

Queensland



# **CORRECTIVE SERVICES ACT 1988**

**Reprinted as in force on 12 September 1997  
(includes amendments up to Act No. 46 of 1997)**

**Reprint No. 2D**

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# Information about this reprint

This Act is reprinted as at 12 September 1997. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

# Queensland



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# CORRECTIVE SERVICES ACT 1988

[as amended by all amendments that commenced on or before 12 September 1997]

## **An Act to provide for and in respect of corrective services, the release of prisoners on parole and for related purposes**

### **PART 1—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Corrective Services Act 1988*.

#### **Savings and transitional—general**

- 5.(1) On the appointed day<sup>1</sup> a person who immediately before that day—
  - (a) held the office of prison officer under the *Prisons Act 1958* shall be deemed to be appointed to the office of custodial correctional officer under the *Corrective Services (Administration) Act 1988*;
  - (b) held the office of probation officer or parole officer under the *Offenders Probation and Parole Act 1980* shall be deemed to be appointed to the office of community correctional officer under the *Corrective Services (Administration) Act 1988*;
  - (c) was an honorary probation officer or an honorary parole officer under the *Offenders Probation and Parole Act 1980* shall be deemed to be appointed as a voluntary community correctional officer under this Act;
  - (d) was a supervisor under the *Offenders Probation and Parole Act*

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<sup>1</sup> The appointed day is 15 December 1988 (see *Corrective Services (Administration) Act 1988* s 6, def “appointed day”).

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1980 shall be deemed to be appointed as a supervisor under this Act;

- (e) held the office of medical officer to a prison under the *Prisons Act 1958* shall be deemed to be appointed as a medical officer to that prison under this Act;
- (f) was authorised under the *Prisons Act 1958* to be a chaplain to a prison shall be deemed to be appointed as a chaplain to that prison under this Act;
- (g) was a prisoner within the meaning of the *Prisons Act 1958* shall be deemed to be a prisoner within the meaning of section 10.

(2) Every instrument, order, direction, approval, cancellation, suspension, determination, recommendation or other act or authority, made, issued, given, granted, continued in force or done under the *Prisons Act 1958* or the *Offenders Probation and Parole Act 1980* and in force immediately before the appointed day shall continue in force as if it were made, issued, given, granted or done under this Act until it expires by effluxion of time or is discharged, revoked, cancelled or suspended under this Act and a reference therein to a probation officer or a parole officer shall be taken to refer to a community correctional officer.

(2A) Subsection (2) does not apply to or in respect of a fine option order made under the *Offenders Probation and Parole Act 1980*.

(3) A probation officer or parole officer assigned pursuant to the *Offenders Probation and Parole Act 1980* in respect of a probation order, community service order or parole order continued in force under subsection (2) who, on the appointed day, becomes a community correctional officer or a voluntary community correctional officer shall be deemed to be the community correctional officer assigned in respect of the order until another community correctional officer is so assigned.

(4) For the purpose of applying the provisions of this Act to and in respect of a probation order continued in force under subsection (2) and—

- (a) made under the *Offenders Probation and Parole Act 1980*, section 17(1)(a), that order shall be deemed to have been made under section 197(1)(a);
- (b) made under the *Offenders Probation and Parole Act 1980*,

section 17(1)(b), that order shall be deemed to have been made under section 197(1)(b).

### **Savings and transitional—parole**

**6.(1)** On and from the appointed day every parole order and parole certificate continued in force under section 5(2) shall, for the purposes of applying the provisions of this Act to or in respect of that order or certificate or to or in respect of the prisoner to whom that order or certificate relates, be deemed to have been validly made or issued by the Queensland Community Corrections Board under this Act.

**(4)** The person who immediately before the appointed day was the secretary to the parole board constituted under the *Offenders Probation and Parole Act 1980* shall on that day be deemed to be appointed secretary to the Queensland Community Corrections Board pursuant to this Act.

**(5)** All courts and persons acting judicially shall take judicial notice of the signature of every person who was a member of or secretary to the parole board constituted under the *Offenders Probation and Parole Act 1980* affixed to a document or other writing under the authority of that Act or any other Act and shall presume until the contrary is proved that every such signature has been lawfully and properly affixed.

**(6)** A certificate signed by the secretary to the Queensland Community Corrections Board purporting to record any determination of the parole board referred to in subsection (5) shall be evidence and in the absence of evidence to the contrary conclusive evidence of the making of that determination by that board.

### **References to hard labour**

**9.** On and from the appointed day—

- (a) where any Act or law providing for imprisonment uses the expression ‘with hard labour’ or an expression to that effect or the expression ‘without hard labour’ or an expression to that effect—the expression shall be disregarded;
- (b) where any warrant or other order, whether made before or after the appointed day, contains a requirement that a person be

imprisoned with hard labour or without hard labour—the requirement shall be disregarded.

## Definitions

10. In this Act—

“**appointed day**” means 15 December 1988.

“**breach of discipline**” means a breach of discipline prescribed by regulation.

“**chaplain**” means a chaplain appointed under this Act to a prison or a community corrections centre.

“**child**” means a person under the age or apparent age of 17 years.

“**commission**” means the Queensland Corrective Services Commission.<sup>2</sup>

“**commissioner**” means a commissioner of the commission.

“**commission’s rules**” means the rules as amended and in force for the time being made under the *Corrective Services (Administration) Act 1988*, section 20.

“**community correctional officer**” see *Corrective Services (Administration) Act 1988*, section 7(1).<sup>3</sup>

“**community corrections centre**” means any premises or place declared as a community corrections centre under this Act.

“**community service**” means any activity declared by the commission to be community service for the purposes of this Act.

“**community service order**” means a community service order within the meaning of the *Penalties and Sentences Act 1992*.

“**correctional officer**” means a community correctional officer or a custodial correctional officer.

“**corrective services**” means—

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<sup>2</sup> See *Corrective Services (Administration) Act 1988*, section 7 for meaning of reference to Queensland Corrective Services Commission.

<sup>3</sup> *Corrective Services (Administration) Act 1988*, section 7 (References to various officers and the commission)

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- (a) prisons and services related to prisons;
- (b) programs for prisoners who are detained in a prison;
- (c) services related to prisoners who are released on parole and persons subject to probation orders, community service orders or fine option orders;
- (d) community corrections centres and services related to community corrections centres;
- (e) programs for prisoners who are living or working outside of a prison and for persons subject to probation orders, community service orders or fine option orders;
- (f) services related to and programs for such persons or classes of persons as are from time to time prescribed by order in council.

**“custodial correctional officer”** see *Corrective Services (Administration) Act 1988*, section 7(2).

**“director-general”** means the Director-General of Corrective Services appointed under the *Corrective Services (Administration) Act 1988*.

**“discharged”**, used in respect of a prisoner, means discharged from lawful custody pursuant to this Act or any lawful order other than a parole order.

**“employee”** of the commission, see *Corrective Services (Administration) Act 1988*, section 7(4).

**“fine option order”** means a fine option order within the meaning of the *Penalties and Sentences Act 1992*.

**“general manager”** of a prison, see *Corrective Services (Administration) Act 1988*, section 7(3).

**“inspector”** means an inspector appointed under section 27.

**“leave of absence”** means leave of absence granted to a prisoner under section 61.

**“medical officer”** means a medical officer appointed under this Act to a prison.

**“offence”** includes—

- (a) an indictable offence;

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(b) an offence punishable on summary conviction.

“**officer**” of the commission, see *Corrective Services (Administration) Act 1988*, section 7(4).

“**official visitor**” means an official visitor appointed under this Act to a prison or a community corrections centre.

“**parole order**” means an order made under part 4 directing that a prisoner be released on parole.

“**parole period**” means the period during which a prisoner is released on parole under the supervision of a community correctional officer.

“**police gaol**” means any police lockup or watch-house.

“**prison**” means any premises or place declared or deemed to have been declared as a prison pursuant to this Act.

“**prisoner**”, except where used in the context of a person released on parole, means a person in the custody of the commission.

“**probation order**” means a probation order within the meaning of the *Penalties and Sentences Act 1992*.

“**Queensland Community Corrections Board**” means the Queensland Community Corrections Board constituted under part 3.

“**regional community corrections board**” means a regional community corrections board established under part 3.

“**rule**” means a rule made by the commission pursuant to the *Corrective Services (Administration) Act 1988*.

“**serious violent offence**” see the *Penalties and Sentences Act 1992*, section 4.

“**supervisor**” means a supervisor appointed under this Act.

“**term of imprisonment**” means—

- (a) the term of a single sentence; or
- (b) the unbroken period of imprisonment a person is liable to serve by virtue of a number of sentences, whether ordered to be served concurrently or cumulatively and whether imposed at the same time or at different times;

and for the purposes of this definition a person is deemed to be serving



a term of imprisonment by virtue of a sentence where the person is undergoing imprisonment in default of payment of a fine or for failure to comply with any order of a court.

## **PART 2—PRISONS, COMMUNITY CORRECTIONS CENTRES AND PRISONERS**

### *Division 1—Establishment of prisons and community corrections centres*

#### **Establishment of prisons**

**11.(1)** The Governor in Council may by order in council—

- (a) declare any premises or place to be a prison;
- (b) declare any premises or place to be part of a prison, whether contiguous to the prison or not;
- (c) declare any premises or place to no longer be a prison or, as the case may be, part of a prison;
- (d) assign a name to any prison or alter the name of any prison;
- (e) define the limits of any prison in such manner as the Governor in Council thinks fit.

**(2)** In subsection (1)—

“**any premises**” includes part of any premises.

#### **Establishment of community corrections centres**

**12.** The commission may (by notification published in the gazette) with the approval of the Minister—

- (a) declare any premises or place to be or to no longer be a community corrections centre;
- (b) assign a name to any community corrections centre or alter the name of any community corrections centre;

- (c) define the limits of any community corrections centre in such manner as it thinks fit.

## *Division 2—Management of prisons and community corrections centres*

### *Subdivision 1—Responsibility for prisons, community corrections centres and prisoners*

#### **Functions of commission concerning prisons and community corrections centres**

**13.(1)** Subject to this Act and to any direction of the Minister, the commission shall be responsible for the security and management of prisons and community corrections centres and the safe custody and welfare of prisoners.

**(2)** The commission shall provide such medical services as are necessary for the welfare of prisoners.

**(3)** The commission shall keep a register (the “**prisoner register**”) that shall be in the prescribed form and shall contain such details in respect of each prisoner as are prescribed.

#### **General manager responsible for prison**

**14.** The general manager of a prison shall, subject to the commission, be responsible for the security and management of the prison and the safe custody and welfare of prisoners detained in or who, for the time being, may be detained in the prison.

#### **Delegation by general manager**

**15.(1)** Subject to any direction by the commission, the general manager of a prison may by instrument, either generally or otherwise as provided by the instrument, delegate to any officer of the commission all or any of the powers, authorities, functions and duties conferred or imposed on the general manager by or under this Act or any other Act except this power of delegation.

(2) The general manager of a prison may make as many delegations of the same power, authority, function or duty and to as many persons as the general manager thinks fit.

(3) A delegation under subsection (1) may be to—

- (a) a specified person;
- (b) the person for the time being holding a specified office in which case each person who holds or discharges the duties of that office shall, while holding that office or discharging those duties, be the delegate.

(4) A delegation may be made subject to such terms or limitations as the general manager thinks fit including a requirement that the delegate shall report to the general manager on the exercise or discharge of the delegated power, authority, function or duty.

(5) A power, authority, function or duty delegated under subsection (1), if exercised or discharged by the delegate, shall be exercised or discharged in accordance with the instrument of delegation.

(6) A delegation does not prevent or prejudice—

- (a) the exercise of a delegated power or authority or the discharge of a delegated function or duty by the general manager; or
- (b) the exercise by the general manager of supervision of the carrying out by the delegate of the terms of the delegation to the extent of countermanding the delegate's exercise of a power or authority or discharge of a function or duty under the delegation.

(7) Subject to any direction of the commission, a delegation is revocable at the will of the general manager.

### **General manager's rules**

**17.(1)** The general manager of a prison may make rules (the “**general manager's rules**”), not inconsistent with this Act or the *Corrective Services (Administration) Act 1988* (or regulations made under either Act) or the commission's rules, in respect of the management and security of the prison and for the safe custody and welfare of prisoners detained in or who, for the time being, may be detained in the prison.

(2) The general manager shall cause the general manager's rules to be brought to the notice of persons to whom they apply.

(3) Rules made under this section may differ according to the persons or classes of persons to whom they are expressed to apply.

### **Certain persons to have powers of general manager**

**18.(1)** The chairperson of the commission and any person authorised by the commission in that behalf shall have all the powers conferred by or under this Act upon a general manager.

(2) A person who pursuant to subsection (1) has the powers of a general manager may, in respect of any order, decision or rule made by a general manager—

(a) rescind or vary it; or

(b) make any new order, decision or rule that the general manager could have made;

and the order, decision or rule shall be deemed to have been rescinded or varied by, and any new order, decision or rule shall be deemed to have been made by, the general manager.

(3) A person who pursuant to subsection (1) has the powers of a general manager shall not rescind or vary an order made pursuant to section 109(1) by the general manager of a prison that the person submit to being searched.

### **Medical officer**

**19.(1)** The commission shall from time to time appoint at least 1 medical officer in respect of each prison.

(2) A person shall not be appointed as a medical officer unless the person is a legally qualified medical practitioner.

(3) A medical officer shall have the functions and powers prescribed by or under this Act or the *Corrective Services (Administration) Act 1988*.

(4) A medical officer who is not employed within the public service of the State shall be entitled to such remuneration and allowances as are approved by the commission.

(5) A medical officer shall be entitled to such expenses as are approved by the commission.

### *Subdivision 2—Volunteers and chaplains*

#### **Volunteers**

**20.(1)** The commission may by instrument authorise a person (a “volunteer”) to perform unpaid work for the welfare of prisoners.

(2) A volunteer shall comply with any condition specified in the instrument and with any direction given by an officer of the commission.

(3) A volunteer shall receive such training and supervision as the commission thinks fit.

(4) The commission may pay a volunteer such expenses, from moneys appropriated for the purposes of this Act, as it thinks fit.

(5) If a person receives any personal injury while performing or as a result of performing, as a volunteer, work that the person is authorised to perform, the person may make written application to the commission for compensation.

**(5A)** For the purpose of subsection (5), a person is deemed to be performing work—

- (a) while the person is attending a place for the purpose of performing work; or
- (b) while the person is travelling to a place for the purpose of performing work; or
- (c) while the person is travelling from a place at which the person has attended for the purpose of performing work.

(6) Upon receiving an application, the commission shall arrange for the applicant to be examined by a medical practitioner nominated by it.

(7) An applicant who fails to submit to any reasonable examination or test to be carried out by or on the recommendation of the medical practitioner shall not be eligible for compensation.

(8) After the commission has received the report of the medical

practitioner it shall make its recommendations to the minister in respect of compensation.

(9) The Governor in Council may, from moneys appropriated for the purposes of this Act, award compensation of such amount as the Governor in Council thinks fit to an applicant.

### **Chaplains**

21.(1) The commission may appoint any person, nominated by a religious body or denomination as its representative, to be a chaplain to a prison or community corrections centre.

(2) A chaplain shall, in respect of the prison or community corrections centre to which the chaplain is appointed, have such rights and duties as are prescribed by this Act or the commission's rules.

(3) A chaplain to a prison or community corrections centre shall comply with any direction given by a correctional officer for the management, security or good order of the prison or community corrections centre.

### *Division 3—Official visitors*

#### **Appointment of official visitors**

22.(1) The commission shall, in respect of each prison and each community corrections centre, appoint at least 2 official visitors, 1 of whom shall be a barrister or a solicitor.

(2) An officer of the commission or of the public service shall not be eligible for appointment as an official visitor.

(3) A person appointed as an official visitor shall hold office for a period of 3 years unless sooner dismissed from office by the commission.

(4) A person who has held office as an official visitor shall be eligible for further appointment to that office.

(5) An official visitor shall be entitled to such remuneration, allowances and expenses as are approved by the commission.

**Duties of official visitor**

**23.(1)** A prison or community corrections centre shall be visited at least twice a month by an official visitor, which visits may be made by the same official visitor or by different official visitors appointed to that prison or community corrections centre.

**(2)** Subject to subsection (3), an official visitor shall hear and investigate—

- (a) any complaint made by a prisoner; and
- (b) any complaint made by a person who is subject to a parole order, a probation order, a community service order or a fine option order.

**(3)** An official visitor shall not investigate a complaint—

- (a) that the official visitor believes to be frivolous or vexatious; or
- (b) if the investigation can be more conveniently conducted by another official visitor who agrees to conduct it; or
- (c) if the matter of complaint is not related to any function of the commission.

**(4)** An official visitor shall provide the commission with a report of any investigations conducted by the official visitor.

**(5)** An official visitor shall perform such other duties as are prescribed or the official visitor is directed by the commission to perform.

**Powers of official visitor**

**24.** An official visitor—

- (a) shall at any time have access to the prison or community corrections centre to which the official visitor is appointed;
- (b) may at any time require a prisoner or an officer or employee of the commission to provide any information and answer any question relevant to any investigation being conducted by the official visitor;
- (c) shall have access to and may examine any document or stored information kept under or for the purposes of this Act or the

*Corrective Services (Administration) Act 1988* and require that the official visitor be provided with a copy of any document or with any part of any stored information in a manner specified by the official visitor;

- (d) shall have such other powers as are prescribed by regulation.

### **Privacy of communication with official visitor**

**25.(1)** An official visitor shall conduct any interview—

- (a) with a prisoner (whether or not the prisoner is the complainant);  
or  
(b) with any person who is subject to a parole order, a probation order, a community service order or a fine option order;

out of the hearing of any officer or employee of the commission.

**(2)** An officer or employee of the commission shall not open or read any correspondence from a person referred to in subsection (1)(a) or (b) to an official visitor or from an official visitor to such a person without the written consent of that person.

**(3)** If the general manager of a prison suspects that an envelope or a package alleged by a prisoner to contain correspondence from the prisoner to an official visitor contains any other material, the general manager may require the prisoner to open the envelope or package.

**(4)** A document contained in an envelope or package required pursuant to subsection (3) to be opened—

- (a) shall not, without the written consent of the prisoner, be read by an officer or employee of the commission; and  
(b) shall, as soon as is practicable, be delivered to an official visitor.

### **Directions to official visitor re security**

**26.(1)** The commission may give to an official visitor such directions as it considers necessary for the security of any prison, community corrections centre or prisoner.

- (2)** The general manager of a prison may give to an official visitor who is



visiting the prison such directions as the general manager considers necessary for the security of the prison.

### *Division 4—Inspectors*

#### **Appointment of inspectors**

**27.(1)** The commission may by instrument appoint any person, whether or not the person is an officer of the commission or is employed in the public service of the State, as an inspector for the purpose of advising upon or inquiring into any matter relating to corrective services.

**(2)** The instrument of appointment of an inspector shall specify—

- (a) the term of appointment;
- (b) the purpose for which the person is appointed;
- (c) any powers conferred upon the inspector;
- (d) such other matters as are determined by the commission.

**(3)** An inspector shall give the commission the inspector's advice in writing or, as the case may be, a written report containing the results of the inspector's inquiry.

#### **Remuneration, allowances and expenses**

**28.(1)** An inspector, who is not an officer of the commission or of the public service, shall be entitled to such remuneration and allowances as are approved by the commission.

**(2)** An inspector shall be entitled to such expenses as are approved by the commission.

#### **Powers of inspector**

**29.(1)** An inspector—

- (a) shall at any time have access to any prison or community corrections centre;
- (b) may at any time require a prisoner or an officer or employee of

the commission to provide any information or answer any question relevant to any inquiry being conducted by the inspector;

- (c) shall have access to and may examine any document or stored information kept under or for the purposes of this Act or the *Corrective Services (Administration) Act 1988* and require that the inspector be provided with a copy of any document or with any part of any stored information in a manner specified by the inspector;
- (d) shall have such of the powers of an officer or employee of the commission, including a community correctional officer, custodial correctional officer and general manager of a prison as are conferred upon the inspector by the commission.

