

Prisons Amendment Bill 1998

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Western Australia

LEGISLATIVE ASSEMBLY

Prisons Amendment Bill 1998

A Bill for

An Act to amend the *Prisons Act 1981* to provide for prison services to be provided under contracts and for related matters and to amend various other Acts as a consequence.

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Prisons Amendment Act 1998*.

2. Commencement

- (1) Subject to subsection (2), this Act comes into operation on such day as is fixed by proclamation.
- (2) The day referred to in subsection (1) is not to be earlier than the day when all of Parts 2, 5, 6, 8 and 10 of the *Court Security and Custodial Services (Consequential Provisions) Act 1998* have come into operation.

3. The Act amended

The amendments in this Act are to the *Prisons Act 1981** unless otherwise indicated.

[* Reprinted as at 21 November 1996.

For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 188.]

4. Section 3 amended

- (1) Section 3(1) is amended by inserting the following definitions in the appropriate alphabetical order —

“

“**contract**” means a contract entered into under section 15B;

“**contractor**” means a person who has entered into a contract with the chief executive officer;

“**high-level security work**” means —

(a) work specified in section 15M as high-level security work; and

(b) work declared as high-level security work under section 15N;

“**permit**” means a permit issued under section 15P to do high-level security work;

“**prison services**” means the management, control and security of a prison and the welfare of the prisoners at the prison;

5 “**subcontractor**” means a subcontractor of a contractor and includes a person with whom a subcontractor contracts and a person with whom that person contracts;

”.

10 (2) Section 3(1) is amended by deleting the definition of “medical officer” and inserting the following definition instead —

“

“**medical officer**” means a person who is appointed or engaged as a medical officer referred to in section 6(3) or (4);

15

”.

(3) Section 3(1) is amended in the definition of “officer” by deleting “section 6 or section 13” and inserting instead —

“ , or as referred to in, section 6 or under section 13 ”.

20 (4) Section 3(1) is amended by deleting the definition of “prison medical officer”.

5. Section 6 amended

(1) Section 6(3) is amended by inserting after “such officers” —

“ including medical officers ”.

25 (2) Section 6(4) is repealed and the following subsection is inserted instead —

“

(4) Without limiting the appointment of medical officers referred to in subsection (3), there may be appointed or

engaged as medical officers for the purposes of this Act
medical practitioners —

- (a) who are registered under the *Medical Act 1894*;
and
- 5 (b) who have current entitlement to practise under
that Act.

”.

6. Section 7 amended

10 Section 7(3) is amended by inserting after “superintendent” in
both places where it occurs —

“ or other officer ”.

7. Part IIIA inserted

After section 15 the following Part is inserted —

15 “
Part IIIA — Contracts for prison services

Division 1 — Preliminary

15A. Definitions

In this Part —

20 “**administrator**” means a person appointed or engaged
under section 15Y or 15Z;

“**contract worker**” means a natural person who is —

- (a) a contractor or an employee or agent of a
contractor; or
- 25 (b) a subcontractor or an employee or agent of a
subcontractor;

“**function**” includes power, duty, responsibility and authority;

“**intervene**”, in relation to a contract, means —

- 5
- (a) to give directions as to the manner in which a prison service that is a subject of the contract is to be provided; or
 - (b) to provide a prison service that is a subject of the contract;

10 “**other officer**” means an officer, except a medical officer, referred to in section 6(3) or a person engaged under section 6(5);

“**perform**”, in relation to a function, includes the exercise of a power, responsibility or authority.

Division 2 — Matters relating to contracts generally

15 **15B. Contracts for prison services**

The chief executive officer may, for and on behalf of the State of Western Australia, enter into a contract with a person to provide prison services for the State.

