic where the custodian is not a correctional officer. It is not unusual for a prisoner or detainee to be released into the custody of a person other than a correctional officer, for example to allow a low risk prisoner or detainee to attend a funeral.

The Bill overcomes this problem by clarifying that a correctional officer who is not the official custodian of a prisoner or detainee to whom a leave permit is granted, and who believes on reasonable grounds that the prisoner or detainee has failed to comply or is likely to fail to comply with a condition or restriction of a leave permit, may return the prisoner or detainee to a prison.

Disclosure of Health Information – Clause 17

A new section 87C is also inserted into the Act by the Bill. Section 87C makes it clear that a health official may disclose to the Director health information about a prisoner or detainee as the Director reasonably requires for their treatment, care and rehabilitation.

This provision is intended to improve the exchange of information between the Department of Health and Human Services and the Tasmania Prison Service, with corrections staff being more fully informed and able to make better decisions about the treatment, care and rehabilitation needs of prisoners and detainees.

A 'health official' is defined in the Bill to include 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. A health official does not include private health providers, such as general practitioners.

'Health information' is defined in the Bill to mean information about a prisoner or detainee's health or medical treatment.

The Bill also clarifies that where the relevant information is disclosed by a health official for the purpose of the new section 87C, the health official does not incur any criminal, civil or administrative liability and:

- is not taken to have breached any rule of law or practice; or
- 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 or condemn the person for making the disclosure; or
- is not liable to condemnation or disciplinary action.

These protections will apply to health officials, despite the provisions of the *Personal Information Protection Act* and any other laws relating to the confidentiality or privacy of information.

Health information that is disclosed to the Director under the new section 87C, is only to be used by the Director for the purpose of determining and managing the relevant prisoner or detainee's treatment, care and rehabilitation.

Prison Offences – Clause 19

The Act prescribes a range of prison offences in Schedule 1 of the Act. Further, section 58 of the Act provides that a prisoner or a detainee must not commit a prison offence, and section 59 details the procedures for dealing with allegations around the commission of prison offences.

The prison offence regime is an essential tool for the management and control of prisoners and detainees in the prison environment.

The Bill introduces into Schedule 1 of the Act new prison offences which are incorporated by these amendments, specifically offences for:

- striking, injuring, maiming or killing a detector dog without lawful excuse;
- impeding or interfering with a detector dog without lawful excuse;
- 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.

Finally, Schedule 1 is also amended by extending the prison offence of being in possession of unauthorised articles to detainees.

As noted earlier, this Bill makes a number of amendments to improve the operation of the *Corrections Act,* and will assist the Tasmania Prison Service with the management of prisoners and detainees. Wide consultation has been undertaken on the Bill and in general the changes are largely supported.

I commend the Bill to the House.