(2) The Governor in Council may by order in council declare that an inspector shall have such of the powers, authorities, rights, privileges, protection and jurisdiction of a commission of inquiry under the *Commissions of Inquiry Act 1950* as are specified in the order in council.

### **Privacy of communication with inspector**

**30.** An inspector may, as the inspector thinks fit, conduct any interview with a prisoner or a person who is subject to a parole order, a probation order, a community service order or a fine option order out of the hearing of any officer or employee of the commission.

### **Directions to inspector re security**

**31.(1)** The commission may give to an inspector such directions as it considers necessary for the security of any prison, community corrections centre or prisoner.

(2) The general manager of a prison may give to an inspector who is visiting the prison such directions as the general manager considers necessary for the security of the prison.

***Division 5—Prisoners******Subdivision 1—Admission and accommodation of prisoners*****Where persons to be detained in custody**

**32.(1)** Subject to this Act, the Criminal Code, the *Juvenile Justice Act 1992* and the *Mental Health Act 1974*, a person sentenced to a term of imprisonment or required by law to be detained in custody for a period shall be detained for the term or period in a prison.

(2) Where the term of imprisonment or period of detention does not exceed 31 days, the person may be detained for that term or period in a police gaol.

(3) A person whose term of imprisonment or period of detention exceeds 31 days may be detained in a police gaol until the person can be conveniently conveyed to a prison.

(4) A person, upon being admitted to a police gaol pursuant to subsection (2) or (3), is deemed to be in the custody of the commissioner of the police service notwithstanding the provisions of any warrant or other authority committing the person into the custody of another person.

(5) A person who, pursuant to subsection (4), is deemed to be in the custody of the commissioner of the police service remains in that custody until discharged (except for any period for which the person is by law thereafter in the custody of another person) notwithstanding that the person is at any time lawfully outside of a police gaol.

**Persons in custody of commission**

**33.(1)** A person, upon being admitted to a prison for detention there, is deemed to be in the custody of the commission notwithstanding the provisions of any warrant or other authority committing the person into the custody of another person.

(2) A person who, pursuant to subsection (1), is deemed to be in the custody of the commission remains in that custody until discharged (except for any period for which the person is by law thereafter in the custody of another person) notwithstanding that the person is at any time not being

detained in prison by reason of being transferred, attending legal proceedings or serving a period of home detention or for any other reason authorised by this Act.

(3) Notwithstanding the provisions of any warrant or other authority committing a person to a specified prison or to a police gaol, the person may be taken to and detained in a prison specified by the commission.

(4) Where a person sentenced to a term of imprisonment or required by law to be detained in custody for a period is, while being taken to a prison for detention there, under the control of a correctional officer, the person is deemed to be in the custody of the commission notwithstanding the provisions of any warrant or other authority committing the person into the custody of a specified person or a specified class of person.

### **Commission to obey writ etc. directed to keeper of gaol**

34. Where any warrant or other authority for the commitment of a person to prison or for the production of a prisoner is properly directed to the keeper or officer in charge of the prison, the warrant or other authority shall be deemed to be directed to and shall, subject to this subdivision, be obeyed by the commission.

### **Authority for admission to prison**

35.(1) A person shall not be admitted to and detained in a prison unless the officer of the commission in charge of the reception of prisoners at the prison is given—

- (a) a warrant or other written authority for the detention of the person in custody; or
- (b) a list or calendar made out pursuant to the *Criminal Practice Rules 1900*, order 8 rule 3 containing the name of the person and particulars of the judgment pronounced upon the person; or
- (c) a document, in a form prescribed by rule, containing the relevant details of an existing document referred to in paragraph (a) or (b).

(2) The taking of a person to or the detention of a person in a prison shall not be unlawful by reason of the fact that the person was committed to some other place.

**Prisoner to be informed of entitlements and duties**

**36.(1)** Upon being admitted to prison, a prisoner shall be informed of the prisoner's entitlements and duties pursuant to this Act or the commission's rules.

(2) The general manager of a prison shall, upon request, make available to a prisoner a copy of this Act and, with the approval of the commission, a copy of any other Act.

(3) The general manager of a prison shall take such steps as are reasonable to make known to every prisoner who is illiterate or who does not understand English such of the provisions of this Act, the commission's rules and the general manager's rules as are relevant to the entitlements or duties of prisoners.

**Accommodation**

**37.** As far as is practicable there shall be provided in every prison separate accommodation for each prisoner to a standard approved by the commission.

**Prisoner under 18 years of age**

**38.** Subject to any direction given by the commission in a particular case, a prisoner who is under the age of 18 years shall at all times be kept apart from any prisoner who is of or above the age of 18 years.

**Special treatment**

**39.(1)** In this section—

“**special treatment**” means the segregation or partial segregation of a prisoner from other prisoners under conditions prescribed by rule.

(2) The general manager of a prison may by instrument order that a prisoner receive special treatment—

- (a) for the security or good order of the prison; or
- (b) for the safety of the prisoner.

(3) An instrument whereby a prisoner is ordered to receive special

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treatment shall specify such of the conditions referred to in subsection (1) as the general manager determines shall apply to the prisoner's treatment.

(4) A prisoner shall not, in respect of any period for which the prisoner receives special treatment, forfeit any privileges other than those privileges that the prisoner can not practicably receive while receiving special treatment.

(5) A general manager shall not order a prisoner to receive a period of special treatment exceeding 7 days without the approval of the commission.

(6) A prisoner ordered to receive a period of special treatment exceeding 3 days may require the general manager to refer the order to an official visitor for review and the general manager and the official visitor shall comply with the requirement as soon as is practicable.

(7) Where a prisoner is ordered to receive a period of special treatment exceeding 1 month, the official visitor shall review the order as near as is practicable to the expiration of the first month and thereafter at intervals not exceeding 1 month in any case, until the period expires.

(8) An official visitor may, for the purposes of the official visitor's review of an order, exercise any of the powers referred to in section 24 and shall after completing the review—

- (a) recommend to the commission that the order be confirmed, varied or set aside; and
- (b) where the official visitor recommends that the order be varied by reducing the period of special treatment or that the order be set aside—make such recommendation as the official visitor thinks fit concerning any privileges forfeited by the prisoner while receiving special treatment.

(9) The commission, upon receiving the recommendation of the official visitor, may affirm or vary the order of the general manager or may rescind the general manager's order and substitute its own decision for it.

(10) A medical officer shall examine a prisoner—

- (a) as soon as is practicable after the prisoner commences a period of special treatment; and
- (b) if the period allows—within 7 days after the first examination and thereafter at intervals not exceeding 7 days in any case, until the

period expires; and

- (c) as soon as is practicable after the period of special treatment expires.

### **Child may be accommodated in a prison or community corrections centre**

**40.** The commission may authorise the accommodation in a prison or a community corrections centre of the child of a prisoner subject to such conditions as it thinks fit.

### **Registration of birth**

**41.(1)** In this section—

**“document”** means a certificate or other document made or issued pursuant to the *Registration of Births, Deaths and Marriages Act 1962* in respect of the birth of a child or an alteration or addition to the name of a child.

**(2)** Where a document is made or issued in respect of a child whose mother or father is, or was when the child was born, detained in a prison or otherwise detained in custody—

- (a) the document shall not state that fact or contain any information from which that fact can reasonably be inferred; and
- (b) an address that is required by the *Registration of Births, Deaths and Marriages Act 1962* to be shown in the document and that, if shown, would contravene paragraph (a) shall be shown as the city or town in which or nearest to which the address is situated.

### **Dangerously ill prisoner**

**42.** If a prisoner appears to the medical officer or to the general manager of the prison to be dangerously ill or seriously injured, the general manager shall notify—

- (a) the prisoner’s next of kin; or
- (b) a person nominated by the prisoner, where the prisoner has no

next of kin or does not wish his or her next of kin to be notified; and the prisoner's chaplain.

### **Death of prisoner**

**43.(1)** If a prisoner dies, the commission shall, as soon as is practicable, notify—

- (a) a medical officer appointed to the prison in which the prisoner died or was last detained; and
- (b) the police officer in charge of the police station nearest to the place where the prisoner died; and
- (c) a coroner; and
- (d) the prisoner's next of kin or any other person the prisoner wished to be notified in the event of the prisoner's death; and
- (e) the prisoner's chaplain.

**(2)** If a coroner's order for the burial or a coroner's certificate for the cremation of the body of a prisoner is produced to the general manager of the prison, together with a written application for the release of the body, the general manager may authorise the release of the body to a relative or friend of the prisoner or to any association of persons publicly recognised as having for an object the welfare of prisoners or former prisoners.

**(3)** If the body of a prisoner is not claimed pursuant to subsection (2) within 3 days after the prisoner's death and there has been produced to the general manager a coroner's order for the burial or a coroner's certificate for the cremation of the body, the general manager shall notify the chief executive of the department responsible for the administration of the *Burials Assistance Act 1965* who must arrange for the disposal of the body as provided under that Act.

**(4)** A person who causes the body of a prisoner to be buried or cremated shall give such details to the commission in respect of the burial or cremation as the commission may require and the commission shall maintain records of those details in a form it considers suitable.



### ***Subdivision 2—Control and management of prisoners***

#### **Control of prisoners**

**44.(1)** A correctional officer may give to a prisoner any order that the correctional officer believes on reasonable grounds to be necessary for the security or good order of a prison or a community corrections centre, for the welfare or safe custody of the prisoner or other prisoners or to ensure that the prisoner or any other prisoner does not commit an offence against this Act or any other Act or a breach of discipline.

**(2)** A correctional officer may require a prisoner to provide any information or answer any question relevant to any duty being performed by the correctional officer.

**(3)** A correctional officer may use such force as is reasonable to compel a prisoner to obey an order given under subsection (1) by the correctional officer or by another correctional officer or to restrain a prisoner who is attempting or preparing to commit or is committing an offence against this Act or any other Act or a breach of discipline.

#### **Certain persons to have powers of custodial correctional officer**

**45.(1)** The director-general and a general manager shall have all the powers conferred by or under this Act upon a custodial correctional officer.

**(2)** The commission may by instrument authorise any person to exercise such of the powers conferred by or under this Act upon a custodial correctional officer as are specified in the instrument.

**(3)** Any power exercised pursuant to subsection (1) or pursuant to an instrument made under subsection (2) shall for the purposes of this Act and any other Act be deemed to have been exercised by a custodial correctional officer.

#### **Identification procedures**

**46.(1)** An officer of the commission may, for the purposes of identifying a prisoner and compiling records under or for the purposes of this Act, photograph the prisoner and take the prisoner's fingerprints, palm prints, footprints, toe prints, eye prints and voiceprints or any of them.

(2) Where a person is found not guilty of an offence (other than upon the grounds of unsoundness of mind) or proceedings for an offence are discontinued or dismissed (other than as a result of unsoundness of mind or mental illness), any photographs or prints taken pursuant to subsection (1) while the prisoner was detained for that offence shall be destroyed by the commission unless for any part of the period of detention for that offence the prisoner was also being detained in respect of another offence of which the prisoner has been convicted or in respect of which proceedings have not been discontinued or dismissed.

### **Search of prisoners**

47.(1) In this section, power to search a prisoner includes power to search anything in the possession of the prisoner.

(2) The commission may make rules prescribing the circumstances in which correctional officers must search prisoners.

(3) The general manager of a prison may order a custodial correctional officer to search a prisoner for any purpose.

(4) A correctional officer may, of the officer's own motion, search a prisoner if reasonable grounds exist for so doing.

(5) A correctional officer may, for the purpose of a search, order a prisoner to undress (completely or partially) but shall not touch the prisoner except for the purpose of enforcing compliance with the order or searching the prisoner's head hair.

(6) Where a correctional officer, pursuant to subsection (5), orders a prisoner to undress, the officer shall immediately report to the commission in writing the circumstances associated with the officer's giving the order and the commission shall make and keep such record of that fact as is prescribed.

(7) A prisoner shall not be ordered to undress in the presence or view of and shall not be searched by a person of the opposite sex unless that person is a medical officer or is acting in aid of and at the direction of a medical officer.

(8) A prisoner shall submit to any search authorised by this section to be carried out.

(9) A correctional officer may take possession of anything found by the officer during a search and shall, as soon as is practicable, deliver that thing to an officer authorised by the commission for the purposes of this subsection who may—

- (a) if the officer believes the prisoner from whom it was taken or another prisoner to be entitled to possession of the thing—return it to the prisoner or retain it until the prisoner is discharged or released on parole; or
- (b) if the officer believes any other person to be entitled to possession of the thing—return it to that person; or
- (c) retain the thing as evidence of the commission of an offence or a breach of discipline; or
- (d) make such other order in respect of the thing (including an order for the disposal or destruction of the thing) as the officer thinks fit.

(10) A determination made under subsection (9) for the disposal of property shall not affect the right of any person to recover the property, by action commenced within 6 months after the determination is made, from the person to whom it was delivered pursuant to the determination.

### **Body searches and samples**

**48.(1)** The general manager of a prison may authorise a medical officer, a registered nurse who is an officer of the commission or a legally qualified medical practitioner to search the person of a prisoner including the orifices of the prisoner's body if the general manager believes on reasonable grounds—

- (a) that the prisoner is in possession of anything that may threaten the security or good order of the prison or that may endanger or be used to endanger the prisoner or any other person; or
- (b) that the search may afford evidence of the commission of an offence by the prisoner during the prisoner's term of imprisonment or period of detention or the commission of a breach of discipline by the prisoner.

(2) The general manager of a prison may authorise a medical officer, a

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registered nurse who is an officer of the commission or a legally qualified medical practitioner to collect from the person of a prisoner, including the orifices of the prisoner's body, any substance or thing if—

- (a) collecting the substance or thing would be unlikely to cause bodily harm to the prisoner if the prisoner cooperates therewith; and
- (b) the general manager believes that the substance or thing may afford evidence such as is referred to in subsection (1)(b).

(3) The general manager may take possession of anything found during a search and shall deal with it in the manner provided in section 47(9)(a), (b), (c) or (d) and section 47(10) shall apply to any determination for the disposal of the thing.

(4) The general manager of a prison—

- (a) may order a prisoner to provide a sample of the prisoner's breath or the prisoner's urine;
- (b) may authorise a medical officer, a registered nurse who is an officer of the commission or a legally qualified medical practitioner to take samples of a prisoner's blood, saliva or hair;

if the general manager believes on reasonable grounds that the sample may afford evidence of the commission of an offence by the prisoner during the prisoner's term of imprisonment or period of detention or the commission of a breach of discipline by the prisoner.

(5) The general manager or the medical officer, nurse or medical practitioner may give directions to the prisoner concerning the manner in which the prisoner is required to provide any sample referred to in subsection (4).

(6) A prisoner shall submit to any search carried out or other act done pursuant to this section and shall comply with any order made or direction given pursuant to this section.

(7) A medical officer, nurse or medical practitioner authorised pursuant to this section to carry out a search or do any other act in respect of a prisoner, and any person acting in good faith in aid of and at the direction of the medical officer, nurse or medical practitioner may use such force as is reasonable for that purpose.

(8) The results of any test conducted with respect to any sample or thing taken or collected pursuant to this section from a prisoner shall be furnished to the prisoner as soon as is practicable after those results are available to the general manager or the commission.

### **Search may be completed**

49. If a search of a prisoner, authorised by or under section 47 or 48 to be carried out, has been commenced when the prisoner becomes entitled to be discharged or released on parole—

- (a) the search may be completed; and
- (b) if the search is authorised under section 48—the prisoner may be required to submit to any other act or to comply with any order or direction authorised by or under that section to be done or given;

as if the prisoner were not entitled to be discharged or released on parole.

### **Examinations and treatment by medical officer**

50.(1) In respect of the prison to which he or she is appointed a medical officer—

- (a) shall medically examine a prisoner as soon as is practicable after the prisoner's admission to prison;
- (b) shall medically examine and treat any prisoner who in the opinion of the medical officer requires medical attention;
- (c) shall medically examine a prisoner if required to do so by the commission or the general manager.

(2) For the purpose of any examination or treatment the medical officer may—

- (a) carry out any medical test;
- (b) take samples of a prisoner's blood and any other bodily substance;
- (c) order a prisoner to provide a sample of the prisoner's urine and any other bodily substance and give the prisoner directions concerning the manner in which the sample is to be provided;

- (d) perform any psychiatric or psychological examination or test or give any psychiatric or psychological treatment.

(3) Subsections (1) and (2) shall not be construed as requiring or authorising a medical officer to carry out any examination or give any treatment that the medical officer is not qualified to carry out or give.

(4) A medical officer may authorise a person to carry out any examination of or give any treatment to a prisoner if—

- (a) the medical officer is required or authorised under this section to carry out the examination or give the treatment or would, if qualified to carry out an examination or give treatment of the kind in question, be so required or authorised; and
- (b) the person is qualified to carry out the examination or give the treatment.

(5) In respect of the prison to which he or she is appointed a medical officer shall—

- (a) maintain a record of all examinations carried out and all treatment given by the medical officer or at the medical officer's direction;
- (b) report and make recommendations to the commission or, as the case may be, the general manager concerning the medical condition of a prisoner when required by the commission or the general manager to do so;
- (c) perform such other duties as the medical officer is required by the commission or the general manager to perform.

### **Prisoner to submit to medical examination etc.**

**51.(1)** A prisoner shall—

- (a) submit to any examination or other act required or authorised by or under section 50 to be carried out; and
- (b) submit to any treatment authorised by or under section 50 to be given; and
- (c) comply with an order made or direction given under section 50(2)(c).

(2) If a prisoner—

- (a) refuses or fails to submit to an examination authorised by or under section 50 to be carried out or to the doing of any other act, so authorised, for the purpose of the examination; or
- (b) refuses or fails to submit to any treatment or to any other act authorised by or under section 50 to be given or done and the medical officer believes the health of the prisoner or of other prisoners is likely to be endangered by the refusal or failure;

the medical officer, and any person acting in good faith in aid of and at the direction of the medical officer, may use such force as is reasonable to compel the prisoner to submit.

### **Private medical examination or treatment**

**52.(1)** A prisoner may, in a form approved by the commission or to that effect, apply to the commission for approval to be examined or treated by a medical practitioner or psychologist nominated by the prisoner.

**(2)** The commission shall grant an application if satisfied—

- (a) the application is not frivolous or vexatious; and
- (b) the prisoner is able to meet the costs of the examination or treatment; and
- (c) the medical practitioner or psychologist nominated by the prisoner is willing and available to carry out the examination or give the treatment and is qualified to do so.

**(3)** The prisoner shall meet the costs of any examination or treatment approved by the commission under this section.

### **Psychological assessment of prisoner**

**53.(1)** A prisoner shall submit to psychological assessment ordered by the commission to be performed for the purposes of—

- (a) classifying the prisoner for any purpose prescribed by regulation; or
- (b) determining whether to transfer the prisoner to another place; or
- (c) determining the suitability of the prisoner to participate in an

approved compulsory program within the meaning of section 59.

(2) The psychological assessment of a prisoner shall be performed by a psychologist within the meaning of the *Psychologists Act 1977*.

### ***Subdivision 3—Prison dogs***

#### **Prison dogs**

54. The commission may by instrument certify a dog as a prison dog for the purposes of this Act.

#### **Prison dog handlers**

55. The commission may by instrument certify a custodial correctional officer as a prison dog handler for the purposes of this Act.

#### **Prison dogs may accompany prison dog handler**

56. Notwithstanding any other Act or law—

- (a) a prison dog under the control of a prison dog handler may enter and be on any place that the prison dog handler may as a custodial correctional officer lawfully enter or be on;
- (b) the commission and a prison dog handler in charge of a prison dog shall not incur any liability by reason only that the prison dog entered or was on any place in accordance with paragraph (a).