20 **15C. Minimum matters to be included in contracts**

A contract must provide for —

- 25
- (a) compliance by the contractor with this Act, any other written law and the rules;
 - (b) objectives and performance standards in relation to the provision of prison services under the contract;
 - (c) fees, costs and charges to be paid to and by the contractor;

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- (d) compliance by the contractor with the minimum standards established under section 15D in relation to the provision of prison services under the contract;
- 5 (e) the submission of reports in relation to the contractor's obligations under the contract;
- (f) notification by the contractor of any change in the control, management or ownership of —
 - 10 (i) the contractor; or
 - (ii) a subcontractor, or a member of a class of subcontractors, specified for the purposes of this paragraph by the chief executive officer in the contract;
- 15 (g) the financial and other consequences of intervening in a contract under section 15W, terminating or suspending a contract under section 15X and of requisitioning property under section 15ZC;
- 20 (h) codes of ethics and conduct, as approved by the chief executive officer, to apply to the contractor, any subcontractor and their employees and agents;
- 25 (i) reporting procedures to notify the chief executive officer of escapes, deaths of prisoners and other emergencies or serious irregularities;
- (j) investigation procedures and dispute resolution mechanisms for complaints about the provision of prison services under the contract;
- 30 (k) an indemnity by the contractor in favour of the State of Western Australia;

- 5
- (l) the office the holder of which is to be the principal officer of the contractor and the subcontractors under the relevant contract for the purposes of the *Anti-Corruption Commission Act 1988*, the *Freedom of Information Act 1992* and the *Parliamentary Commissioner Act 1971*, respectively; and
 - (m) any other matter prescribed by regulation.

15D. Minimum standards

- 10
- (1) The chief executive officer must establish minimum standards applicable to the provision of prison services under a contract and the chief executive officer may, from time to time, amend the minimum standards.
 - 15 (2) The Minister is to ensure that the minimum standards, as amended from time to time, are laid before each House of Parliament within 10 sitting days of such House next following the establishment or amendment of the minimum standards.

15E. Minister, chief executive officer etc. may have access to certain prisons, persons, vehicles and documents

- 20
- (1) The Minister, the chief executive officer and any person authorized by the chief executive officer may, at any time, (with any assistants, prison dogs and equipment that the Minister, the chief executive officer or authorized person thinks are necessary) have free and unfettered access to a prison, person, vehicle or document referred to in subsection (2) for the purpose of —
 - 25 (a) ensuring compliance with this Act, the rules or
 - 30 (a) a contract; or

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- (b) ensuring that a prison service that is a subject of a contract is being properly provided.
- (2) A person referred to in subsection (1) may have access to —
- 5 (a) a prison at which prison services are provided under a contract;
- (b) a prisoner in such a prison;
- (c) a contract worker who works in such a prison;
- 10 (d) a vehicle used by a contractor to provide prison services under a contract;
- (e) a prisoner in such a vehicle;
- (f) a contract worker whose work is concerned with such a vehicle; and
- 15 (g) all documents in the possession of the contractor or a subcontractor in relation to any prison service that is a subject of a contract.
- (3) The chief executive officer may authorize a person for the purposes of subsection (1).
- 20 (4) An authorization must be in writing and may be made subject to such conditions and limitations specified in the authorization as the chief executive officer thinks fit.
- (5) A person must not hinder or resist a person referred to in subsection (1) when the person is exercising or attempting to exercise a power under that subsection.
- 25 Penalty: \$20 000.

- (6) Nothing in this section limits any entitlement that a person, under a law, has to have access to a place, vehicle, person or document referred to in subsection (2).

5 **15F. Administrators and reporting officers may have access to certain prisons, persons, vehicles and documents**

- 10 (1) An administrator and a reporting officer appointed under section 9 may, at any time, (with any assistants, prison dogs and equipment that the administrator or reporting officer thinks are necessary) have free and unfettered access to a prison, vehicle, person or document referred to in section 15E(2) for the purpose of enabling the administrator or reporting officer to perform his or her functions.

- 15 (2) A person must not hinder or resist an administrator or reporting officer when the administrator or reporting officer is exercising or attempting to exercise a power under subsection (1).

20 Penalty: \$20 000.

- (3) Nothing in this section limits any entitlement that a person, under a law, has to have access to a place, vehicle, person or document referred to in section 15E(2).

25 **15G. Annual reports**

- (1) The chief executive officer is to prepare and deliver to the Minister by 30 September each year a report on each contractor who provided prison services under a contract in the preceding 12 months.

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- 5
- (2) The report is to contain such information as is required to be included in the report by the Minister to enable an informed assessment to be made of —
- (a) the operations of each contractor; and
 - (b) the extent to which there has been compliance with the relevant contract.
- 10
- (3) The Minister is to ensure that the report is laid before each House of Parliament within 10 sitting days of such House next following the Minister's receipt of the report.

15H. No contracting out

The provisions of this Part apply despite anything to the contrary in the contract.

Division 3 — Authorization of contract workers to perform functions

15

15I. Contract workers' functions

- 20
- (1) The chief executive officer may authorize a contract worker who holds a permit, to perform any of the functions that —
- (a) a superintendent;
 - (b) a prison officer; or
 - (c) an other officer,
- has under this Act except a function referred to in section 15J.

- (2) An authorization must be in writing and may be made subject to such conditions and limitations specified in the authorization as the chief executive officer thinks fit.

5 **15J. Limitation on functions of contract workers**

- (1) A contract worker cannot be authorized to perform a function that cannot be delegated to a person under section 8(1).
- 10 (2) A contract worker cannot be authorized to perform a superintendent's function of a kind referred to in a provision of this Act that is set out in the Table to this subsection.

Table

s. 31(2)	s. 74(3)
s. 32(1)(b)	s. 75(1) and (2)
s. 47(1) and (2)	s. 76(1) and (2)
s. 71(1) and(2)	s. 77(1) and (2)
s. 73(a) (second reference to superintendent only)	s. 80(1) and (2)

- 15 (3) A contract worker cannot be authorized to perform a superintendent's function of a kind referred to in Part X.
- (4) A contract worker cannot be authorized to perform a prison officer's function referred to in section 47(1) or (2).

15K. Effect of authorization

(1) Subject to subsections (2), (3), (4), (5) and (6), a contract worker who is authorized under section 15I to perform a function of —

- 5
- (a) a superintendent;
 - (b) a prison officer; or
 - (c) an other officer,

10 must, for the purposes of this Act and any other written law, be deemed to be a superintendent, prison officer or other officer, as the case requires, in relation to that function.

(2) A reference to a superintendent in Part X does not include a reference to a contract worker.

15 (3) A reference to a prison officer or any other officer in a provision of this Act that is set out in the Table to this subsection does not include a reference to a contract worker.

Table

s. 13(1), (2) and (3)	s. 110(1)(b), (d), (e), (v), and (w)
Part X	s. 114(1), (3), (6), (8), (9), (11) and (12)

20 (4) If prison services in relation to a prison are being provided under a contract, a reference to the prison's superintendent in a provision that is set out in the Table to section 15J(2) in relation to that prison is to be regarded as a reference to a superintendent of a prison that is not managed under a contract.

- 5 (5) If prison services in relation to a prison are being provided under a contract, a reference to a prison officer in section 47(1) or (2) in relation to that prison is to be regarded as a reference to a prison officer engaged under section 13.
- 10 (6) A contract worker referred to in subsection (1) —
- (a) does not hold the position of superintendent, prison officer or other officer, as the case requires; and
 - (b) is not subject to the *Public Sector Management Act 1994*.

Division 4 — Vetting and control of contract workers in relation to high-level security work

15 **15L. Interpretation in this Division of “offence for which the contract worker is convicted”**

In this Division a reference to an offence for which the contract worker is convicted includes —

- 20 (a) an offence for which the person is convicted in any part of the world; and
- (b) the payment of the whole or a part of a penalty under a traffic infringement notice that is served on the contract worker under section 102(1) of the *Road Traffic Act 1974* or a corresponding law in any other part of the world.