#### **Application of local government local laws etc.**

57.(1) The provisions of any local law made by a local government do not apply—

- (a) to or in respect of a prison dog;
- (b) to a prison dog handler in respect of anything done by the handler in the execution of the handler's duty as a custodial correctional officer or a prison dog handler.



**Obstruction of prison dog constitutes obstruction of handler**

**58.(1)** A person who—

- (a) hinders or obstructs; or
- (b) aids, counsels or procures another to hinder or obstruct;

a prison dog working under the control of a prison dog handler performing the handler's duties as a custodial correctional officer is deemed to hinder or, as the case may be, obstruct the custodial correctional officer.

(2) The provisions of the *Animals Protection Act 1925*, section 4(3) do not apply in respect of a prison dog at any time when it is under the control of a prison dog handler.

*Subdivision 4—Prison programs***Approved programs**

**59.(1)** In this Act—

**“approved compulsory program”** means any work or other activity prescribed by rule as an approved compulsory program for the purposes of this Act, whether within or outside of prison.

**“approved program”** means an approved compulsory program or an approved voluntary program.

**“approved voluntary program”** means any work or other activity prescribed by rule as an approved voluntary program for the purposes of this Act, whether within or outside of prison.

(2) A prisoner may be ordered to participate in an approved compulsory program.

(3) A prisoner may participate in an approved voluntary program.

(4) A prisoner who participates in an approved program shall, subject to subsections (5) to (7), receive remuneration at a rate prescribed by rule.

(5) Where the commission is satisfied that a prisoner, while participating in an approved program, has not been diligent or of good conduct, it may order that the prisoner not receive all or any part of the remuneration to which the prisoner would otherwise be entitled pursuant to subsection (4).

(6) The commission may withhold from the remuneration to which a prisoner is entitled a portion determined by the commission for the purpose of resettling the prisoner who shall be given the sum withheld when discharged or released on parole.

(7) The commission may make deductions of such amounts as it may determine from the remuneration a prisoner would otherwise have received for any of the following purposes—

- (a) in satisfaction of an order made by a court that the prisoner pay compensation in respect of an offence of which the prisoner has been convicted and for which the prisoner is then serving a term of imprisonment;
- (b) any other purpose prescribed by regulation.

(8) Subject to section 64, a prisoner shall not be released from a prison or a community corrections centre for the purpose of participating in an approved program unless the prisoner is released pursuant to an instrument made under section 61 granting the prisoner leave of absence for that purpose.

### **Compensation to prisoner**

**60.(1)** Where a person receives an accidental personal injury while participating in an approved voluntary program belonging to a class of program prescribed by rule for the purposes of this section or while participating in an approved compulsory program as a result of which—

- (a) the person is, when discharged or released on parole; or
- (b) the person becomes, after being discharged or released on parole;

totally or partially incapacitated, the person may make written application to the commission for compensation.

**(1A)** For the purpose of subsection (1), a person is deemed to be participating in an approved program—

- (a) while the person is attending a place for the purpose of participating in the program; or
- (b) while the person is travelling to a place for the purpose of participating in the program; or

(c) while the person is travelling from a place at which the person has attended for the purpose of participating in the program.

(2) Upon receiving an application, the commission shall arrange for the applicant to be examined by a medical practitioner nominated by it.

(3) An applicant who fails to submit to any reasonable examination or test to be carried out by or on the recommendation of the medical practitioner shall not be eligible for compensation under this section.

(4) The medical practitioner shall report the results of the medical practitioner's examination to the commission and the commission shall make its recommendations to the Minister in respect of compensation.

(5) The Governor in Council may, from moneys appropriated for the purposes of this Act, award compensation of such amount as the Governor in Council thinks fit to an applicant.

### *Subdivision 5—Absence, transfer and removal of prisoners*

#### **Leave of absence**

**61.(1)** Subject to this Act the commission may, by instrument and subject to such conditions as it thinks fit, grant leave of absence to a prisoner for any of the following purposes—

- (a) to participate in an approved program;
- (b) to engage in employment;
- (c) to seek employment to be undertaken while the prisoner is a prisoner or upon being discharged or released on parole;
- (d) to attend any place for educational or training purposes;
- (e) to prepare the prisoner for community resettlement;
- (f) to attend any place for medical, dental or optical treatment;
- (g) compassionate purposes;
- (h) any other purpose approved by the commission.

(2) The commission shall not grant leave of absence to a prisoner—

- (a) who is detained on remand for an offence; or

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- (b) who is detained pursuant to a warrant or order issued under the *Migration Act 1958* (Cwlth); or
- (c) who is imprisoned for an indefinite period for contempt; or
- (d) who is subject to an indefinite sentence under the *Penalties and Sentences Act 1992*, part 10; or
- (e) who is detained pursuant to the *Criminal Law Amendment Act 1945*, part 4;

unless the prisoner is released for medical or dental treatment or for compassionate purposes or, in the case of a prisoner referred to in paragraph (c), (d) or (e), to participate in an approved compulsory program and, in any case, is released under the control of a custodial correctional officer.

**(2A)** The commission must not grant leave of absence to a prisoner serving a term of imprisonment on conviction of a serious violent offence unless the prisoner—

- (a) has served at least—
  - (i) if the prisoner is serving life imprisonment—15 years of that sentence; or
  - (ii) otherwise—80% of the sentence imposed; or
- (b) is released for medical or compassionate purposes.

**(2B)** A prisoner released under subsection (2A) may only be released under the control of a custodial corrections officer.

**(2C)** In deciding whether or not to grant leave of absence to a prisoner to whom subsection (2A) applies, the commission must consider any recommendation of the court that sentenced the prisoner that the prisoner should not be released from imprisonment unless the prisoner has served a period of the sentence longer than that required under subsection (2A)(a).

**(3)** The commission shall not grant leave of absence to a prisoner for a period exceeding 7 days for any purpose other than to participate in an approved compulsory program unless—

- (a) in the case of a prisoner serving a term of imprisonment not exceeding 5 years in a prison or other place situated in an area for which a regional community corrections board is

established—the board has approved that leave be granted; or

- (b) in any other case—the Queensland Community Corrections Board has approved that leave be granted.

**(3A)** If the Queensland Community Corrections Board or a regional community corrections board refuses to approve that leave of absence be granted to a prisoner for a period exceeding 7 days or if the commission refuses to grant such a leave of absence after approval has been given by the appropriate board, the board or the commission so refusing shall give to the prisoner its written reasons for the refusal.

**(4)** In a case to which subsection (3) refers, a regional community corrections board or the Queensland Community Corrections Board, as the case may be—

- (a) may require that the granting by the commission of leave of absence to a prisoner be subject to such conditions as the appropriate board thinks fit; or
- (b) may require the commission to amend or revoke any condition or to impose a new condition.

**(5)** An instrument made under subsection (1)—

- (a) shall be in the prescribed form and shall specify any conditions to which the granting of leave is subject;
- (b) may authorise the release of a prisoner on 1 occasion or a number of occasions and for the same purpose or a number of purposes;
- (c) may authorise the release of a number of prisoners for the same purpose on 1 occasion or on a number of occasions.

**(6)** Any period for which a prisoner is lawfully released on leave of absence shall count as part of the prisoner's term of imprisonment or period of detention.

**(7)** Notwithstanding the *Corrective Services (Administration) Act 1988*, section 21, the commission shall not delegate to any person the power to grant leave of absence to a prisoner for a period exceeding 7 days.

### **Duty of prisoner on leave of absence**

**62.(1)** A prisoner who is granted leave of absence and is not released

under the control of a correctional officer shall be furnished with a copy of the instrument granting leave and shall, while on leave pursuant to that instrument, retain the copy in the prisoner's possession and, if requested to do so by a police officer or an officer of the commission, produce the copy for inspection.

(2) A prisoner granted leave of absence shall comply with every condition specified in the instrument granting leave.

### **Amendment or revocation of instrument**

**63.(1)** Subject to subsection (2) the commission may amend or revoke an instrument by giving the prisoner written notice of the amendment or revocation and shall, in the case of a notice of revocation, give the notice in sufficient time to allow the prisoner to surrender to a correctional officer or a police officer before the instrument is revoked.

(2) The commission shall not amend or revoke a condition imposed pursuant to section 61(4) without the approval of the appropriate board.

(3) Where a prisoner has, in the commission's opinion, failed to comply with any condition specified in the instrument, the commission may, without complying with subsections (1) and (2), revoke the instrument if—

- (a) reasonable inquiries instituted by the commission have failed to locate the prisoner; or
- (b) the commission believes that the prisoner has left the State.

(4) A prisoner who has not surrendered to a correctional officer or a police officer when the commission revokes an instrument granting leave of absence to the prisoner shall be deemed from that time to be unlawfully at large.

(5) A prisoner who surrenders to a correctional officer or a police officer shall be taken to and detained in a prison or in a police gaol until the prisoner can be conveniently taken to a prison.

### **When instrument not required**

**64.** An instrument granting leave of absence shall not be required to authorise, for a purpose mentioned in section 61(1), the release of a prisoner—

- (a) from a prison in order to travel to another part of that prison; or
- (b) from a prison if the prisoner immediately enters and remains in another prison without entering any place that is not part of a prison.

### **Expenses of prisoner on leave of absence**

**65.(1)** The commission may authorise that a prisoner who has been granted leave of absence be provided with such financial or other assistance as the commission considers necessary to meet the prisoner's requirements while on leave of absence.

(2) A prisoner shall, when required to do so by the commission, surrender to the commission the unused portion of any assistance provided to the prisoner under subsection (1).

### **Prisoner employed outside prison**

**66.(1)** Where an instrument granting a prisoner leave of absence to engage in employment provides for the prisoner to obtain board and lodging at a place other than a prison or a community corrections centre, the commission shall specify in the instrument the name of a person (in this section and section 68 called an "**approved person**") appointed by the commission, to perform, in respect of the prisoner, the duties referred to in this section and section 68.

(2) A prisoner granted leave of absence to engage in employment shall, to the extent practicable, be employed in accordance with the provisions of any industrial award or agreement applicable to that employment or, if there is no applicable award or agreement, in accordance with the conditions agreed upon by the employer and the commission.

(3) The employer of a prisoner shall, unless the instrument granting leave of absence otherwise provides, pay to the prisoner all wages, allowances and other moneys due to the prisoner.

(4) The prisoner shall, unless the instrument granting leave of absence otherwise provides, immediately pay any moneys received by the prisoner from an employer to the commission or, where an approved person has been appointed in respect of the prisoner, to that person.

(5) An approved person who receives any money in respect of a prisoner's employment shall deal with those moneys as directed by the commission.

### **Authorised payments from prisoner's earnings**

**67.(1)** Deductions may be made from any moneys paid by an employer in respect of a prisoner's employment of such amounts as the commission may determine for all or any of the following purposes—

- (a) to reimburse the commission for any financial or other assistance provided to the prisoner under section 65 from the time the prisoner commenced that employment;
- (b) to contribute to the costs and expenses of the prisoner's detention in prison or in a community corrections centre from the time the prisoner commenced that employment;
- (c) where the prisoner is provided with board and lodging at a place other than a prison or a community corrections centre—to contribute to the costs and expenses of that board and lodging;
- (d) to provide the prisoner with sufficient money to meet such expenses while on leave of absence as the commission considers necessary;
- (e) in satisfaction of any order made by a court for the prisoner to make restitution or pay compensation upon the prisoner's conviction for an offence for which the prisoner is currently serving a term of imprisonment;
- (f) in satisfaction of any judgment of a court other than a court exercising criminal jurisdiction;
- (g) any purpose approved by the commission at the request in writing of the prisoner;
- (h) any other purpose prescribed by regulation.

(2) Any moneys remaining after deductions have been made pursuant to this section shall be credited to the prisoner.



### **Accounts of approved person**

**68.** A person who is an approved person for a prisoner shall keep and maintain accounts in a form approved by the commission of all moneys received by the approved person in respect of a prisoner's employment and of all disbursements made from those moneys.

### **Transfer of prisoners**

**69.(1)** In this section—

**“institution”** means any of the following—

- (a) a prison;
- (b) a community corrections centre;
- (c) a hospital (including a security patients' hospital within the meaning of the *Mental Health Act 1974*);
- (d) a place for medical examination or treatment;
- (e) a place for psychological or psychiatric examination or treatment;
- (f) a place for the examination or treatment of alcoholics or drug dependent persons;
- (g) a place prescribed by rule or a place belonging to a class of place prescribed by rule.

**(2)** Subject to the provisions of the *Mental Health Act 1974*, the commission may, by instrument and subject to such conditions as it thinks fit, order the transfer of a prisoner from 1 institution to another.

**(3)** An instrument made under subsection (2) shall be in the prescribed form and shall specify—

- (a) the person or class of person who will have control of the prisoner during the transfer;
- (b) the place to which and the purpose and period for which the prisoner is to be transferred;
- (c) any other conditions to which the transfer is subject.

**(4)** An instrument may authorise the transfer of—

- (a) a prisoner on 1 occasion or a number of occasions and for the

same purpose or a number of purposes; or

- (b) a number of prisoners for the same purpose on 1 occasion or on a number of occasions.

### **Prisoner attending court**

**70.(1)** The removal of a prisoner from a prison or any other place where the prisoner is being detained to attend before any court or before any tribunal or person having power to compel persons to attend before it, him or her shall be authorised by the commission, by instrument in the prescribed form, whether or not the prisoner's attendance is required by an instrument or order made under section 71.

**(2)** An instrument made under subsection (1)—

- (a) may authorise the removal of a prisoner on 1 occasion or a number of occasions to attend before the same court, tribunal or person; or
- (b) may authorise the removal of a number of prisoners to attend before the same court, tribunal or person on 1 occasion or a number of occasions.

**(3)** The party requiring a prisoner's attendance in connection with proceedings other than criminal proceedings shall, subject to any other Act, rule or practice of law, pay the commission such expenses in respect of the prisoner's attendance as are prescribed by rule.

**(4)** The provisions of subsection (3) do not apply to the production of a prisoner required pursuant to an instrument or order made under section 71.

### **Order for production of prisoner before court**

**71.(1)** A judge of the Supreme Court or, when the production of a prisoner before a District Court is sought, a judge of District Courts may—

- (a) by instrument order the commission to produce any prisoner for such purpose and at such time and place as are specified in the instrument; or
- (b) if sitting in open court—order the commission, without instrument, to produce any prisoner before that judge for such

purpose and at such time and place as are ordered.

(2) A master of the Supreme Court, a magistrate or a coroner may by instrument order the commission to produce any prisoner before that master or, as the case may be, before that magistrate or that coroner for such purpose and at such time and place as are specified in the instrument.

### **Removal of prisoner in interests of justice**

72.(1) The commission may by instrument authorise the removal of a prisoner from a prison or any other place where the prisoner is being detained where it believes that it is necessary or desirable to do so—

- (a) for the safety of the prisoner; or
- (b) in the interests of justice if the prisoner, in the presence of an official visitor, agrees in writing to be removed.

(2) A person may make written application to the commission for the removal of a prisoner under this section.

(3) An application for the removal of a prisoner may be made by that prisoner.

(4) An instrument made under subsection (1) shall be in the prescribed form and shall specify—

- (a) the name of the person who will have control of the prisoner while the prisoner is absent from the prison or other place of detention;
- (b) the reason for the prisoner's removal;
- (c) the place or locality to which the prisoner is to be removed;
- (d) when the prisoner is to be returned to the prison or other place of detention;
- (e) such other conditions in respect of the removal of the prisoner as the commission thinks fit.

### **Special correctional officers**

73.(1) Where a prisoner—

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- (a) is to be transferred pursuant to section 69 or removed pursuant to section 70 under the control of a person who is not an officer of the commission or a police officer; or
- (b) is to be removed pursuant to section 72 under the control of a person who is not an officer of the commission;

the commission shall by instrument appoint that person as a special correctional officer.

**(2)** A special correctional officer—

- (a) shall be responsible for the safe custody and welfare of the prisoner under the officer's control; and
- (b) shall comply with the conditions of the instrument of the officer's appointment; and
- (c) may exercise in respect of the prisoner such of the powers of a correctional officer as are specified in the instrument of appointment; and
- (d) shall comply with any direction given to the officer by the commission.

**(3)** Anything done by a special correctional officer in the exercise of a power conferred pursuant to this section shall be deemed to have been done by a correctional officer in the exercise of the officer's powers under this Act.

**Detention during transfer etc.**

**74.(1)** A prisoner who is being transferred or removed to any place by instrument made under this subdivision may be detained in any other place for as long as may be necessary or convenient to give effect to the instrument.

**(2)** If the place in which the prisoner is being detained is a police gaol, the prisoner shall, while detained there, be in the custody of the commissioner of the police service.

***Subdivision 6—Custody of appellants in prison*****Custody of appellants under Code**

**75.(1)** In this section—

**“appeal”** means an appeal under the Criminal Code, chapter 67 by a person convicted of an indictable offence, whether on indictment or summarily.

**“appellant”** means a person referred to in the definition “appeal”.

(2) An appellant who is detained in custody in a prison pending the determination of the appeal shall, subject to this section, be treated in accordance with the regulations as an unconvicted prisoner on remand and any appellant so treated shall, for the purpose of the Criminal Code, section 671G, be deemed to be specially treated as an appellant.

(3) Notwithstanding the provisions of the Criminal Code, section 671G—

- (a) an appellant who is detained in custody in a prison pending the determination of the appeal may by notice in writing require the commission to treat the appellant as a prisoner serving a term of imprisonment; and
- (b) any time during which an appellant is treated, pursuant to paragraph (a), as a prisoner serving a term of imprisonment shall, subject to any order the Court of Appeal may make or any direction it may give to the contrary in the circumstances, count as part of the appellant’s sentence, whether imposed by the court of trial or by the Court of Appeal.

**Custody of other appellants**

**76.(1)** Where a person (an **“appellant”**) is sentenced to a term of imprisonment other than for an indictable offence, whether dealt with on indictment or summarily, and appeals against the conviction or sentence, the appellant shall, if not granted bail pending the determination of the appeal, be treated during that period as a prisoner serving a term of imprisonment unless the appellant requires the commission by notice in writing to treat the appellant as an unconvicted prisoner on remand.

(2) The time during which an appellant, pending the determination of his or her appeal, is released on bail shall not count as part of the appellant's sentence, whether imposed by the court of trial or by the court that determines the appeal.

(3) Subject to any order the court that determines the appeal may make or any direction it may give to the contrary in the circumstances, the time during which an appellant, pending the determination of the appellant's appeal, is treated pursuant to subsection (1)—

- (a) as a prisoner serving a term of imprisonment shall count as part of the appellant's sentence; or
- (b) as an unconvicted prisoner on remand shall not count as part of the appellant's sentence;

whether imposed by the court of trial or by the court that determines the appeal.

### **Treatment of prisoner serving sentence not affected**

77. Section 75 or 76 shall not be construed as requiring that an appellant be treated as an unconvicted prisoner on remand where the appellant is serving a term of imprisonment or is otherwise detained in custody in a prison in respect of some other matter.

### **Commission to be notified of appeals by prisoners**

78. Where an appeal referred to in section 75 or 76 is lodged by or on behalf of a prisoner, the registrar of the Court of Appeal shall forthwith notify the commission of the appeal.

### **Custody and sentences of certain respondents**

79.(1) In this section—

“**appeal**” means an appeal in respect of a simple offence or breach of duty, but does not include an appeal in respect of an indictable offence dealt with summarily.

“**respondent**” means a person who, having been the defendant in proceedings for a simple offence or breach of duty, is the respondent

in an appeal in respect of those proceedings.