25 **15M. High-level security work**

A prison service is high-level security work if —

- 30 (a) it is of a kind that requires the person providing it to exercise a power of a superintendent, a prison officer or any other officer; and
- (b) it is provided by a contract worker.

15N. Chief executive officer may declare other kinds of work to be high-level security work

- (1) The chief executive officer may, in writing, declare as high-level security work —
- 5 (a) a prison service of a kind that requires a contract worker to deal directly with prisoners except a prison service referred to in section 15M;
- 10 (b) work that requires a contract worker to have access to information about prisoners; or
- (c) any other work to be done by a contract worker that in the opinion of the chief executive officer should be declared to be high-level security work.
- 15 (2) The chief executive officer may amend a declaration.
- (3) The chief executive officer is to ensure that notice of a declaration or an amendment of a declaration is published in the *Gazette* within 14 days after the day the declaration or amendment occurs.
- 20 (4) The validity of a declaration or an amendment of a declaration is not affected by failure to publish the notice.

15O. Contract workers require permits to do high-level security work

25 A contract worker must not do, or purport to do, any high-level security work unless he or she has a current permit to do the work and does the work in accordance with the permit.

 Penalty: Imprisonment for 3 years.

15P. Issue of permits to do high-level security work

- 5
- (1) On application by a contract worker in a manner approved by the chief executive officer, the chief executive officer may issue the contract worker with a permit to do high-level security work.
- (2) To determine the suitability of a contract worker to do high-level security work the chief executive officer may —
- 10
- (a) have regard to the information referred to in section 15Q(1) and (3) about the contract worker;
- (b) make appropriate enquiries about the contract worker; and
- 15
- (c) enquire into the honesty and integrity of the contract worker's known associates.
- (3) A permit may be issued subject to such conditions and limitations specified in the permit as the chief executive officer thinks fit.
- (4) A permit is not transferable.

20 **15Q. Information about applicants for permits**

- (1) The chief executive officer may, in writing, require a contract worker who applies for a permit or the relevant contractor to provide —
- 25
- (a) information about any offence for which the contract worker is convicted;
- (b) information about any disciplinary proceedings conducted against the contract worker in the course of his or her employment;

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- (c) information about any other matter that is relevant to the suitability of the contract worker to do high-level security work; and
 - (d) a photograph of the contract worker.
- 5 (2) A person must not give information or a photograph that is false or misleading in a material particular in response to a requirement under subsection (1).
Penalty: Imprisonment for 3 years.
- 10 (3) If a contract worker applies for a permit the contract worker is to authorize the Commissioner of Police to provide to the chief executive officer and the relevant contractor —
 - 15 (a) information about any offence for which the contract worker is convicted; and
 - (b) such other information as is required by the chief executive officer to determine the suitability of the contract worker to do high-level security work.
- 20 (4) A person must not give information that is false or misleading in a material particular in an authority under subsection (3).
Penalty: Imprisonment for 3 years.

15R. Taking of fingerprints and palmprints

- 25 (1) The chief executive officer may, in writing, require a contract worker who applies for, or holds, a permit to attend at a place and there have his or her fingerprints or palmprints taken by a member of the Police Force or an employee of the Police Service.

-
- (2) The Commissioner of Police is to cause fingerprints and palmprints taken under this section and any copy of them to be destroyed —
- (a) if the permit is not granted; or
 - (b) when the permit no longer has effect.

15S. Refusal to issue permit

- (1) The chief executive officer may refuse to issue a contract worker with a permit to do high-level security work if, in the opinion of the chief executive officer —
- (a) the contract worker has not complied with a requirement under section 15Q(1);
 - (b) the contract worker has not given an authority under section 15Q(3);
 - (c) the contract worker has not complied with a requirement under section 15R(1);
 - (d) the contract worker has not completed training approved by the chief executive officer;
 - (e) the contract worker has failed to satisfy the chief executive officer that the contract worker is a fit and proper person to do high-level security work;
 - (f) the contract worker should not do high-level security work because of his or her criminal record or character or because of any other relevant reason;
 - (g) the contract worker does not meet all the conditions specified in the relevant contract in relation to persons who are to do high-level security work; or
 - (h) it is not in the public interest to do so.

- (2) The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the issue of, or refusal to issue, a permit.

5 **15T. Determining suitability of contract workers to keep holding permits**

- (1) To determine the suitability of a contract worker to continue to do high-level security work the chief executive officer may —
 - 10 (a) have regard to the information referred to in subsection (2) and (4) about the contract worker;
 - (b) make appropriate enquiries about the contract worker; and
 - 15 (c) enquire into the honesty and integrity of the contract worker's known associates.
- (2) If a contract worker holds a permit the chief executive officer may, at any time, in writing require the contract worker or the relevant contractor to provide
20 information about —
 - (a) any offence for which the contract worker is convicted;
 - (b) any disciplinary proceedings conducted against the contract worker in the course of his or her
25 employment; and
 - (c) any other matter that is relevant to the suitability of the contract worker to continue to do high-level security work.

- (3) A person must not give information that is false or misleading in a material particular in response to a requirement under subsection (2).

Penalty: Imprisonment for 3 years.

- 5 (4) If a contract worker holds a permit the chief executive officer may, at any time, in writing require the contract worker to authorize the Commissioner of Police to provide to the chief executive officer and the relevant contractor —

- 10 (a) information about any offence for which the contract worker is convicted; and
(b) such other information as is required by the chief executive officer to determine the suitability of the contract worker to continue to do high-level security work.
- 15

- (5) A person must not give information that is false or misleading in a material particular in an authority under subsection (4).

Penalty: Imprisonment for 3 years.

20 **15U. Suspension or revocation of permits**

- (1) The chief executive officer may, at any time, suspend or revoke a permit issued to a contract worker if, in the opinion of the chief executive officer —

- 25 (a) the permit ought not to have been issued to the contract worker, or ought not to continue in force in respect of the contract worker, having regard to the grounds referred to in section 15S(1)(d) to (h); or

- 5
- 10
- 15
- 20
- 25
- (b) the contract worker has failed to comply with —
 - (i) this Act, the rules or standing orders;
 - (ii) a direction given to the contract worker under this Act, the rules, a standing order or the relevant contract;
 - (iii) an order, direction, warrant or other instrument under any law directed to the contract worker in relation to a prisoner;
 - (iv) a code of ethics or conduct provided for under the relevant contract; or
 - (v) a requirement under section 15T(2) or (4).
 - (2) The chief executive officer may suspend or revoke any permit issued to any contract worker if —
 - (a) the chief executive officer intervenes in the relevant contract under section 15W or terminates or suspends the relevant contract under section 15X; or
 - (b) the relevant contract is terminated or suspended under the terms of the contract.
 - (3) The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the suspension or revocation of a permit under subsection (2).

15V. Gazettal of permit details

- 30
- (1) The chief executive officer is to ensure that notice of the issue, suspension, reinstatement or revocation of a permit is published in the *Gazette* within 14 days after the day the event occurs.

- (2) The validity of the issue, suspension, reinstatement or revocation of a permit is not affected by failure to publish the notice.

Division 5 — Intervention in, and termination of, contracts

5

15W. Intervention in contracts

- (1) The chief executive officer may intervene in a contract if —
- (a) there are grounds for doing so under subsection (2); and
- (b) the intervention is in the public interest or is necessary to ensure the proper provision of a prison service that is a subject of a contract.
- (2) The grounds for intervening in a contract are that —
- (a) there is an emergency in a prison service that is a subject of the contract; or
- (b) the contractor has failed to effectively provide a prison service that is a subject of the contract.