(2) Where, on an appeal, a court—

- (a) varies a noncustodial sentence or order by sentencing the respondent to a term of imprisonment; or
- (b) convicts the respondent and sentences the respondent to a term of imprisonment;

the term of imprisonment shall commence when the respondent is taken into custody pursuant to the order of the court or, if for any reason the respondent is already detained in custody, from the date the court makes its order.

(3) Where, on an appeal, a court increases the term of a sentence of imprisonment, any period of the term of imprisonment imposed by the court of trial already served by the respondent shall count as part of the term imposed by the court on the appeal.

(4) The provisions of subsections (2) and (3) apply subject to any order made or direction given to the contrary by the court on the appeal.

### *Subdivision 7—Discharge*

#### **Discharge of prisoner**

**80.(1)** On the day on which a prisoner is to be discharged or released on parole, the prisoner shall be discharged or released at a time prescribed by rule.

(2) If the day on which a prisoner would, but for this subsection, be discharged or released on parole is—

- (a) a Saturday or a Sunday; or
- (b) a public holiday throughout the State; or
- (c) a public holiday at the place where the prisoner is then located;

the prisoner shall, if the prisoner's term of imprisonment exceeds 31 days, or may in any other case at the discretion of the commission, be discharged or released on the day immediately preceding, that is not itself a day referred to in paragraph (a), (b) or (c).

**Early discharge**

**81.** The commission may by instrument order that a prisoner whose term of imprisonment—

- (a) is not less than 12 months be discharged at any time within the period of 14 days immediately preceding the day on which the prisoner would, but for this section, be eligible to be discharged; or
- (b) is less than 12 months be discharged at any time within the period of 7 days immediately preceding the day on which the prisoner would, but for this section, be eligible to be discharged.

**Discharge of certain prisoners by Governor in Council**

**82.** The Governor in Council may order the discharge from prison or otherwise from custody of any person who is imprisoned—

- (a) for nonpayment of money;
- (b) for contempt;
- (c) in default of finding sureties to keep the peace or to be of good behaviour;
- (d) for nonpayment of any sum of money imposed as penalty or forfeiture under any law where the Governor in Council may, by law, remit payment of that money or any part of it.

**Prisoner may remain in prison**

**83.(1)** A prisoner may apply in writing to the commission for permission to remain in prison after the prisoner is eligible to be discharged.

**(2)** The commission may grant or reject a prisoner's application.

**(3)** Where the commission grants an application, the prisoner shall—

- (a) be deemed to have completed the prisoner's term of imprisonment or period of detention at the time at which the prisoner is eligible to be discharged; and
- (b) from that time, be treated as an unconvicted prisoner on remand; and



- (c) be discharged within 4 days after the day on which the prisoner is eligible to be discharged.

(4) In no case shall the period for which a prisoner is permitted to remain in prison under this section exceed the period of remission granted in respect of the prisoner's term of imprisonment.

### **Assistance to prisoner on discharge**

**84.** The commission may authorise that a prisoner who is being discharged or released on parole be provided with—

- (a) financial or other assistance, if the commission believes that the prisoner has insufficient means to maintain himself or herself; or
- (b) a voucher for travel to a place within the State or a place in another State or in a Territory.

### **Prisoner discharged by error**

**85.(1)** Where as a result of any error a prisoner is released from prison as if the prisoner were eligible to be discharged, a correctional officer or a police officer may—

- (a) arrest the prisoner without warrant; or
- (b) make written application to a justice for the issue of a warrant for the apprehension of the prisoner.

(2) If a justice is satisfied of the matter of an application, the justice may issue the justice's warrant directed to all police officers and all correctional officers and the warrant may be executed by any of them.

(3) A warrant may be issued and a prisoner may be arrested (whether pursuant to a warrant or subsection (1)(a)) although at the time of issue or arrest the prisoner could, if granted full remission in respect of the prisoner's term of imprisonment, have been lawfully discharged.

(4) The period for which a prisoner is at large having been released by error shall not count as part of the prisoner's term of imprisonment or period of detention.

(5) A person arrested pursuant to this section shall be taken to and

detained in a prison or in a police gaol until the person can be conveniently taken to a prison.

### *Division 6—Home detention*

#### **Release of prisoner to home detention**

**86.(1)** Subject to this section, the commission may, by instrument, release a prisoner to serve a period of home detention pursuant to this division.

**(2)** The commission shall not release to serve a period of home detention a prisoner—

- (a) who is detained on remand for an offence; or
- (b) who is detained pursuant to a warrant or order issued under the *Migration Act 1958* (Cwlth); or
- (c) who is imprisoned for contempt; or
- (d) who is subject to an indefinite sentence under the *Penalties and Sentences Act 1992*, part 10; or
- (e) who is detained pursuant to the *Criminal Law Amendment Act 1945*, part 4.

**(2A)** The commission must not release a prisoner serving a term of imprisonment on conviction of a serious violent offence to serve a period of home detention unless the prisoner has served at least—

- (a) if the prisoner is serving life imprisonment—15 years of that sentence; or
- (b) otherwise—80% of the sentence imposed.

**(2B)** In deciding whether or not to release a prisoner to whom subsection (2A) applies to serve a period of home detention, the commission must consider any recommendation of the court that sentenced the prisoner that the prisoner should not be released from imprisonment unless the prisoner has served a period of the sentence longer than that required under subsection (2A).

**(3)** The commission shall not release a prisoner to serve a period of

home detention unless—

- (a) in the case of a prisoner serving a term of imprisonment not exceeding 5 years in a prison or other place situated in an area for which a regional community corrections board is established—the board has approved the release; or
- (b) in any other case—the Queensland Community Corrections Board has approved the release.

**(3A)** If the Queensland Community Corrections Board or a regional community corrections board refuses to approve that a prisoner be released to serve a period of home detention or if the commission refuses to release a prisoner to serve a period of home detention after the appropriate board has approved the release, the board or commission so refusing shall give to the prisoner its written reasons for the refusal.

**(4)** Where approval has been given under subsection (3) for the release of a prisoner, a regional community corrections board or the Queensland Community Corrections Board, as the case may be—

- (a) may require that the release be subject to such conditions as the appropriate board thinks fit; or
- (b) may require the commission to amend or revoke any condition or to impose a new condition.

**(5)** An instrument authorising the release of a prisoner to serve a period of home detention shall be in the prescribed form and shall specify any conditions to which the release is subject.

**(6)** Subject to subsection (7) the commission may amend or revoke an instrument by giving the prisoner written notice of the amendment or revocation and shall, in the case of a notice of revocation, give the notice in sufficient time to allow the prisoner to surrender to a correctional officer or a police officer before the instrument is revoked.

**(7)** The commission shall not amend or revoke a condition imposed pursuant to subsection (4) without the approval of the appropriate board.

**(8)** Where a prisoner has, in the commission's opinion, failed to comply with any condition specified in the instrument, the commission may, without complying with subsections (6) and (7), revoke the instrument if—

- (a) reasonable inquiries instituted by the commission have failed to

locate the prisoner; or

(b) the commission believes that the prisoner has left the State.

(9) A prisoner who has not surrendered to a correctional officer or a police officer when the commission revokes an instrument releasing the prisoner to serve a period of home detention shall be deemed from that time to be unlawfully at large.

(10) A prisoner who surrenders to a correctional officer or a police officer shall be taken to and detained in a prison or in a police gaol until the prisoner can be conveniently taken to a prison.

(11) Any period of home detention served by a prisoner in compliance with the instrument authorising the prisoner's release shall count as part of the prisoner's term of imprisonment.

### **Community correctional officer to be appointed to prisoner**

87.(1) The commission shall, in respect of each prisoner released to serve a period of home detention, assign a community correctional officer to supervise the prisoner and carry out such other duties as are prescribed by rule.

(2) The commission may at any time—

- (a) revoke an assignment made under subsection (1) and assign another community correctional officer to the prisoner;
- (b) assign more than 1 community correctional officer to the prisoner.

(3) A community correctional officer may give reasonable directions to the prisoner to whom the officer is assigned for the purpose of ensuring that the prisoner complies with any condition to which the prisoner's release on home detention is subject.

(4) A community correctional officer may at any time, for the purpose of ascertaining whether a prisoner serving a period of home detention is complying with the conditions to which the prisoner's release is subject—

- (a) enter the residence of the prisoner;
- (b) telephone or otherwise attempt to communicate with the prisoner at the prisoner's place of residence, place of employment or any

other place where the prisoner is permitted or required to attend;

- (c) question any person present at any place mentioned in paragraph (b) as to the whereabouts of the prisoner or the prisoner's attendance at that place.

(5) A person shall not fail to answer any question put to the person by a community correctional officer in the exercise of the officer's powers under this section or give an answer that the person knows to be false or misleading in a material particular.

### **Duties of prisoner on home detention**

**88.(1)** A prisoner released to serve a period of home detention shall not leave the prisoner's residence except—

- (a) to seek or engage in employment approved by the commission;
- (b) for a purpose prescribed by rule and approved by the community correctional officer assigned to the prisoner;
- (c) for the purpose of averting or minimising a serious risk of death or injury to the prisoner or any other person;
- (d) for any other purpose approved by the commission in exceptional circumstances.

**(2)** A prisoner released to serve a period of home detention shall—

- (a) comply with every condition to which the prisoner's release is subject;
- (b) obey any lawful direction of the community correctional officer assigned to the prisoner.

**(3)** A prisoner released to serve a period of home detention shall be furnished with a copy of the instrument authorising the prisoner's release and shall, during that period, retain the copy in the prisoner's possession and, if requested to do so by a police officer or an officer of the commission, produce the copy for inspection.

### **Expenses of prisoner on home detention**

**89.(1)** The commission may authorise that a prisoner who is released to

serve a period of home detention receive such financial or other assistance as the commission considers necessary to meet the prisoner's requirements during that period.

(2) A prisoner shall, when required to do so by the commission or the community correctional officer assigned to the prisoner, surrender the unused portion of any assistance provided under subsection (1).

### **Employment of prisoner on home detention**

**90.(1)** A prisoner who, while serving a period of home detention under this Act or the *Penalties and Sentences Act 1992*, engages in employment shall, to the extent practicable, be employed in accordance with the provisions of any industrial award or agreement applicable to that employment or, if there is no applicable award or agreement, in accordance with the conditions agreed upon by the employer and the commission.

(2) A prisoner is entitled to receive all wages, allowances and other moneys due to the prisoner unless the instrument authorising the prisoner's release directs that they shall be otherwise dealt with.

### **Authorised payments from prisoner's earnings**

**91.** Deductions may be made from any moneys paid by an employer in respect of the employment of a prisoner who is serving a period of home detention of such amounts as the commission may determine for all or any of the following purposes—

- (a) to reimburse the commission for any financial or other assistance provided to the prisoner under section 89;
- (b) any purpose referred to in section 67(1)(e), (f) or (h).

***Division 7—Offences and breaches of discipline by prisoners******Subdivision 1—Unlawful assembly, riot and mutiny*****Unlawful assembly, riot and mutiny**

**92.(1)** A prisoner who takes part in an unlawful assembly of prisoners is guilty of a crime and is liable to imprisonment for 3 years.

**(2)** A prisoner who takes part in a riot or mutiny of prisoners is guilty of a crime and, subject to subsections (3) to (5), is liable to 6 years imprisonment.

**(3)** If a prisoner taking part in a riot or mutiny of prisoners wilfully and unlawfully destroys or damages, or attempts to destroy or damage any property, the prisoner shall be liable to—

- (a) 10 years imprisonment; or
- (b) where the property is part of a prison and the security of a prison is thereby endangered—life imprisonment.

**(4)** If during a riot or mutiny of prisoners a demand is made by any of them that anything be done or not done with threats of injury or detriment of any kind to any person or property to be caused if the demand is not complied with, each prisoner taking part in the riot or mutiny shall be liable to 14 years imprisonment.

**(5)** If a prisoner taking part in a riot or mutiny of prisoners escapes or attempts to escape from lawful custody or aids any other prisoner in escaping or attempting to escape from lawful custody, the prisoner shall be liable to 14 years imprisonment.

**(6)** For the purposes of this section—

- (a) when 3 or more prisoners with intent to carry out some common purpose assemble (whether inside or outside of prison) in such a manner or being assembled (whether inside or outside of prison) conduct themselves in such a manner that there are reasonable grounds to believe that they will tumultuously disturb the peace or will provoke other prisoners to tumultuously disturb the peace, they are an unlawful assembly, whether or not the original assembling was lawful;

- (b) when an unlawful assembly has begun to act in so tumultuous a manner as to disturb the peace, the assembly is called a riot.

### *Subdivision 2—Prisoner offences*

#### **Prisoner offences**

**93.(1)** A prisoner who—

- (a) escapes, attempts to escape or prepares to escape from lawful custody;
- (b) having been released on leave of absence or to serve a period of home detention, is unlawfully at large or fails to comply with any condition of the instrument authorising the prisoner's release;
- (c) makes or attempts to make, or conceals or has in the prisoner's possession an article or substance prescribed by rule as a prohibited article;
- (d) makes or attempts to make, or conceals or has in the prisoner's possession an article or substance, prescribed by rule as a restricted article, without the authority of the commission;
- (e) takes part in or organises or attempts to organise any opposition to lawful authority, whether within or outside of prison;
- (f) assaults any commissioner, official visitor, inspector, medical officer, chaplain, volunteer, or any officer or employee of the commission or any other prisoner;
- (g) threatens to do grievous bodily harm to any commissioner, official visitor, inspector, medical officer, chaplain, volunteer, or any officer or employee of the commission or to any other prisoner;
- (h) unlawfully kills or injures or attempts unlawfully to kill or injure a prison dog;
- (i) assumes another identity or disguises himself or herself for the purpose of committing an offence against this Act;
- (j) fails to give any information sought or answer any question asked by a person in the exercise of a power conferred by this Act or



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gives to that person information or an answer that is, to the prisoner's knowledge, false or misleading in a material particular;

- (k) wilfully and unlawfully destroys, damages, removes or otherwise interferes with any part of the security system or any part of the communications system of a prison;
- (l) without lawful authority, abstracts information from, destroys information in or makes a false entry in any record kept pursuant to this Act or the *Corrective Services (Administration) Act 1988*, in whatever form the record is kept;

commits an offence against this Act (a “**prisoner offence**”).

(2) The provisions of the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 8 do not afford a lawful excuse to a prisoner for failing to disclose a previous conviction where the prisoner is questioned concerning the prisoner's previous convictions by a person in the exercise of a power conferred by this Act.

(3) Where a prisoner is convicted of a prisoner offence, the court shall order that the prisoner be imprisoned for a period not exceeding 2 years.

(4) Where a prisoner serving a term of imprisonment for an offence against a law of the Commonwealth is convicted of a prisoner offence, the court may direct that the sentence of imprisonment imposed for the prisoner offence take effect at the expiration of deprivation of liberty for the Commonwealth offence.

(5) Where a prisoner is convicted of a prisoner offence, the court may further order that the prisoner be imprisoned under separate confinement (within the meaning of section 96) for a period not exceeding 14 days.

(6) A person may be convicted of a prisoner offence although the person is no longer a prisoner when proceedings in respect of the offence are commenced or heard and shall be liable to a fine of 40 penalty units or 2 years imprisonment.

(7) Where a person is convicted of a prisoner offence, the court may, in addition to any order or orders made by it pursuant to this section, make any order concerning restitution or compensation that may be made under the *Penalties and Sentences Act 1992*, part 3, division 4 upon the summary conviction of a person for an offence and any order made may be enforced in the same manner as an order made under that section.

### **Apprehension of prisoners**

**94.(1)** Where a prisoner—

- (a) escapes from lawful custody; or
- (b) having been released on leave of absence or to serve a period of home detention is or is preparing to become unlawfully at large or fails to comply with any condition of the instrument authorising the prisoner's release;

a correctional officer or a police officer may arrest the prisoner without warrant or may make written application to a justice for the issue of a warrant for the apprehension of the prisoner.

(2) If a justice is satisfied of the matter of an application, the justice may issue the justice's warrant directed to all police officers and all custodial correctional officers and the warrant may be executed by any of them.

(3) A prisoner arrested pursuant to this section shall be taken to and detained in a prison or in a police gaol until the prisoner can be conveniently taken to a prison.

### **Period while unlawfully at large not to count as part of term of imprisonment**

**95.(1)** Where a prisoner escapes from lawful custody or is otherwise unlawfully at large no part of the period during which the prisoner is unlawfully at large shall count as part of the term of imprisonment or period of detention being served by the prisoner when the prisoner escaped or otherwise became unlawfully at large.

(2) For the purposes of subsection (1) a person remains unlawfully at large until the person is admitted to and detained in a prison or a police gaol.

### **Separate confinement**

**96.(1)** In this Act—

“**separate confinement**”, used in respect of a prisoner convicted of a prisoner offence or a major breach of discipline, means the segregation of the prisoner from other prisoners under conditions prescribed by rule.

(2) The commission may make rules prescribing the privileges (other than remission) to be forfeited by a prisoner in separate confinement.

(3) A medical officer shall examine a prisoner—

- (a) as soon as is practicable after the prisoner commences a period of separate confinement; and
- (b) within 7 days after the first examination unless the prisoner is sooner examined pursuant to paragraph (c); and
- (c) as soon as is practicable after the period of separate confinement expires.

### *Subdivision 3—Breaches of discipline*

#### **Breaches of discipline**

97.(1) In this division—

**“breach of discipline”** means a breach of discipline prescribed by regulation.

**“major breach”** means a breach of discipline dealt with pursuant to section 101.

**“minor breach”** means a breach of discipline dealt with pursuant to section 98.

**“privileges”** means privileges prescribed by rule as privileges that a prisoner who commits a breach of discipline may be ordered to forfeit.

(2) A correctional officer who suspects a prisoner has committed a breach of discipline shall determine whether the prisoner should be proceeded against for a major breach or a minor breach.

(3) Nothing contained in this subdivision shall be construed as requiring a correctional officer to take proceedings against a prisoner for a breach of discipline if, having regard to the trivial nature of the breach, the circumstances surrounding its commission and the previous conduct of the prisoner, the officer is of the opinion that the proceedings should not be taken.

**Minor breach**

**98.(1)** Proceedings against a prisoner for a minor breach shall be taken by a correctional officer as soon as is practicable after the breach comes to the officer's knowledge.

**(2)** The correctional officer shall—

- (a) question the prisoner concerned and any other prisoner or any officer or employee of the commission who may be able to provide relevant information; and
- (b) give the prisoner concerned a reasonable opportunity to answer any allegations and to make submissions in respect of punishment.

**(3)** If the correctional officer is satisfied the prisoner has committed the breach of discipline, the officer may reprimand the prisoner without further punishment or may order the prisoner to forfeit any privileges that are specified in the order and that would, but for the making of the order, have been received by the prisoner within a period of 24 hours commencing when the breach was committed.

**(4)** The correctional officer shall, immediately after dealing with the prisoner pursuant to subsection (3), advise the prisoner of the prisoner's right to have the decision reviewed.

**(5)** If the prisoner wishes to exercise the prisoner's right to have the decision reviewed, the prisoner shall do so by notifying the correctional officer of that fact as soon as is practicable after the prisoner is advised of the decision and the execution of any order for the forfeiture of privileges shall be stayed pending the determination of the review.

**Review of minor breach**

**99.(1)** The review of a decision made in respect of a minor breach shall be carried out by an officer of the commission who—

- (a) is of or above a rank prescribed by regulation; and
- (b) holds a higher rank than the correctional officer who made the decision in the first instance.

**(2)** The review of a decision shall be carried out as soon as is practicable

after the prisoner gives notice that the prisoner wishes the decision to be reviewed.

(3) An officer of the commission who carries out a review of a decision shall proceed in the manner provided in section 98(2)(a) and (b).

(4) The officer who carries out a review of a decision may confirm or vary the decision or may set it aside and substitute the officer's own decision for it.

(5) Any decision dealing with a prisoner for a minor breach in respect of which the prisoner does not exercise the prisoner's right of review and any decision made on review shall be final.