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15

15X. Termination or suspension of contracts

- (1) The chief executive officer, with the Minister's approval, may on behalf of the State terminate or suspend (wholly or partially) a contract if, in the opinion of the chief executive officer —
- (a) there are grounds for doing so under subsection (2); and
- (b) the termination or suspension of the contract is in the public interest.

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- (2) The grounds for terminating or suspending a contract are that —
- (a) the contractor becomes insolvent within the meaning of the contract;
 - 5 (b) the identity of the persons who control, manage or own the contractor or a subcontractor changes during the term of the contract without the consent of the chief executive officer;
 - 10 (c) the contractor has committed a material breach of the contract that is not capable of being remedied;
 - (d) the contractor has failed to rectify a breach of the contract within the time specified in the contract after the issue of a default notice; or
 - 15 (e) the chief executive officer gives the contractor written notice to the effect that the contract will be terminated or suspended 3 days after the day on which the contractor receives the notice or at such later time as is specified in the notice.

20 **15Y. Administrator where intervention in contract**

- (1) If the chief executive officer intervenes in a contract under section 15W the chief executive officer may appoint or engage an administrator —
- 25 (a) to give directions as to the manner in which a prison service that is subject of the contract is to be provided; or
 - (b) to provide a prison service that is a subject of the contract.

- 5
- (2) The directions given by an administrator and the provision by an administrator of a prison service that is a subject of a contract must be in accordance with the terms of the administrator's appointment or engagement.
- (3) An administrator cannot be appointed or engaged for a period exceeding one year but can be reappointed or re-engaged if, after review of the reason for intervention in a contract, the chief executive officer determines that the reason for the intervention still exists.
- 10

15Z. Administrator where termination or suspension of contract

- 15
- (1) If the chief executive officer terminates or suspends a contract under section 15X the chief executive officer may appoint or engage an administrator —
- (a) to provide any prison service that was a subject of the terminated contract; or
 - (b) to provide any prison service that is a subject of the suspended contract.
- 20
- (2) The provision by an administrator of a prison service that was or is a subject of a contract must be in accordance with the terms of the administrator's appointment or engagement.
- 25
- (3) An administrator cannot be appointed or engaged for a period exceeding one year but can be reappointed or re-engaged if the chief executive officer determines —
- (a) in the case of the termination of a contract, that matters arising from the terminated contract have not been properly resolved; or

- (b) in the case of the suspension of a contract, that the reason for the suspension still exists.

15ZA. Administrator's functions

An administrator may, for the purposes of performing his or her functions —

5

- (a) perform —
 - (i) any function that the contractor or an employee or agent of that contractor has under a contract or had under a terminated contract; and
 - (ii) any function that a subcontractor or an employee or agent of that subcontractor has under a contract or had under a terminated contract;

10

15

and

- (b) exercise any power of a superintendent, a prison officer or any other officer.

15ZB. Compliance with administrator's directions

- (1) If an administrator is appointed under section 15Y then for the period of the appointment or engagement —

20

- (a) the contractor;
- (b) each subcontractor; and
- (c) any person appointed or employed by the contractor or a subcontractor to manage a service that is a subject of a contract,

25

must comply with the administrator's directions in respect of the management or provision of the service, or the ceasing of the provision of the service.

Penalty: \$50 000.

- 5 (2) If an administrator is appointed or engaged under section 15Y then for the period of the appointment or engagement any contract worker who has a function in respect of a prison service that is a subject of the relevant contract must comply with the administrator's directions as to the performance of the function.
Penalty: \$5 000.