(6) Neither the prisoner who requires a decision to be reviewed nor the correctional officer who made that decision shall be permitted any legal or other representation upon the review.

### **Reports relating to minor breaches**

**100.** A correctional officer who reprimands a prisoner or orders the forfeiture of any privileges for a minor breach and an officer of the commission who carries out a review shall, as soon as is practicable thereafter, give a report to the commission containing such details concerning the minor breach as are prescribed by rule.

### **Major breach**

**101.(1)** Proceedings against a prisoner for a major breach shall be by way of complaint of a correctional officer made—

- (a) in a form prescribed by regulation; and
- (b) as soon as is practicable after the matter of complaint came to the complainant's knowledge and, in any event, within a period of 7 days after the matter of complaint arose.

(2) A complaint against a prisoner shall be heard and determined by an officer of the commission who—

- (a) is of or above a rank prescribed by regulation; and
- (b) holds a higher rank than the complainant.

(3) An officer of the commission who hears a complaint shall not be bound by the rules or practice of any court or tribunal as to procedure or evidence but shall, subject to any regulation or rule, inform himself or herself of the matter of complaint in such manner as the officer thinks fit.

(4) A prisoner against whom a complaint is made is entitled to be present at the hearing of the complaint and—

- (a) shall be informed of any evidence adduced in respect of the complaint;
- (b) may cross-examine any witness called by or on behalf of the complainant;
- (c) may call any person to give evidence in the prisoner's defence unless the officer conducting the hearing orders, for such reasons as the officer thinks fit, that the evidence of that person be given in writing or in some other form;
- (d) may make submissions in the prisoner's defence or in mitigation of punishment.

(5) Neither the complainant nor the prisoner shall be permitted any legal or other representation at the hearing of a complaint.

(6) Subject to subsection (7), if the officer of the commission who hears a complaint is satisfied beyond reasonable doubt that the prisoner has committed the breach of discipline, the officer may—

- (a) reprimand the prisoner without further punishment; or
- (b) order the prisoner to forfeit any privileges that are specified in the order and that would, but for the making of the order, have been received by the prisoner within a period of 7 days commencing when the order is made; or
- (c) order the prisoner to undergo separate confinement (within the meaning of section 96) for a period not exceeding 7 days commencing when the order is made.

(7) The officer of the commission who hears the complaint may, if satisfied that the circumstances of the breach do not warrant the officer's dealing with the prisoner for a major breach, deal with the prisoner as for a minor breach and the provisions of sections 98(4)–(5) and 99 shall apply accordingly with all necessary modifications.

(8) The officer of the commission shall, immediately after dealing with the prisoner for a major breach, advise the prisoner of the prisoner's right to have the decision reviewed.

(9) If the prisoner wishes to exercise the prisoner's right to have the decision reviewed, the prisoner shall do so by notifying the officer of the commission who heard and determined the complaint of that fact as soon as is practicable after the prisoner is advised of the decision and the execution of any punishment shall be stayed pending the determination of the review.

### **Review of major breach**

**102.(1)** The review of a decision made in respect of a major breach shall be carried out by an officer of the commission who—

- (a) is of or above a rank prescribed by regulation; and
- (b) holds a higher rank than the officer of the commission who made the decision in the first instance.

(2) The review of a decision shall be by way of rehearing and shall be carried out as soon as is practicable after the prisoner gives notice that the prisoner wishes the decision to be reviewed.

(3) The prisoner shall be entitled to be present at the rehearing and may make submissions in the prisoner's defence or in mitigation of punishment.

(4) The officer who carries out a review of a decision—

- (a) may confirm or vary the decision or may set it aside and substitute the officer's own decision for it; or
- (b) may, if satisfied that the circumstances of the breach do not warrant the prisoner's being dealt with for a major breach, deal with the prisoner as for a minor breach.

(5) Any decision made to deal with a prisoner for a major breach in respect of which the prisoner does not exercise the prisoner's right of review and any decision made on review shall be final.

(6) Neither the prisoner who requires a decision to be reviewed nor the complainant shall be permitted any legal or other representation upon the review.

**Disciplinary breach register**

**103.(1)** The commission shall keep a register styled the ‘disciplinary breach register’ containing details of—

- (a) any decision to deal with a prisoner for a minor breach, whether or not the decision has been reviewed;
- (b) any review of a decision in respect of a minor breach;
- (c) any complaint made against a prisoner for a major breach, whether or not the prisoner is found to have committed the breach;
- (d) any review of a decision in respect of a major breach.

**(2)** An entry in the register in respect of the punishment imposed for a breach of discipline or a document purporting to be certified by the commission as being a true copy of part of the register containing the entry shall be sufficient authority for the execution of the punishment.

**(3)** A prisoner dealt with for a breach of discipline shall not be taken to have committed an offence.

***Division 8—Control of persons other than prisoners******Subdivision 1—Offences by persons other than prisoners*****Offences by persons other than prisoners**

**104.(1)** In this subdivision—

“**prison**” means any place in which a prisoner is being detained.

“**prisoner**” means any person required to be detained in custody whether or not the person is a prisoner within the meaning of section 10.

**(2)** A person who—

- (a) harbours, maintains or employs a person who is, to the person’s knowledge, a prisoner who has escaped from lawful custody or who is otherwise unlawfully at large; or
- (b) rescues a prisoner from lawful custody;



commits an offence against this Act.

(3) A person who—

- (a) aids a prisoner in escaping, attempting to escape or preparing to escape from lawful custody;
- (b) counsels or procures a prisoner to escape from lawful custody;
- (c) aids a prisoner who is unlawfully at large in remaining unlawfully at large;
- (d) counsels or procures a prisoner who is unlawfully at large to remain unlawfully at large;

commits an offence against this Act.

(4) A person who—

- (a) takes anything into or causes anything to be introduced into a prison with intent to facilitate the escape of a prisoner from lawful custody; or
- (b) delivers anything to a prisoner or causes anything to come into the possession of a prisoner with intent to facilitate the escape of any prisoner from lawful custody;

commits an offence against this Act.

(5) A person who, without lawful authority—

- (a) takes into or causes to be introduced into a prison any prohibited article; or
- (b) delivers any prohibited article to a prisoner or causes any prohibited article to come into the possession of a prisoner;

commits an offence against this Act.

(5A) In subsection (5)—

**“prohibited article”** means—

- (a) any article or substance that a prisoner is, by lawful authority, prohibited from possessing; or
- (b) any article or substance the offender intends to be used by a prisoner for making an article or substance referred to in paragraph (a).

(6) A person who, acting on behalf of a prisoner and without lawful authority—

- (a) removes anything from a prison or causes anything to be removed from a prison; or
- (b) takes anything from a prisoner, whether within or outside of prison;

commits an offence against this Act.

(7) If a correctional officer, a police officer or any other person having custody or control of a prisoner believes on reasonable grounds that a person in the vicinity of the prisoner is acting in a way that threatens or is likely to threaten the security of the prisoner or the security or good order of the place in which the prisoner is detained, the correctional officer, police officer or other person having custody or control of the prisoner may order that person to leave the vicinity of that prisoner or place of detention.

(8) A person who disobeys an order given pursuant to subsection (7) commits an offence against this Act.

(9) A person who—

- (a) enters a prison without lawful authority; or
- (b) fraudulently obtains authorisation to enter a prison, whether for himself, herself or another; or
- (c) wilfully and unlawfully destroys, damages, removes or otherwise interferes with any part of the security system or any part of the communications system of a prison;

commits an offence against this Act.

(10) A person who—

- (a) fails to leave a prison (within the meaning of section 10) or a community corrections centre when ordered to do so by a correctional officer; or
- (b) kills or injures a prison dog; or
- (c) hinders, resists or obstructs a person in the execution of the person's duty under this Act or the *Corrective Services (Administration) Act 1988*; or

- (d) without the authority of the commission, alters, defaces or removes any notice displayed in a prison (within the meaning of section 10) pursuant to this Act or the commission's rules; or
- (e) without the authority of the commission, abstracts information from, destroys information in or makes a false entry in any record kept pursuant to this Act or the *Corrective Services (Administration) Act 1988*, in whatever form the record is kept; or
- (f) without the authority of the commission, interviews a prisoner (within the meaning of section 10) or obtains a written or recorded statement from such a prisoner, whether within or outside of a prison; or
- (g) without the authority of the commission, photographs or otherwise records by means of any apparatus, while within a prison within the meaning of section 10, any visual image of any prisoner (within the meaning of section 10) or any part of the prison;

commits an offence against this Act.

**(11)** A person who attempts to do anything prohibited by subsection (2)(b), (4), (5), (6), (9) or (10) commits an offence against this Act.

### **Penalties and procedure for offences defined in s 104**

**105.(1)** A person who commits an offence defined in section 104 shall be liable to a fine of 40 penalty units or 2 years imprisonment.

**(2)** Where a person is convicted of killing or injuring a prison dog, the court may, in addition to any penalty imposed under subsection (1), order the person to pay to the commission such sum as the court thinks fit in respect of—

- (a) veterinary treatment and care of the dog or the retraining of the dog; or
- (b) where it is necessary to replace the dog—the acquisition and training of the replacement.

**(3)** Proceedings in respect of an offence defined in section 104 shall be commenced by complaint made—

- (a) where the offence relates to a prison or prisoner, other than a prison or prisoner within the meaning of section 10—by the person (or a person authorised by the person in that behalf) in charge of the prison or having custody of the prisoner;
- (b) in any other case—by the commission or a person authorised by it in that behalf.

### **Where officer of commission commits offence**

**106.(1)** Upon proof that an officer of the commission has done any act or made any omission that, in the absence of lawful authority, justification or excuse, would constitute an offence defined in section 104, the court shall convict the officer of the offence unless it is satisfied the officer did the act or made the omission with lawful authority, justification or excuse.

**(2)** An officer of the commission convicted of an offence defined in section 104 shall, in addition to any penalty imposed under subsection (1), forfeit the officer's office on and from the date of conviction.

### **Search and arrest of persons suspected of offences**

**107.** Where there are reasonable grounds to believe that a person has committed, is committing or is about to commit an offence defined in section 104 or any other offence that may threaten the security or management of a prison or the security of a prisoner, a correctional officer or a police officer may, using such force as is reasonable—

- (a) arrest the person without warrant; or
- (b) search the person and anything in the person's possession (including any motor vehicle) and seize and retain anything that the correctional officer or police officer believes on reasonable grounds is connected with or affords evidence of the commission or intended commission of the offence.

***Subdivision 2—Powers of search and seizure*****Search of visitors**

**108.(1)** In this section—

“**visitor**” means a person who is visiting a prison or seeking entry to a prison or is visiting a prisoner, but does not include a prisoner or a person referred to in section 109(1).

(2) The general manager of a prison may ask a visitor to submit to being searched by a custodial correctional officer.

(3) The general manager may prohibit a visitor from entering or, as the case may be, remaining in a prison if—

- (a) the visitor refuses to submit to a search requested pursuant to subsection (2); or
- (b) the general manager believes that it is necessary for the security or good order of the prison.

(4) A visitor who is prohibited from remaining in a prison and who refuses to immediately leave the prison may be removed from the prison by a custodial correctional officer who may for that purpose use such force as is reasonable.

(5) A custodial correctional officer who searches a visitor may seize and retain anything found during the search that the officer believes on reasonable grounds is connected with or affords evidence of the commission or intended commission of an offence.

**Searching of officers and employees of commission etc.**

**109.(1)** The general manager of a prison may order a person who is in or near the prison and is, or purportedly is—

- (a) a commissioner, an official visitor, an inspector, a medical officer, a chaplain or an officer or employee of the commission;  
or

- (b) a person authorised under section 45(2)<sup>4</sup> to perform any function or exercise any power of an officer of the commission;

to submit to being searched by a custodial correctional officer and the person shall comply with the order.

(2) A custodial correctional officer who, acting at the direction of the general manager of a prison, searches a person may—

- (a) search anything (including any motor vehicle) in the possession of the person; and
- (b) seize and retain anything that the officer believes on reasonable grounds is connected with or affords evidence of the commission or intended commission of an offence.

### **Disposal of seized property**

**110.(1)** A person who seizes anything pursuant to this division shall, as soon as is practicable, take it before a justice who may—

- (a) order that it be detained in such custody as the justice directs until investigations or proceedings to which it may be relevant are concluded;
- (b) order that it be returned to the person who the justice believes is entitled to possession of it;
- (c) if it is of such a nature that a person having it in the person's possession without lawful authority would be committing an offence—order that it be destroyed or delivered to a person authorised to have possession of it;
- (d) if unable to ascertain any person entitled to possess it—make such order with respect to its disposal as the justice thinks fit.

(2) Subject to subsection (3), an order made for the disposal of property shall not affect the right of any person to recover the property by action from the person who, pursuant to the order, has possession of it.

(3) An action for the recovery of property disposed of by order made

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<sup>4</sup> Section 45 (Certain persons to have powers of custodial correctional officer)

under subsection (1) shall be commenced within 6 months after the order is made.

### *Division 9—Emergency*

#### **Declaration of emergency**

**111.(1)** If the commission believes that a situation exists at a prison that threatens or is likely to threaten the security or good order of the prison or the security of any prisoner or other person in the prison, it may, with the approval of the Minister, declare that an emergency exists in relation to that prison or any part of it.

**(2)** The declaration of an emergency shall specify the period for which it shall remain in force and shall lapse at the expiration of that period unless sooner revoked by the commission or unless the commission, with the approval of the Minister, extends that period.

#### **Power of commission during emergency**

**112.(1)** While the declaration of an emergency is in force, the commission may, in respect of the prison or part of a prison to which the declaration relates—

- (a) restrict any prison activity or restrict access to the prison or part;
- (b) order that any privileges to prisoners be withheld;
- (c) authorise any person to perform or exercise any duty, function or power, other than any duty, function or power of a correctional officer;
- (d) authorise police officers to perform or exercise all or any duties, functions or powers of a correctional officer.

**(2)** A police officer authorised pursuant to subsection (1) shall, while doing any act pursuant to that authority, be under the direction and control of the senior police officer present.

**(3)** The commission may require the commissioner of the police service to provide as many police officers as the commission considers necessary or expedient for the purpose of dealing with any emergency declared

pursuant to section 111, and the commissioner of the police service shall comply with the requirement.

### *Division 10—Prisoner of a court*

#### **Meanings of terms**

**113.** In this division—

“**clerk of the court**” means a clerk of the court within the meaning of the *Justices Act 1886*.

“**court**” includes a court exercising appellate jurisdiction and any justice or justices of the peace conducting an examination of witnesses in respect of an indictable offence.

“**prisoner of a court**” means a person in the custody of a court.

“**proper officer**” means—

- (a) in respect of the Supreme Court sitting at Brisbane, including the court when sitting as the Court of Appeal—the sheriff;
- (b) in respect of the Supreme Court or a Circuit Court sitting at any other place—the person performing the duties of sheriff at that place;
- (c) in respect of a District Court—the registrar of the court or the person performing the duties of registrar;
- (d) in respect of a court constituted by a magistrate or by a justice or justices of the peace—the clerk of the court at the place where the court is sitting.

#### **Person surrendering into custody of court**

**114.(1)** A person who is required by law to surrender himself or herself into the custody of a court shall do so by surrendering himself or herself into the custody of the proper officer of the court.

**(2)** Subject to subsection (3), a prisoner of a court shall be in the custody of the proper officer of the court until released on bail, discharged from lawful custody or otherwise dealt with as the court directs.



(3) Where pursuant to any arrangements made by a proper officer of a court and the commissioner of the police service, a prisoner of the court is detained in a police gaol, the prisoner shall, while detained there, be in the custody of the commissioner of the police service.

### **Duties and powers of proper officer**

**115.(1)** Subject to section 114(3), the proper officer of a court shall be responsible for the safe custody and welfare of any prisoner of the court.

(2) The proper officer of a court shall have, in respect of a prisoner of the court, all the powers conferred by this Act or the commission's rules upon a custodial correctional officer.

(3) The proper officer of a court may at any time search a prisoner of the court and anything in the prisoner's possession and the prisoner shall submit to the search.

(4) The proper officer of a court may seize and retain anything found by the proper officer in the course of a search that the proper officer believes may be used to endanger the safety or security of the prisoner or any other person or the security of the court or that may afford evidence of the commission or intended commission of an offence.

(5) Anything seized by the proper officer of a court may be dealt with by the proper officer in the same manner as a justice may deal with anything under section 110.

(6) An order made by a proper officer of a court for the disposal of any property shall not affect the right of any person to recover the property, by action commenced within 6 months after the order is made, from the person to whom it was delivered pursuant to the order.

### **Proper officer may require assistance**

**116.** The proper officer of a court may require—

- (a) the commission to provide correctional officers; and
- (b) the commissioner of the police service to provide police officers; and
- (c) the chief executive, within the meaning of the *Juvenile Justice Act*

1992, to provide officers under the chief executive's control; to assist the proper officer in the discharge of the proper officer's functions under this division.

### **Proper officer may delegate**

**117.(1)** The proper officer of a court may delegate to any person all or any of the proper officer's powers and functions under this division except this power of delegation.

**(2)** A person acting under a power of delegation made pursuant to subsection (1) or a person assisting the proper officer of a court to discharge the proper officer's functions under this division shall be subject to the direction of the proper officer.

### **Offences**

**118.(1)** A prisoner of a court who—

- (a) escapes, attempts to escape or prepares to escape from lawful custody;
- (b) makes, conceals or has in the prisoner's possession any article that the prisoner is, by rule made under section 120, prohibited from possessing;
- (c) fails to obey a lawful direction given by the proper officer of the court or by a person assisting the proper officer of the court;

commits an offence against this Act and, subject to subsection (3), shall be liable to a fine of 40 penalty units or 2 years imprisonment.

**(2)** A person (whether a prisoner of a court or not) who hinders, resists or obstructs—

- (a) the proper officer of a court or any other person in the discharge of his or her duty under this division; or
- (b) any person assisting the proper officer or the other person in the discharge of that duty;

commits an offence against this Act and, subject to subsection (3), shall be liable to a fine of 40 penalty units or 2 years imprisonment.

(3) If a person who has committed an offence defined in subsection (1) or (2) while a prisoner of a court—

- (a) was, at the time of commission of the offence, serving a term of imprisonment in respect of any other offence; and
- (b) is, when dealt with for the offence, a prisoner within the meaning of section 10;

the person shall be liable to any punishment to which a prisoner who commits a prisoner offence is liable.

(4) Proceedings in respect of an offence defined in this section shall be commenced by complaint made by the proper officer of the court or a person authorised by the proper officer in that behalf.

### **Court cells**

**119.(1)** Notwithstanding the provisions of the *Law Courts and State Buildings Protective Security Act 1983*, the proper officer of a court shall be responsible for the management, security and good order of any place attached to or in the precincts of the court—

- (a) that is not a prison or police gaol; and
- (b) that is used for detaining prisoners of the court.

(2) If the application of subsection (1) would result in the proper officers of 2 or more courts being responsible for the management, security and good order of the same place, the proper officer of the court having higher jurisdiction than the other court or, as the case may be, than each of the other courts shall be charged with that responsibility.

(3) Nothing in this section prevents the detention in a place referred to in subsection (1) of any person who is not a prisoner of the court but who is in custody and is to attend before any court, person or tribunal.

(4) Any person to whom subsection (3) applies shall, while detained in a place referred to in subsection (1), be in the custody of the proper officer of the court responsible for the management, security and good order of that place.

(5) The proper officer of a court who, pursuant to this section, has responsibility for any place shall have, in respect of that place, the powers a

general manager of a prison has under this Act and the commission's rules in respect of the management, security and good order of the prison.

### **Proper officer may make rules**

**120.(1)** The proper officer of a court may make rules prescribing for or with respect to—

- (a) the security and management of any place for which the proper officer is responsible pursuant to section 119;
- (b) the safe custody and welfare of prisoners of the court or other persons in the proper officer's custody.