15ZC. Requisitioning property on intervention in, or termination of, contract

10 If the chief executive officer intervenes in a contract under section 15W or terminates or suspends a contract under section 15X, the chief executive officer or an administrator (with the chief executive officer's approval) may —

- 15 (a) no later than 2 months after the intervention, termination or suspension, requisition any property used in relation to the provision of a prison service that is a subject of the contract or was a subject of the terminated contract; and
20 (b) use the property for the ongoing provision of that prison service for no longer than 12 months after the requisition of the property.

”.

8. Section 38 amended

- 25 (1) Section 38(1) is repealed and the following subsection is inserted instead —

“

- 30 (1) The chief executive officer is to ensure that medical care and treatment is provided to the prisoners in each prison.

”.

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(2) Section 38(2) is amended by deleting “the prison medical officer or” in each place where it occurs and inserting instead —

“ a ”.

(3) Section 38(3) is amended by deleting “prison medical officer or medical officer who is responsible under this section” and inserting instead —

“ medical officer who is responsible ”.

9. Section 39 replaced

Section 39 is repealed and the following section is inserted instead —

“

39. Duties of medical officers

A medical officer shall —

- (a) attend at a prison at such times and on such occasions as are specified in the terms of the medical officer’s appointment or engagement;
- (b) on the request of the chief executive officer, examine a prisoner as soon as practicable after the prisoner’s admission to prison and ascertain and record the prisoner’s state of health and any other circumstance connected with the prisoner’s health, as the medical officer considers necessary;
- (c) maintain a record of the medical condition and the course of treatment prescribed in respect of each prisoner under the medical officer’s care;
- (d) make such returns and reports to the chief executive officer as the chief executive officer may from time to time direct;

- 5
- (e) make records referred to in paragraphs (b) and (c) relating to a prisoner available, upon request, to the chief executive officer;
- (f) on the request of the chief executive officer, give close medical supervision to a prisoner in separate confinement;
- (g) on the request of the chief executive officer, examine and treat a prisoner who requires medical care and treatment; and
- 10 (h) on the request of the chief executive officer or a superintendent, examine a prisoner.
- ”.

10. Section 40 repealed

Section 40 is repealed.

15 **11. Section 41 amended**

Section 41(3) is amended by inserting after “may” —

“

, subject to section 49B of this Act and to section 6(2) of the *Weapons Act 1998*,

20

”.

12. Section 42 amended

- (1) Section 42(1)(b) is amended by deleting “the prison medical officer or the” and inserting instead —

“ a ”.

- 25 (2) Section 42(2) is amended by deleting “the prison medical officer, or the” and inserting instead —

“ a ”.

13. Section 45 amended

Section 45 is amended as follows:

- 5 (a) in paragraph (c) by deleting “the prison medical officer or the medical officer, as the case may be,” and inserting instead —
“ a medical officer ”;
- 10 (b) in paragraph (d) by deleting “the prison medical officer or the medical officer, as the case may be,” and inserting instead —
“ a medical officer ”;
- (c) by deleting “the prison medical officer or”.

14. Section 46 amended

Section 46 is amended by deleting “the prison medical officer, the medical officer,” and inserting instead —

15 “ a medical officer ”.

15. Section 49 amended

Section 49(5) is amended by inserting after “and,” —

20 “
subject to section 49B of this Act and to section 6(2) of the *Weapons Act 1998*,
”.

16. **Section 49B inserted**

After section 49A the following section is inserted —

“

5 **49B. Possession of firearms, prohibited drugs etc. by
prison officers**

(1) A prison officer who comes into possession of property
under section 41, 49 or 49A does not commit —

10 (a) an offence under the *Firearms Act 1973* in
relation to possession of a firearm, ammunition
or a silencer or contrivance of a similar nature;
or

(b) an offence under the *Misuse of Drugs Act 1981*
in relation to the possession of a prohibited
drug, prohibited plant or utensil,

15 if the prison officer possesses the property for a reason
set out in subsection (2).

(2) A prison officer may possess the property —

20 (a) so as to deliver it into the custody of a member
of the Police Force or an employee of the
Police Service; or

(b) in the case of a firearm, if the prison officer is
authorized under this Act to be in possession of
the firearm for the purposes of section 47.

”.

17. Section 54 amended

After section 54(1) the following subsection is inserted —

“

- 5 (1a) A person is not to be appointed as a prison visitor for a prison where prison services are being provided under a contract if —
- 10 (a) the person has any financial interest in the contract; or
 - (b) the person is, or to any extent controls, manages or owns, the contractor or a subcontractor under the contract.
- ”

18. Transitional

- 15 (1) A person who, immediately before the commencement of this Act, was a prison medical officer as defined in the *Prisons Act 1981* is, on and after the commencement of this Act, to be taken to be —
- 20 (a) a medical officer referred to in section 6(3) of the *Prisons Act 1981* as amended by this Act; and
 - (b) appointed on the same terms and conditions, including as to remuneration, as those which applied to the person immediately before the commencement of this Act.
- 25 (2) A person who, immediately before the commencement of this Act, was a medical officer as defined in the *Prisons Act 1981* is, on and after the commencement of this Act, to be taken to be —
- (a) a medical officer referred to in section 6(4) of the *Prisons Act 1981* as amended by this Act; and

- (b) appointed or engaged (as is relevant to the case) on the same terms and conditions, including as to remuneration, as those which applied to the person immediately before the commencement of this Act.

5 **19. Miscellaneous amendments**

Amendments are made as set out in Schedule 1.

Schedule 1 — Miscellaneous amendments

[s. 19]

1. Anti-Corruption Commission Act 1988 amended

5 (1) Section 3(1) is amended in the definitions of “contractor” and “subcontractor” in each case by inserting after “1998” —

“ or the *Prisons Act 1981*, as is relevant to the case ”.

(2) Section 14(7)(b) is amended by inserting after “1998” —

“

10 or the chief executive officer as defined in the *Prisons Act 1981*, as is relevant to the case

”.

2. The Criminal Code amended

Section 1(1) is amended in the definition of “public officer” after paragraph (ca) by inserting the following paragraph —

15 “

(cb) a person who holds a permit to do high-level security work as defined in the *Prisons Act 1981*;

”.

20 **3. Freedom of Information Act 1992 amended**

(1) Section 63(3)(aa) is amended as follows:

(a) by inserting after “1998” —

“ or the *Prisons Act 1981* ”;

(b) by inserting after “committed” —

25 “

, as is relevant to the case ”.

- (2) Schedule 2 is amended in the Glossary in the definitions of “contractor” and “subcontractor” in each case by inserting after “1998” —

“ or the *Prisons Act 1981*, as is relevant to the case ”.

5 **4. *Parliamentary Commissioner Act 1971* amended**

- (1) Section 4 is amended in the definitions of “contractor” and “subcontractor” in each case by inserting after “1998” —

“ or the *Prisons Act 1981*, as is relevant to the case ”.

- 10 (2) Section 4 is amended in paragraph (b) of the definition of “responsible Minister” as follows:

- (a) by inserting after “1998” —

“ or the *Prisons Act 1981* ”;

- (b) by inserting after “committed” —

“ , as is relevant to the case ”.

- 15 (3) Section 19(7)(b) is amended as follows:

- (a) by inserting after “1998” —

“ or the *Prisons Act 1981* ”;

- (b) by inserting after “committed” —

“ , as is relevant to the case ”.

5. *Spent Convictions Act 1988* amended

Schedule 3 is amended by deleting item 5 in the Table to clause 1 and inserting the following item instead —

“

5. A person —
- | | | |
|-----|--|--|
| (a) | who is employed, or who is being considered for employment, as a prison officer under the <i>Prisons Act 1981</i> ; or | Section 18,
19, 20, 22
and
Division 4 |
| (b) | who holds, or who is applying to be issued with, a permit to do high-level security work as defined in that Act. | |

5

”.