**(2)** Rules made by the proper officer of a court may adopt wholly or partly any of the commission's rules or any of the general manager's rules in force in any prison with such modifications as the proper officer thinks fit.

### **Power of court unaltered**

**121.** Nothing in this division prevents a court from making any order in respect of a prisoner of the court that it could have made if the provisions of this division had not been enacted.

## *Division 11—General*

### **Cumulative sentences**

**122.(1)** In this section—

**“cumulative sentence”** means a sentence of imprisonment that is to take effect upon the expiration of deprivation of liberty for another sentence of imprisonment (the **“first sentence”**).

**(2)** A prisoner shall commence serving a cumulative sentence when, taking into account any remission granted in respect of the first sentence, the prisoner has completed serving the first sentence.

**(3)** Where the first sentence of a prisoner is for an offence against a law of the Commonwealth and an order is made pursuant to any law of the

Commonwealth that the prisoner is no longer required to be detained in custody for that offence, the prisoner shall, notwithstanding subsection (2), commence to serve the cumulative sentence upon that order taking effect.

### **Application to Supreme Court for interpretation of warrant etc.**

**123.(1)** Where any question arises as to the construction or effect of any warrant or other order (whether in writing or not) for the detention in custody of any person, the commission may apply to the Supreme Court or to a judge of the Supreme Court for its or the determination of the question, and for a declaration in respect thereof.

**(2)** Rules of court may be made providing for or in respect of the making, hearing and determination of an application and until those rules are made or to the extent those rules do not apply, the court or a judge thereof may give directions as to any of those matters and the directions shall, according to their tenor, have the force and effect of rules of court.

**(3)** A declaration made in respect of a warrant or other order for the detention in custody of a person shall be sufficient authority to the commission for dealing with the person in accordance with the declaration.

**(4)** No appeal shall lie in respect of a declaration made pursuant to this section.

### **Warrant etc. may be executed by custodial correctional officer**

**124.** Where a court issues a warrant or makes any other order requiring police officers to convey any person then before the court to any prison or other place of detention, the warrant or order may be executed by a custodial correctional officer.

### **Certificate re prisoner etc.**

**125.** A certificate under the seal of the commission or purporting to be signed by a person authorised in that behalf by the commission stating that at a specified time or during a specified period—

- (a) a person was a prisoner; or
- (b) a person was a prison dog handler; or

(c) a dog was a prison dog;

shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters stated.

### **Answers and information given under compulsion**

**126.** Where a person, in the exercise of a power conferred by this Act, requires another person (whether a prisoner or not) to answer any question or provide any information, that other person is not entitled to refuse to comply with the requisition on the ground that the answer or information may tend to incriminate the other person but any answer made or information provided by the other person after objection taken on that ground shall not be admissible against the person in proceedings taken against the person other than proceedings in respect of an offence founded on the giving of a false or misleading answer or false or misleading information or in respect of a breach of discipline.

### **Exemption from tolls**

**127.** A correctional officer having prisoners under the officer's control, those prisoners and any motor vehicle being used exclusively for the purpose of conveying the correctional officer and the prisoners shall be exempt from payment of any toll in passing any tollgate or in respect of the use of any road, bridge or vehicular ferry.

### **Commissioner of the police service to provide police**

**128.** The commission may, for reasons of security, request the commissioner of the police service to provide as many police officers as the commission considers necessary or expedient to have control of a prisoner while the prisoner is outside prison or any other place where the prisoner is being detained, and the commissioner of the police service shall comply with any request the commissioner considers reasonable.

### **Offence provision**

**129.** A person who—

- (a) contravenes or attempts to contravene a provision of this part; or
- (b) fails to comply with a provision of this part; or
- (c) fails to comply with any order made or direction given under the authority of this part;

commits an offence against this Act and is liable, unless a penalty is otherwise prescribed for the offence, to a fine of 40 penalty units or 6 months imprisonment.

### **Regulations for purposes of pt 2**

**130.** Regulations may be made under section 208 prescribing for or with respect to—

- (a) the management, good order and security of prisons and community corrections centres;
- (b) the control, discipline, care and welfare of prisoners, including prisoners subject to indefinite sentences under the *Penalties and Sentences Act 1992*, part 10;
- (c) the accommodation of prisoners and the segregation from other prisoners of prisoners belonging to a prescribed class of prisoner;
- (d) systems for classifying prisoners for the purpose of accommodation, security or for any other purpose of this Act;
- (e) the granting or forfeiting of remission of sentences of imprisonment;
- (f) prison holidays;
- (g) breaches of discipline;
- (h) visits to prisons and community corrections centres or visits or other forms of communication with prisoners;
- (i) the manner of dealing with property (including mail) belonging to, sent to or left for prisoners;
- (j) the control and regulation of traffic entering or leaving a prison or within a prison;
- (k) a system for identifying prisoners and officers or employees of the commission and any person entering a prison;

- (l) the manner in which searches under this Act are to be carried out;
- (m) the weapons or instruments of restraint that may be used or that may not be used by correctional officers;
- (n) the operation of any device approved by the commission for monitoring the whereabouts of prisoners; tests to determine the accuracy of any such device; certificates to be given in respect of the operation or testing of any such device and the evidentiary value of those certificates in any proceeding under this Act or any other Act.

## **PART 3—COMMUNITY CORRECTIONS BOARDS**

### *Division 1—Queensland Community Corrections Board*

#### **Constitution of board**

**131.** The parole board constituted under the *Offenders Probation and Parole Act 1980* is preserved, continued in existence and constituted under this Act under the name ‘Queensland Community Corrections Board’.

#### **Members of the Queensland Community Corrections Board**

**132.(1)** The Queensland Community Corrections Board shall consist of—

- (a) a president and deputy president each of whom shall be—
  - (i) a retired judge of a court of a State or a Territory or of the High Court or a court constituted under an Act of the Commonwealth; or
  - (ii) a barrister or solicitor who has practised as either barrister or solicitor for a period of at least 5 years; and
- (b) the director-general who shall be a member ex officio; and
- (c) 5 other members of whom—



*Corrective Services Act 1988*

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- (i) 1 at least shall be an Aborigine within the meaning of the *Community Services (Aborigines) Act 1984* or an Islander within the meaning of the *Community Services (Torres Strait) Act 1984*; and
- (ii) 1 at least shall be a legally qualified medical practitioner, or a psychologist within the meaning of the *Psychologists Act 1977*.

**(1A)** The members of the Queensland Community Corrections Board referred to in subsection (1)(a) and (c) are in this division referred to as the **“appointed members”**.

**(1B)** At least 2 appointed members of the board shall be women.

**(2)** A person who is—

- (a) appointed or authorised under this Act to be a medical officer, volunteer or official visitor; or
- (b) a commissioner or an officer or employee of the commission; or
- (c) an officer or employee of a department of the government of the State; or
- (d) a member, officer or employee of another State instrumentality;

is not qualified to be or continue as an appointed member of the Queensland Community Corrections Board.

**(3)** The director-general may appoint an officer of the commission to be the director-general’s deputy as a member of the Queensland Community Corrections Board.

**(4)** An appointment under subsection (3)—

- (a) shall be by instrument in writing;
- (b) may be made generally or subject to such limitations as are specified in the instrument of appointment;
- (c) may be revoked by the director-general at any time by notice in writing furnished to the appointee.

**(5)** A person appointed as the deputy of the director-general shall act instead of the director-general as a member of the Queensland Community Corrections Board during the absence of the director-general from any

cause and whilst so acting shall have and may exercise the powers and authorities and shall discharge the functions and duties of a member of the board.

(6) In this section—

**“State instrumentality”** means an agency or instrumentality of the Crown and includes an entity constituted, established or maintained by or under an Act that is—

- (a) generally subject to control or direction of a Minister; or
- (b) is comprised of persons who are, or has a governing body of persons a majority at least of which are, appointed or employed by the Governor in Council, any Minister or a State instrumentality.

### **Appointment of members**

**133.(1)** Appointed members of the Queensland Community Corrections Board shall be appointed on the recommendation of the Minister by the Governor in Council by notification published in the gazette.

(2) Persons appointed as president and deputy president may be appointed to office as such by the notification by which they are appointed members or by another notification.

### **Tenure of office of appointed members**

**134.(1)** Each appointed member shall be appointed and hold office for such term not exceeding 3 years as the Governor in Council determines, but if by the expiration of the member’s term of office the member’s successor has not been duly appointed the member shall, subject to subsection (3), hold office until the member’s successor is duly appointed.

(1A) An appointed member shall, if the member is otherwise qualified, be eligible for reappointment as a member.

(2) The Governor in Council may, by notification published in the gazette, remove from office any appointed member.

(3) The office of an appointed member shall become vacant if the member—

- (a) dies or becomes a patient (within the meaning of the *Mental Health Act 1974*);
- (b) resigns the member's office by writing signed by the member and furnished to the Minister;
- (c) ceases to be qualified as such member;
- (d) is removed from office by the Governor in Council.

### **Casual vacancies**

**135.(1)** Where a vacancy occurs in the office of an appointed member of the Queensland Community Corrections Board during the term of office of that member, the Governor in Council may appoint in accordance with this division another person as a member to hold office for the balance of his or her predecessor's term of office as a member.

**(2)** A person appointed under subsection (1) to fill a casual vacancy as an appointed member shall hold office for the balance of the member's predecessor's term of office or until the member sooner vacates that office and shall if otherwise qualified, be eligible for reappointment.

### **Meetings of board**

**136.(1)** The Queensland Community Corrections Board shall meet as often as is necessary for the exercise of its powers and authorities, and the discharge of its functions and duties.

**(1A)** The president of the Queensland Community Corrections Board or in the president's absence, the deputy president may at any time convene a meeting of the board.

**(2)** When requested to do so by the secretary of the Queensland Community Corrections Board, an officer of the commission shall attend a meeting of the board and provide such advice and information as the board requests.

**(3)** Unless the secretary indicates otherwise, a delegate of a person requested to attend a meeting may attend instead of the person.

**Procedure at meetings**

**137.(1)** The president of the Queensland Community Corrections Board shall preside at all meetings of the board at which the president is present.

**(1A)** If the president is not present, the deputy president shall preside and whilst so doing shall be deemed to be the president of the board.

**(2)** Subject to subsection (4), a quorum of the Queensland Community Corrections Board shall consist of the president or deputy president and 3 other members of the board and business shall not be conducted at a meeting of the board unless a quorum is present.

**(3)** If both the president and deputy president of the Queensland Community Corrections Board are unable from any cause to attend a meeting of the board and 4 other members of the board are of the opinion that it is desirable that a meeting of the board be held to consider the exercise by the board of its powers under section 185(1), the secretary to the board shall convene a meeting of the board.

**(3A)** At a meeting so convened a member elected by the members present shall preside and while so doing shall be deemed to be the president of the board.

**(4)** A quorum of the Queensland Community Corrections Board at a meeting convened pursuant to subsection (3) shall consist of any 4 members of the board.

**(5)** Subsections (3) and (4) shall be read and construed so as not to prejudice in any way the power of the Queensland Community Corrections Board to transact at a duly convened meeting of the board any business of the board.

**Secretary**

**138.(1)** A person shall from time to time be appointed secretary to the Queensland Community Corrections Board and such appointment shall be made under the *Corrective Services (Administration) Act 1988*.

**(2)** Where the secretary to the Queensland Community Corrections Board is absent or is for any other reason unable to act as secretary to the board an officer of the commission or another officer of the public service

may act in the secretary's place and while so acting shall be deemed to be the secretary to the board.

### **Guidelines**

**139.(1)** The Minister may, subject to this Act, from time to time issue guidelines to the Queensland Community Corrections Board with respect to the policy to be adhered to by the board in exercising its powers and discharging its functions under this Act.

**(2)** The Queensland Community Corrections Board may, subject to this Act, from time to time issue guidelines to each regional community corrections board in relation to—

- (a) the exercise by the regional community corrections board of its powers under this Act; and
- (b) the conduct by the regional community corrections board of its business generally and proceedings at meetings; and
- (c) the matters to be dealt with and the information to be contained in reports required to be furnished under section 152.

**(3)** Before issuing any guidelines under subsection (2) the Queensland Community Corrections Board shall consult thereon with the commission.

### **Attendance at meetings of regional community corrections boards**

**140.** A member of the Queensland Community Corrections Board may attend at any meeting of a regional community corrections board and may participate in the consideration of any business before that meeting but shall not be entitled to vote at that meeting on any business.

### **Annual report**

**141.(1)** The Queensland Community Corrections Board shall on or before 30 September in each year furnish to the Minister in respect of the year that ended on 30 June last preceding a report on the operation of this Act with respect to parole, the activities of the Queensland Community Corrections Board and each regional community corrections board and the effectiveness of each regional community corrections board.

(2) The report shall set forth—

- (a) the number of persons released on parole during that year;
- (b) the number of persons returned to prison during that year on cancellation or suspension of parole;
- (c) the number of persons declared habitual criminals who were released on parole during that year.

### **Special reports**

**142.** The Queensland Community Corrections Board shall on request made in that behalf by the Minister furnish to the Minister a report in writing on any matter relating to—

- (a) the operation of this Act with respect to parole or to the exercise of any power or authority or the discharge of any function or duty of the Queensland Community Corrections Board or a regional community corrections board;
- (b) the exercise of any power or authority or the discharge of any function or duty of the parole board constituted under the *Offenders Probation and Parole Act 1980*.

### ***Division 2—Regional community corrections boards***

#### **Establishment**

**143.(1)** The Governor in Council may, by order in council—

- (a) from time to time establish a regional community corrections board for the area of the State specified in the order; and
- (b) assign a name to that board.

(2) The Governor in Council may, by order in council, from time to time—

- (a) alter the name assigned to a regional community corrections board or substitute another name;
- (b) alter the area of the State for which a regional community corrections board is established or substitute another area.

**Members of regional community corrections board**

**144.(1)** Each regional community corrections board shall consist of—

- (a) a president and deputy president each of whom shall be—
  - (i) a retired judge of a court of a State or Territory or of the High Court or a court constituted under an Act of the Commonwealth; or
  - (ii) a barrister or solicitor who has practised as either barrister or solicitor for a period of at least 5 years; or
  - (iii) a retired magistrate; and
- (b) an officer of the commission nominated by the director-general; and
- (c) 4 other members of whom—
  - (i) 1 at least shall be an Aborigine within the meaning of the *Community Services (Aborigines) Act 1984* or an Islander within the meaning of the *Community Services (Torres Strait) Act 1984*; and
  - (ii) 1 at least shall be a legally qualified medical practitioner.

**(1A)** At least 1 member of the board shall be a woman.

**(2)** A person who is—

- (a) appointed or authorised under this Act to be a medical officer, volunteer or official visitor; or
- (b) a commissioner or, except in the case of the member referred to in subsection (1)(b), an officer or employee of the commission; or
- (c) an officer or employee of a department of the government of the State; or
- (d) appointed or employed under the *Police Service Administration Act 1990*, the *Criminal Justice Act 1989* or the *Director of Public Prosecutions Act 1984*;

is not qualified to be or continue as a member of a regional community corrections board.

**(3)** Except as provided by subsection (2)(a), subsection (2) shall not be

taken to disqualify a legally qualified medical practitioner from appointment as a member of a regional community corrections board.

### **Appointment of members**

**146.(1)** The members of a regional community corrections board shall be appointed on the recommendation of the Minister by the Governor in Council by notification published in the gazette.

**(1A)** Persons appointed as president and deputy president may be appointed to office as such by the notification by which they are appointed members or by another notification.

**(2)** A member of a regional community corrections board shall, if the member is otherwise qualified, be eligible for reappointment as a member.

### **Tenure of office of members**

**147.(1)** Each member of a regional community corrections board shall be appointed and hold office for such term not exceeding 3 years as the Governor in Council determines, but if by the expiration of the member's term of office the member's successor has not been duly appointed the member shall, subject to subsection (3), hold office until the member's successor is duly appointed.

**(2)** The Governor in Council may, by notification published in the gazette, remove from office any member of a regional community corrections board.

**(3)** The office of a member of a regional community corrections board becomes vacant if the member—

- (a) dies or becomes a patient (within the meaning of the *Mental Health Act 1974*);
- (b) resigns the member's office by writing signed by the member and furnished to the Minister;
- (c) ceases to be qualified as such member;
- (d) is removed from office by the Governor in Council.



**Casual vacancies**

**148.(1)** Where a vacancy occurs in the office of a member of a regional community corrections board during the term of office of that member, the Governor in Council may appoint in accordance with this division another person as a member to hold office for the balance of the member's predecessor's term of office as a member.

**(2)** A person appointed under this section to fill a casual vacancy shall hold office for the balance of the member's predecessor's term of office or until the member sooner vacates that office.

**Meetings of board**

**149.(1)** A regional community corrections board shall meet as often as is necessary for the exercise of its powers and authorities and the discharge of its functions and duties.

**(1A)** The president or in the absence of the president, the deputy president of a regional community corrections board may at any time convene a meeting of the board.

**(2)** A regional community corrections board shall meet only in the area of the State for which it is established.

**(3)** The general manager of a prison may give to a member of or secretary to a regional community corrections board who is visiting that prison for the purpose of attending a meeting of the board such directions as the general manager considers necessary for the security of the prison and the member or, as the case may be, secretary shall comply with those directions.

**(4)** When requested to do so by the secretary to a regional community corrections board, a person, not being a member of the regional community corrections board, who holds office under the *Corrective Services (Administration) Act 1988* as—

- (a) general manager or manager (programs) of any prison situated in the area of the State for which the board is established; or
- (b) regional manager of a community corrections region wholly or partly within the area of the State for which the board is situated;

shall attend a meeting of the board and provide such advice and information

as the board requests.

(5) A reference in subsection (4) to a person holding an office includes a reference to a person for the time being performing the duties of the office.

(6) Unless the secretary to a board indicates otherwise a delegate of a person requested to attend a meeting of the board may attend instead of the person.

### **Procedure at meetings**

**150.(1)** The president of a regional community corrections board shall preside at all meetings when present.

(1A) In the president's absence, the deputy president shall preside and whilst so doing shall be deemed to be the president of the board.

(2) A quorum of a regional community corrections board shall consist of the president or deputy president and 3 other members of the board and business shall not be conducted at a meeting of the board unless a quorum is present.

(3) Where the president and deputy president of a regional community corrections board are unable from any cause to attend a meeting of the board and 3 other members of the board are of the opinion that it is desirable that a meeting of the board be held to consider the exercise by the board of its powers under section 185(1), the secretary to the board shall be advised accordingly and thereupon the secretary shall convene a meeting of the board.

(3A) The members present at the meeting so convened shall appoint 1 of their number to preside at the meeting.

(3B) The member who presides at such meeting shall have and may exercise the powers and authorities and shall discharge the functions and duties of the president of the regional community corrections board.

(4) Notwithstanding subsection (2), a quorum at a meeting of a regional community corrections board convened in accordance with subsection (3) shall be any 4 members of the board and the meeting shall be deemed to be a duly convened meeting of the board for the purpose of exercising any power of the board conferred by section 185(1).

(5) Subsections (3) to (4) shall be read and construed so as not to

prejudice in any way the power of a regional community corrections board to transact at a duly convened meeting of the board any business of the board.

### **Secretary to regional community corrections board**

**151.(1)** The commission shall appoint a secretary to each regional community corrections board.

**(2)** A person appointed pursuant to subsection (1) shall be an officer of the commission.

**(3)** Where the secretary to a regional community corrections board is absent or is for any other reason unable to act as secretary another officer of the commission may act in the secretary's place and while so acting shall be deemed to be the secretary to that board.

**(4)** The secretary to a regional community corrections board shall in respect of the secretary's functions and duties as such secretary be subject to the direction of the president of the board but otherwise shall be subject to the control of officers of the commission having authority over the secretary.

### **Annual report etc.**

**152.(1)** The president of each regional community corrections board shall within 2 weeks after 30 June in each year furnish to the Queensland Community Corrections Board in respect of the year that ended on that 30 June a report prepared in accordance with guidelines issued under section 139(2).

**(2)** For the purpose of the Queensland Community Corrections Board making a report under section 142(a), a regional community corrections board shall furnish to the Queensland Community Corrections Board such information as is requested by that board.

***Division 3—General*****Interpretation**

**153.** In this division—

**“corrections board”** means the Queensland Community Corrections Board or a regional community corrections board.

**Conduct of affairs**

**154.(1)** The president of a corrections board alone shall decide all questions of law arising out of any matter before the board.

**(2)** Subject to subsection (1), a corrections board shall exercise a power or authority and discharge a function or duty by the majority vote of its members present at a meeting and voting on the business in question.

**(3)** The president of a corrections board has a deliberative vote and in the event of an equality of votes on any question also has a casting vote.

**(4)** Subject to this Act and in the case of a regional community corrections board to any guidelines issued under section 139(2), a corrections board shall conduct its business generally and proceedings at meetings in such manner as it determines from time to time.

**(5)** Notwithstanding any other provision of this Act, a corrections board is competent to conduct its business at a meeting of the board held by means of distance communication with 1 or more of its members, in any case where the person convening the meeting considers urgent circumstances require it.

**(6)** Subsection (5) applies whether the distance communication is through a conference facility available in conjunction with the means of communication used, or through a series of communications.

**(7)** In subsections (5) and (6)—

**“distance communication”** includes communication by means of telephone, radio, telex or other facility.

**Invalidity of acts**

**155.** Any act, proceeding, decision or determination of a corrections board is not invalidated or in any way prejudiced by reason only of any defect in the qualification, membership or appointment of a member thereof or a vacancy in the membership of the board at the time of that act, proceeding, decision or determination.

**Judicial notice**

**156.(1)** All courts and persons acting judicially shall take judicial notice of the signature of every person who is a member of or secretary to a corrections board affixed to a document or other writing under the authority of this Act or any other Act and shall presume until the contrary is proved that every such signature has been lawfully and properly affixed.

**(2)** A certificate signed by the secretary to a corrections board purporting to record any determination of the board shall be evidence and in the absence of evidence to the contrary conclusive evidence of the making of that determination by the board.

**Authentication of document**

**157.** Subject to this Act, a document or other writing made or issued by a corrections board for the purposes of this Act shall be sufficiently authenticated if it is made or, as the case may be, signed by the president of the board, or by the secretary to the board at the president's direction.

**Powers and duties generally**

**158.** A corrections board shall have and may exercise such powers and authorities and shall discharge such functions and duties as are conferred or imposed upon it by or under this Act or any other Act.

**Board to have powers of commission of inquiry**

**159.** For the purpose of discharging its functions and duties under this Act, a corrections board shall be deemed to be a commission within the meaning of the *Commissions of Inquiry Act 1950* and the provisions of that

Act, other than sections 4, 4A, 5A, 14(1A), 19A, 19B, 19C and 26, shall apply and for that purpose each member of the board shall be deemed to be a commissioner and the president of the board shall be deemed to be the chairman of the commission.

### **Fees and allowances**

**160.(1)** Subject to subsection (2), each member of a corrections board shall be paid such fees and allowances as the Governor in Council determines.

(2) Fees and allowances shall not be paid to a member of a corrections board who is an officer of the public service or the commission in respect of the member's attendance at a meeting of a corrections board during the member's ordinary hours of duty as such an officer.

(3) Each member of a corrections board shall be paid such expenses as are necessarily incurred by the member in the discharge of the member's duties as a member and as the Minister approves.

### **Regulations for purposes of pt 3**

**161.** Regulations may be made under section 208 providing for or with respect to—

- (a) the functions and duties of secretaries to corrections boards;
- (b) reports and notifications required by corrections boards;
- (c) the custody and safe keeping of the records of corrections boards and access to those records.

## **PART 4—PAROLE**

### **Application for parole**

**163.(1)** Subject to section 172, a prisoner may apply to be released on parole under this part.

(2) All applications for parole under this part shall be in the prescribed form and shall—

- (a) where a regional community corrections board is established for the area of the State in which the applicant resides—be forwarded to the secretary to that board;
- (b) in a case to which paragraph (a) does not apply—be forwarded to the secretary to the Queensland Community Corrections Board.

### **Residence of prisoners**

**164.** For the purposes of this part a prisoner, while on leave of absence, shall be deemed to reside at the prison or community corrections centre from which the prisoner was granted leave.

### **Release on parole**

**165.(1)** Subject to section 166, the Queensland Community Corrections Board may, by written order, direct that—

- (a) a prisoner who—
  - (i) is serving a term of imprisonment (including a term of life imprisonment); or
  - (ii) is serving a term of imprisonment imposed under the *Penalties and Sentences Act 1992*, section 173(1)(b); or
- (b) a prisoner who is being detained in an institution for a period fixed by a judge under the *Criminal Law Amendment Act 1945*, part 4;

be released on parole on the date specified in the order.

**(1A)** Subject to section 166, a regional community corrections board may, by written order, direct that a prisoner who is serving a term of imprisonment not longer than 5 years be released on the date specified in the order.

**(1B)** A prisoner in relation to whom a parole order is made under subsection (1) or (1A) must be released on the date specified in the order.

(2) The Queensland Community Corrections Board shall not make a

parole order in relation to a prisoner mentioned in subsection (1)(a)(i) unless—

- (a) the term of imprisonment that the prisoner is serving exceeds 5 years; or
- (b) there is not a regional community corrections board established for the area in which the prisoner resides; or
- (c) it is acting pursuant to section 168.

(3) A regional community corrections board shall not make a parole order in relation to a prisoner unless the prisoner is resident in the area for which the board is established.

(4) The Queensland Community Corrections Board or a regional community corrections board may cancel, amend or vary a parole order made by it in accordance with this section at any time before the prisoner is released on parole thereunder and a parole order so amended or varied shall apply accordingly.

(5) The secretary to the Queensland Community Corrections Board or, as the case may be, a regional community corrections board shall send a copy of the parole order together with such other documents and information as are prescribed to—

- (a) the prisoner in respect of whom the order is made; and
- (b) where the prisoner is to be released on parole from a prison or community corrections centre, the person in charge of that prison or centre; and
- (c) the commission.

### **Eligibility for parole**

**166.(1)** Subject to subsection (4) of this section and the *Penalties and Sentences Act 1992*, section 157, a prisoner mentioned in section 165(1)(a)(i) is not eligible for release on parole—

- (a) if the prisoner is serving a term of life imprisonment and the Criminal Code, section 305(2)<sup>5</sup> applied to the prisoner on

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<sup>5</sup> Criminal Code, section 305 (Punishment of murder)



sentence—until the prisoner has served the period required under an order under the subsection, or, if no order was made, 20 years; or

- (b) if the prisoner is serving a term of life imprisonment and the Criminal Code, section 305(2) did not apply to the prisoner on sentence—until the prisoner has served a period of 15 years; or
- (c) if the prisoner is serving a term of imprisonment for a serious violent offence—until the prisoner has served the lesser of the following—
  - (i) 80% of the term of imprisonment to which the prisoner was sentenced;
  - (ii) 15 years; or
- (d) otherwise—until the prisoner has served half of the term of imprisonment to which the prisoner was sentenced.

(2) A prisoner mentioned in section 165(1)(b) is not eligible for release on parole until the prisoner has been detained for 50% of the period for which the prisoner was directed to be detained.

(4) Subject to section 165(2), the Queensland Community Corrections Board may, where it is satisfied that there are special circumstances relating to a prisoner mentioned in section 165(1)(a), release that prisoner on parole at any time.

(5) Subject to section 165(3), a regional community corrections board may, where it is satisfied that there are special circumstances relating to a prisoner mentioned in section 165(1A), release that prisoner on parole at any time.

### **Regional community corrections board to consider application**

**167.(1)** A regional community corrections board shall consider each application for parole received by its secretary pursuant to this part and in relation to an application by a prisoner who may be released on parole only by the Queensland Community Corrections Board or a prisoner referred to in section 182, the regional community corrections board shall recommend to the Queensland Community Corrections Board as to whether or not the prisoner should be released on parole.

(2) A regional community corrections board shall forward the board's recommendation under subsection (1) together with the application, notes of any representations made to the board by or on behalf of the applicant and such other material as it considers appropriate to the Queensland Community Corrections Board for its consideration.

(3) The Queensland Community Corrections Board in considering an application for parole received by it pursuant to subsection (2) shall have regard to the regional community corrections board's recommendation with respect thereto but is in no way bound by the recommendation.

### **Review of regional community corrections board's decision**

**168.(1)** A prisoner who pursuant to this part has applied on 3 or more occasions to be released on parole in relation to the same term of imprisonment and whose applications have been refused by a regional community corrections board may apply to have the last such refusal reviewed by the Queensland Community Corrections Board.

(2) An application under subsection (1) shall be in the prescribed form and must be received by the secretary to the regional community corrections board in relation to whose refusal the application is made within 7 days after written notice of the refusal is received by the applicant.

(3) A secretary who receives an application for review pursuant to subsection (2) shall forward to the secretary to the Queensland Community Corrections Board—

- (a) the application for review;
- (b) the application to be released on parole to which the application for review relates;
- (c) notes of any representations made to the regional community corrections board by or on behalf of the applicant in relation to the application to be released on parole;
- (d) the reasons for the regional community corrections board refusing the application to be released on parole;
- (e) such other material (if any) as the regional community corrections board considers appropriate.

(4) On a review under this section the Queensland Community

Corrections Board shall have regard to the material forwarded pursuant to subsection (3) and may confirm the decision of the regional community corrections board to refuse the application for parole or set aside that decision and make any order that the regional community corrections board could have made.

(5) The order of the Queensland Community Corrections Board made under this subsection shall be given effect.

### **Representations by or on behalf of prisoner**

**169.(1)** Where—

- (a) a prisoner's application to be released on parole is pursuant to this part to be considered by a regional community corrections board, the prisoner may, if the prisoner so requests, appear before and make representations to the board in support of the prisoner's application and, with the leave of the board first obtained, be represented before the board by an agent;
- (b) a prisoner's application to be released on parole is pursuant to this part to be considered by the Queensland Community Corrections Board, the prisoner may, if the prisoner so requests and with the leave of the board first obtained, be represented before the board by an agent who may make representations to the board in support of the application;
- (c) a prisoner has duly made application pursuant to section 168 to have a regional community corrections board's refusal of the prisoner's application to be released on parole reviewed, the prisoner may, if the prisoner so requests and with the leave of the Queensland Community Corrections Board first obtained, be represented before that board by an agent who may make representations to the board in relation to matters that are relevant to the review.

(2) A request under subsection (1) shall be in the prescribed form and be given to the secretary to the board to which the request relates within the time prescribed for that purpose.

(3) The secretary to the board to which a request is duly made under subsection (2) shall—

- (a) in the case of a request duly made of a regional community corrections board—give to the prisoner written notice of the time and place at which the prisoner may appear before the board and, where the prisoner has sought the board’s leave to be represented before it by an agent, as to whether or not the board has granted leave;
- (b) in the case of a request duly made of the Queensland Community Corrections Board—give to the prisoner written notice as to whether or not the board has granted leave for the prisoner to be represented before it by an agent and, where leave is so granted, of the time and place at which the agent may appear before the board.

(4) The secretary to a regional community corrections board or, as the case may be, the Queensland Community Corrections Board may, by subsequent notice in writing given to the prisoner, from time to time alter the time or place or time and place notice of which was given under subsection (3).

(5) Subsection (1) shall not be construed—

- (a) as requiring a regional community corrections board to refrain from considering or determining an application to be released on parole where the prisoner or the prisoner’s agent fails to appear before it at the time and place specified in the notice last given to the prisoner under this section;
- (b) as requiring the Queensland Community Corrections Board to refrain from considering or determining an application to be released on parole or from reviewing a regional community corrections board’s refusal of an application to be released on parole where the prisoner’s agent fails to appear before it at the time and place specified in the notice last given to the prisoner under this section.

(6) The granting of leave pursuant to this section by a regional community corrections board or the Queensland Community Corrections Board lies wholly within the discretion of that board.

(7) In no case may a barrister or solicitor appear before a regional community corrections board or the Queensland Community Corrections Board as agent for a prisoner pursuant to leave granted under this section.

(8) Except where a prisoner is summoned to attend before the Queensland Community Corrections Board pursuant to the provisions of the *Commissions of Inquiry Act 1950* as applied by section 159, a prisoner may not appear before the Queensland Community Corrections Board in respect of the prisoner's application referred to in subsection (1)(b) or (c).

### **Removal of prisoner appearing before regional community corrections board**

**170.(1)** If a prisoner who is appearing before a regional community corrections board pursuant to section 169(1) insults a member of the board or disrupts the board's proceedings, the president of the board may direct any custodial correctional officer to remove the prisoner from the meeting and the officer shall remove the prisoner in accordance with the direction.

(2) A prisoner who is removed from a meeting of a regional community corrections board under subsection (1) loses the prisoner's entitlement under section 169(1) to appear before and make representations to the board.

### **Custodial correctional officer may be directed to leave meeting of board**

**171.(1)** Where a prisoner is appearing before a regional community corrections board pursuant to section 169(1), the president of the board may direct any custodial correctional officer present at the meeting (other than the custodial correctional officer who is a member of the board) to leave and remain out of the hearing of the meeting for such time as the president directs.

(2) A custodial correctional officer shall comply with a direction given to the officer under subsection (1).

### **Competency of prisoner to apply for parole**

**172.(1)** Subject to subsection (2), it is not competent to a prisoner to apply to be released on parole in relation to a term of imprisonment—

- (a) where a prior application made by the prisoner in relation to that term has been refused—within a period determined under

section 174(a) by the Queensland Community Correctional Board or a regional community correctional board that refused the application;

- (b) where an appeal has been duly instituted to a court against any sentence imposing that term or any part of that term or against any conviction to which any such sentence relates—until the appeal is determined.

(2) It is competent to a prisoner to whom subsection (1)(a) applies to again apply to be released on parole in relation to a term of imprisonment within the period referred to in that paragraph if the prisoner has the permission of the Queensland Community Corrections Board or a regional community corrections board to do so.

### **Application to lapse**

**173.** Where subsequent to his or her applying to be released on parole and prior to the application being determined pursuant to this part the prisoner is sentenced to another term of imprisonment, the application shall lapse.

### **Refusal of application for parole**

**174.** If the Queensland Community Corrections Board or a regional community corrections board refuses an application for parole made pursuant to this part, the board shall—

- (a) determine a period of time within which a further application for parole by the applicant shall not be considered, in no case greater than a period of 6 months after the refusal; and
- (b) cause reasons in writing for the refusal to be given to the applicant.

### **Requirements of parole order**

**175.(1)** A parole order—

- (a) shall contain requirements that the prisoner—
  - (i) be under the supervision of a community correctional

officer—

- (A) if the prisoner is a prisoner mentioned in section 165(1)(a)—for such period, that does not go past the end of the prisoner's term of imprisonment, as is determined by the board making the order; or
- (B) if the prisoner is a prisoner mentioned in section 165(1)(b)—for the period that the prisoner was directed to be detained; and
  - (ii) abstain from violation of the law; and
  - (iii) carry out the lawful instructions of the community correctional officer; and
  - (iv) report and receive visits as directed by the community correctional officer; and
  - (v) notify the community correctional officer within 48 hours of any change of address or change of employment during the parole period; and
- (b) may contain such other requirements specified in the parole order as the board making the order considers necessary with a view to—
  - (i) securing the good conduct of the prisoner;
  - (ii) preventing a repetition by the prisoner of the offence in relation to which the prisoner was imprisoned or detained or the commission by the prisoner of other offences.

(2) A parole order may include requirements relating to the residence of the prisoner in the State or if the prisoner consents, in another State or a Territory.

(3) Unless the parole order otherwise permits or requires the prisoner to reside in another State or a Territory, it shall be a requirement of every parole order that the prisoner shall not leave or remain out of the State save in compliance in every respect with the terms and conditions of a permit in writing of—

- (a) where the order was made by the Queensland Community Corrections Board—that board or the commission;

- (b) where the order was made by a regional community corrections board—any such board or the commission.

(4) A permit referred to in subsection (3) may be granted upon application made by the prisoner in that behalf and shall be for such period of time and subject to such terms and conditions as the board granting the permit thinks fit.

(4A) To the extent necessary to give effect to a permit under subsection (4) the parole order in question shall be deemed to be amended and shall apply accordingly.

(5) Where pursuant to a parole order, a prisoner is required or permitted to reside in another State or a Territory, the commission shall send to the proper authority of that State or Territory, where that authority so requires, a copy of the parole order certified as a true copy together with such other documents and information as are prescribed.

### **Assignment of community correctional officer**

**176.(1)** The board making the order or the commission shall assign a community correctional officer in respect of a parole order and the community correctional officer so assigned shall supervise the prisoner during the parole period.

- (2) Where the parole order was made—
- (a) by the Queensland Community Corrections Board—that board or the commission;
- (b) by a regional community corrections board—any such board or the commission;

may from time to time assign another community correctional officer in lieu of the officer assigned under subsection (1).

### **Breach of parole order otherwise than by conviction**

**177.(1)** A prisoner who, during the parole period and whether in Queensland or elsewhere, contravenes or fails to comply with a requirement contained in a parole order commits an offence.

- (2) The conviction of a prisoner of an offence against subsection (1) shall



not prejudice or otherwise affect in any way the power of the Queensland Community Corrections Board or a regional community corrections board to cancel, suspend, amend or vary in accordance with section 185 or 186 the parole order made in respect of the prisoner.

(3) A prisoner who has been convicted and sentenced to another term of imprisonment in respect of an offence committed in Queensland or elsewhere during the parole period shall not by reason only of the commission of that offence render himself or herself liable to prosecution as for an offence against subsection (1).

### **Procedure upon breach of parole order**

**178.(1)** Subject to section 177(3), a justice to whom it is made to appear upon complaint by a community correctional officer duly authorised in that behalf by the commission that a prisoner has, during the parole period, committed an offence against section 177(1) may issue a summons directed to the prisoner requiring the prisoner to appear at a Magistrates Court at the time and place specified in the summons to be dealt with according to law.

(2) Where a complaint pursuant to subsection (1) is in writing and on oath, the justice may instead of issuing a summons issue a warrant directed to all police officers to arrest the prisoner and bring the prisoner before a Magistrates Court at the place specified to be dealt with according to law.

(3) Notwithstanding any other Act or law, the Magistrates Court before which the prisoner appears pursuant to subsection (1) or is brought pursuant to subsection (2) shall have jurisdiction to hear and determine the complaint.

### **Power of Magistrates Court that convicts prisoner of an offence against s 177(1)**

**179.** A Magistrates Court that convicts a prisoner who appears or is brought before it pursuant to section 178 of an offence against section 177(1) may, without prejudice to the continuation of the parole order, impose on the prisoner a penalty not exceeding 10 penalty units.

**Commission may suspend parole**

**180.(1)** Where the commission believes on reasonable grounds that a prisoner has committed an offence defined in section 177(1) it may by order in writing suspend that prisoner's parole for a period of not more than 7 days.

(2) Where the commission suspends a prisoner's parole pursuant to this section it shall forthwith give notice in writing of the offence and suspension to the secretary to the board which made the parole order pursuant to which the prisoner was released on parole.

(2A) Upon being requested to do so by that board the commission shall furnish to it such reports on and information with respect to the breach as it requires.

(3) The board which made the parole order or the commission may at any time cancel an order made pursuant to this section.

(4) Unless a prisoner's parole has been cancelled pursuant to the provisions of this part during the period of suspension then upon the expiration of that period, or if the order suspending a prisoner's parole is sooner cancelled, then upon that cancellation the parole order shall again apply and the prisoner shall be released on parole under the order.

**Commission may issue warrant**

**181.(1)** Where a prisoner's parole is suspended pursuant to section 180 the commission may, as and when the occasion requires it, issue a warrant directed to all police officers to apprehend the prisoner and convey the prisoner to a prison to be therein kept in custody for so long as the order suspending the prisoner's parole remains in force.

(2) A warrant issued pursuant to subsection (1) shall be sufficient authority for the apprehension and conveyance of the prisoner to a prison and for the prisoner's detention therein for the period during which the order remains in force.

**Discharge of persons on parole**

**183.(1)** If in relation to a prisoner the parole period has expired without the Queensland Community Corrections Board or a regional community

corrections board having made an order cancelling the parole and without the commission by the prisoner, whether in Queensland or elsewhere, of an offence for which the prisoner is sentenced to a term of imprisonment, whether during or after the expiration of the parole period, the prisoner shall be deemed to have served the prisoner's term of imprisonment or detention and shall be wholly discharged therefrom.

(2) For the purpose of subsection (1), a prisoner shall be taken not to have been sentenced to a term of imprisonment in respect of an offence committed during the parole period where the prisoner's liability to undergo a term of imprisonment arises only—

- (a) in default of payment of a fine; or
- (b) in consequence of the nonpayment of a sum of money required to be paid pursuant to an order of a court; or
- (c) in consequence of the failure to make restitution required to be made pursuant to an order of a court.

### **Prisoners on parole deemed still under sentence**

**184.** Until the parole period has expired as referred to in section 183(1) or a prisoner is otherwise discharged from the term of imprisonment, detention for a period or detention during Her Majesty's pleasure imposed upon the prisoner, a prisoner released on parole shall be regarded as still being under sentence or detention and as not having suffered the punishment to which the prisoner was sentenced or as not having undergone detention during the period for which the prisoner was ordered to be detained.

### **Cancellation etc. of parole by board**

**185.(1)** Where a prisoner is released on parole—

- (a) in the case of a prisoner referred to in section 182 or a prisoner released on parole pursuant to an order of the Queensland Community Corrections Board—that board;
- (b) in the case of a prisoner released on parole pursuant to an order of a regional community corrections board—any such board;

may at any time before the expiration of the parole period by its order

cancel, suspend, amend or vary the prisoner's parole.

(1A) A parole order as amended or varied shall apply and extend accordingly.

(1B) The suspension of a prisoner's parole under this subsection may be for such fixed or indeterminate period as the board which orders the suspension thinks fit.

(2) In the case of an order suspending a prisoner's parole made by—

- (a) the Queensland Community Corrections Board—that board;
- (b) a regional community corrections board—any such board;

may at any time cancel that order.

(3) Unless a prisoner's parole has been cancelled pursuant to the provisions of this part during the period of suspension then upon the expiration of that period, or if the order suspending a prisoner's parole is sooner cancelled, then upon such cancellation the parole order shall again apply with such additional or varied requirements (if any) as the Queensland Community Corrections Board or, as the case may be, a regional community corrections board may impose and the prisoner shall be released on parole under the order.

### **Reduction of parole period**

**186.(1)** Where having regard to a prisoner's behaviour during the parole period the commission is of the opinion that the prisoner's parole should be amended by reducing the parole period it may so recommend—

- (a) in the case of a prisoner referred to in section 182 or a prisoner released on parole pursuant to an order of the Queensland Community Corrections Board—to that board; or
- (b) in the case of a prisoner released on parole pursuant to an order of a regional community corrections board—any such board.

### **Cancellation of parole by conviction**

**187.(1)** Where a prisoner who has been released on parole is sentenced to another term of imprisonment upon conviction for an offence committed in Queensland or elsewhere during the parole period, the prisoner's parole

shall ipso facto be cancelled whether or not the parole period has expired.

(2) For the purpose of subsection (1), a prisoner shall not be taken to have been sentenced to another term of imprisonment where the prisoner's liability to undergo a term of imprisonment arises only—

- (a) in default of payment of a fine; or
- (b) in consequence of the nonpayment of a sum of money required to be paid pursuant to an order of a court; or
- (c) in consequence of the failure to make restitution required to be made pursuant to an order of a court; or
- (d) in consequence of the term of imprisonment being served by way of an intensive correction order in force under the *Penalties and Sentences Act 1992*, part 6; or
- (e) in consequence of the term of imprisonment being wholly suspended under the *Penalties and Sentences Act 1992*, part 8.

### **Warrant for the return of prisoner to prison**

**188.(1)** Where—

- (a) a prisoner is released on parole pursuant to section 182 and the parole is cancelled or suspended by order of the Queensland Community Corrections Board or cancelled pursuant to section 187—that board; or
- (b) a prisoner is released on parole pursuant to an order of the Queensland Community Corrections Board and the parole is cancelled or suspended by order of the board or cancelled pursuant to section 187—that board; or
- (c) a prisoner is released on parole pursuant to an order of a regional community corrections board and the parole is cancelled or suspended by order of any such board or cancelled pursuant to section 187—any regional community corrections board;

may, as and when the occasion requires it, issue a warrant signed by any 2 of its members directed to all police officers to apprehend the prisoner and convey the prisoner to a prison there—

- (d) in a case where the prisoner's parole is cancelled—to serve the

unexpired portion of the term of imprisonment or detention to which the prisoner was sentenced;

- (e) in a case where the prisoner's parole is suspended—to be kept in custody for so long as the order suspending the prisoner's parole remains in force.

(2) A warrant issued pursuant to this section shall be sufficient authority for the apprehension and conveyance of the prisoner to a prison and for the prisoner's detention therein pursuant to the provisions of this Act.

### **Magistrate may issue warrant**

#### **189.(1) Where—**

- (a) a prisoner is released on parole pursuant to section 182 and the parole is cancelled or suspended by order of the Queensland Community Corrections Board or cancelled pursuant to section 187—that board or a member thereof; or
- (b) a prisoner is released on parole pursuant to an order of the Queensland Community Corrections Board and the parole is cancelled or suspended by order of that board or cancelled pursuant to section 187—that board or a member thereof; or
- (c) a prisoner is released on parole pursuant to an order of a regional community corrections board and the parole is cancelled or suspended by order of any such board or cancelled pursuant to section 187—any regional community corrections board or a member thereof;

may (whether or not a warrant has been issued under section 188) apply to a magistrate for a warrant directed to all police officers to apprehend the prisoner and convey the prisoner to a prison there—

- (d) in a case where the prisoner's parole is cancelled—to serve the unexpired portion of the term of imprisonment or detention to which the prisoner was sentenced;
- (e) in a case where the prisoner's parole is suspended—to be kept in custody for so long as the order suspending the prisoner's parole remains in force;

and a magistrate may issue such a warrant.

(2) A warrant issued pursuant to this section shall be sufficient authority for the apprehension and conveyance of the prisoner to a prison and for the prisoner's detention therein pursuant to the provisions of this Act.

### **Effect of cancellation of parole on sentence**

**190.(1)** Upon the cancellation of a prisoner's parole, the original warrant of commitment or other authority for the prisoner's imprisonment or detention shall again be in force and no part of the time between the prisoner's release on parole and the prisoner recommencing to serve the unexpired portion of the prisoner's term of imprisonment or detention, other than the period (if any) during which the prisoner was kept in custody consequent upon the prisoner's parole being suspended, shall be regarded as time served in respect of that term.

(2) The Queensland Community Corrections Board may, where a prisoner's parole has been cancelled, by order direct that the prisoner concerned serve such part only of the unexpired portion of the term of imprisonment or detention imposed on the prisoner as is specified in the order and where the prisoner has, in accordance with any law applicable to the term of imprisonment or detention imposed on the prisoner, served the part so specified, the prisoner shall be deemed to have served that term and shall be wholly discharged therefrom.

(3) The Queensland Community Corrections Board may make an order under this subsection notwithstanding that the order pursuant to which the prisoner was released on parole was made by a regional community corrections board.

### **Authority of board to release more than once on parole**

**191.** A prisoner may again be released on parole notwithstanding that the prisoner's parole has been cancelled on any prior occasion or occasions in respect of the same term of imprisonment or detention.

### **Action by way of prerogative order does not lie**

**192.(1)** No action by way of prerogative order lies in respect of any action taken or decision made under this part by the Queensland Community Corrections Board or a regional community corrections board.

(2) In this section—

“**prerogative order**” has the meaning given by the *Judicial Review Act 1991*.

### **Community correctional officers subject to direction of board**

**193.** In relation to a parole order, community correctional officers are subject to the directions of—

- (a) where the order was made by the Queensland Community Corrections Board—that board;
- (b) where the order was made by a regional community corrections board—any such board.

### **Commission to cause reports to be prepared**

**194.** When requested to do so by the Queensland Community Corrections Board or a regional community corrections board, the commission shall cause to be prepared and submitted to the board such reports on and information with respect to a prisoner as the board requested.

### **Application of Justices Act**

**195.** The *Justices Act 1886* shall with all necessary adaptations apply and extend to and in respect of a complaint, summons or warrant referred to in section 178 and a penalty referred to in section 179 and for the purpose of such application—

- (a) a complaint shall be deemed to be a complaint for an offence; and
- (b) a summons shall be deemed to be a summons to answer a complaint; and
- (c) a penalty may be enforced by any order under that Act that might be made by the adjudicating justices for the enforcement of the payment of a penalty adjudged to be paid upon a conviction as for an offence under any Act not expressly providing for such enforcement.



**Regulations for purposes of pt 4**

**196.** Regulations may be made under section 208 providing for or with respect to the making and dealing with of applications made under this part.

**PART 6—MISCELLANEOUS****Assignment of community correctional officer in respect of order**

**197.(1)** The commission—

- (a) shall assign a community correctional officer in respect of each probation order, community service order and fine option order; and
- (b) may from time to time assign another community correctional officer in the stead of an officer assigned under paragraph (a).

**(2)** A community correctional officer assigned in respect of an order pursuant to subsection (1) shall be the community correctional officer for the purposes of the order.

**Community service**

**198.** The commission may declare any activity to be community service for the purposes of this Act or of the *Penalties and Sentences Act 1992*, part 4, division 2 or part 5 or 6.

**Appointment of voluntary community correctional officers**

**200.** The commission may from time to time appoint suitable persons to be voluntary community correctional officers for the purposes of this Act and may at any time remove a person so appointed.

**Commission to cause reports to be prepared**

**201.(1)** When required to do so by a court, the commission shall cause to be prepared and submitted to that court such reports on and information

with respect to a specified person as the court requires.

(2) A report referred to in subsection (1) shall be—

- (a) prepared by a community correctional officer; and
- (b) furnished to the court within such time (if any) as may be prescribed; and
- (c) where the report is in writing—submitted in triplicate.

### **Offender to report to community correctional officer where presentence report required**

**202.** Where a court proposes to grant bail upon an adjournment of a hearing to a person convicted of an offence and intends to require the commission to cause to be prepared a report or reports in relation to that person the court shall by its order direct that person to report to a specified community correctional officer within a specified time.

### **Reports of community correctional officers**

**203.(1)** A written report or oral statement made by a community correctional officer to any court with a view to assisting the court in determining the most suitable method of dealing with a convicted person shall be received by the court as prima facie evidence of the matters contained in that report or statement notwithstanding that the officer is not called as a witness.

(2) Where a written report is made as mentioned in subsection (1) the court shall show a copy of the report to the defence and the prosecution unless the court makes an order to the effect that a copy of the report or any part of the report be not shown to the convicted person in which case a copy of the report or part shall be shown only to the convicted person's legal representatives and to the prosecution.

(3) Where a copy of a written report or part thereof is shown to a person pursuant to subsection (2) the person shall return it to the court not later than the conclusion of the proceedings of the court to which it relates.

(4) Where a court receives a report or statement referred to in subsection (1) it shall give the defence and the prosecution such an opportunity as it thinks reasonable to controvert the whole or any part of

that report or statement.

(5) No objection shall be taken or allowed to evidence received pursuant to subsection (1) on the ground that it is hearsay.

(6) A reference in subsection (1) to a written report or oral statement made by a community correctional officer to any court includes, but is not limited to, a report or information submitted to a court pursuant to a requirement made under section 201(1).

### **Commissioner of the police service to provide criminal histories**

**204.(1)** Upon being requested to do so by the commission, the commissioner of the police service shall make available such information in respect of the criminal history of any person as is in the possession of or available to the commissioner.

(2) Subject to subsection (3) information provided by the commissioner of the police service shall be used by the commission only for the purposes of this Act.

(3) The commission may supply any information supplied to it by the commissioner of the police service to—

- (a) the person in charge of any institution (within or out of the State) to which a prisoner is or is to be transferred under this Act or any other Act; or
- (b) any person in another State or a Territory for the purpose of the transfer of the parole of a prisoner under the *Parole Orders (Transfer) Act 1984*.

(4) The *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6 does not apply in respect of—

- (a) the dissemination into, within or from Queensland of information concerning any person by an officer or employee of the commission or by an officer or employee of a department or body responsible for corrective services in another State or a Territory;
- (b) the filing and recording by an officer or employee of the commission in the discharge of his or her duties of information in the possession of the commission;

- (c) the use for any purpose of this Act of information in the possession of the commission.

### **Royal prerogative of mercy etc. not affected**

**205.(1)** This Act does not affect the royal prerogative of mercy.

**(2)** Subject to the express provisions of this Act, nothing in this Act shall be read so as to annul, abridge or alter any authority or jurisdiction which any court or any judge or justice may possess under any other Act or otherwise.

### **Proceedings for offences**

**206.** Subject to this Act, proceedings for an offence against this Act, other than an offence defined in section 92—

- (a) shall be by way of summary proceedings under the *Justices Act 1886*; and
- (b) shall be commenced by complaint made by a person authorised by the commission in that behalf either generally or in a particular case.

### **Evidentiary provision**

**207.** In any proceedings under or for the purposes of this Act or in any other proceedings—

- (a) it shall not be necessary to prove the appointment of any commissioner or of any official visitor, inspector, general manager, correctional officer, medical officer, police officer or supervisor but this shall not prejudice the right of any person to prove that such person was not so appointed;
- (b) it shall not be necessary to prove the authority of the commission, or of a person referred to in paragraph (a), to do any act or take any proceedings but this shall not prejudice the right of any person to prove the absence of authority;
- (c) a signature purporting to be that of a person referred to in paragraph (a) shall be taken to be the signature it purports to be

until the contrary is proved;

- (d) a person who purports to do or to have done anything for the purposes of this Act pursuant to the authority of an instrument of delegation made pursuant to this Act or the *Corrective Services (Administration) Act 1988* shall, if the person purported to have made the delegation could pursuant to either Act have done that thing, be presumed to act or to have acted in accordance with a valid instrument of delegation unless the contrary is proved;
- (e) an instrument purporting to be made under this Act shall, unless the contrary is proved, be presumed to be validly made;
- (f) a certificate under the seal of the commission or purporting to be signed by a person authorised in that behalf by the commission stating that a place or premises described in the certificate is or was during a specified period a prison or part of a prison or a community corrections centre or part of a community corrections centre shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters stated.

## **Regulations**

**208.(1)** The Governor in Council may make regulations, not inconsistent with this Act, prescribing any matter that this Act requires or permits to be prescribed (other than any matter required to be prescribed otherwise than by regulation) or any matter that it is necessary or convenient to prescribe to give effect to this Act.

**(2)** Without limiting the generality of subsection (1), regulations may be made prescribing for or with respect to—

- (a) the forms to be used for the purposes of this Act;
- (b) the reports which are required by a court for the purposes of this Act, the persons who may be allowed access to those reports and the custody and safekeeping of those reports;
- (c) the records required for the purposes of this Act;
- (d) offences against the regulations and the amount of any penalty (not exceeding 20 penalty units) for any offence.

**(3)** Regulations may be of general or limited application and may differ

according to differences in time, place or circumstance or according to the persons or classes of persons to whom they are expressed to apply.

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## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 12 September 1997. Future amendments of the Corrective Services Act 1988 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 70 of 1993	27 April 1994
2	to Act No. 87 of 1994	3 June 1996
2A	to Act No. 22 of 1996	22 August 1996
2B	to Act No. 75 of 1996	30 January 1997
2C	to Act No. 4 of 1997	4 July 1997

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	1, 2
Changed names and titles	1
Corrected minor errors	1
Obsolete and redundant provisions	1, 2
Renumbered provisions	1, 2

## 6 List of legislation

### **Corrective Services Act 1988 No. 89**

date of assent 1 December 1988

ss 1–2 commenced on date of assent

remaining provisions commenced 15 December 1988 (see s 2(2) and o in c  
pubd gaz 10 December 1988 p 1675)

as amended by—

### **Corrective Services Act Amendment Act 1990 No. 38**

date of assent 21 June 1990

ss 1–2 commenced on date of assent

remaining provisions commenced 18 August 1990 (proc pubd gaz 18 August  
1990 p 2393)

### **Corrective Services Amendment Act 1991 No. 55**

date of assent 18 September 1991

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 1992 (1991 SL No. 175)



**Juvenile Justice Act 1992 No. 44 ss 1–2, 235 sch 3**

date of assent 19 August 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 1993 (1993 SL No. 313)

**Penalties and Sentences Act 1992 No. 48 ss 1–2, 207 sch**

date of assent 24 November 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 18 December 1992 (1993 SL No. 393)

**Penalties and Sentences Legislation Amendment Act 1993 No. 36 ss 1–2, 15 sch 2**

date of assent 23 July 1993

commenced on date of assent

**Local Government Act 1993 No. 70 pt 1, s 804 sch**

date of assent 7 December 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 26 March 1994 (see s 2(5))

**Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 ss 1–3 sch 2**

date of assent 1 December 1994

commenced on date of assent

**Juvenile Justice Legislation Amendment Act 1996 No. 22 pts 1, 6 sch 2**

date of assent 15 August 1996

commenced on date of assent

**WorkCover Queensland Act 1996 No. 75 ss 1–2, 535 sch 2**

date of assent 12 December 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 1997 (1996 SL No. 442)

**Penalties and Sentences (Serious Violent Offences) Amendment Act 1997 No. 4 pts 1, 4**

date of assent 3 April 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 151)

**Corrective Services Legislation Amendment Act 1997 No. 46 pts 1, 3**

date of assent 29 August 1997

commenced on date of assent

**7 List of annotations****Long title** amd 1992 No. 48 s 207 sch**Commencement**

s 2 om R2 (see RA s 37)

**Arrangement**

s 3 om 1991 No. 55 s 4

**Repeals and references**

- s 4**           amd R1 (see RA s 40)  
                  om R1 (see RA s 39)

**Savings and transitional—general**

- s 5**           amd 1994 No. 87 s 3 sch 2

**Savings and transitional—parole**

- s 6**           amd R1 (see RA s 38)

**Savings and transitional—community service**

- s 7**           om R1 (see RA s 38)

**Savings and transitional—fine option orders**

- s 8**           om R1 (see RA s 38)

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- prov hdg**   sub 1996 No. 22 s 108 sch 2

- s 10**           amd R1 (see RA s 39)  
                  def **“appointed day”** ins 1996 No. 22 s 108 sch 2  
                  def **“commission”** amd 1997 No. 46 s 16(3)  
                  def **“community correctional officer”** sub 1997 No. 46 s 16(1)–(2)  
                  def **“community service order”** amd 1992 No. 48 s 207 sch  
                  def **“custodial correctional officer”** sub 1997 No. 46 s 16(1)–(2)  
                  def **“director of community corrections”** om 1997 No. 46 s 16(1)  
                  def **“director of custodial corrections”** om 1997 No. 46 s 16(1)  
                  def **“employee”** ins 1997 No. 46 s 16(2)  
                  def **“fine option order”** amd 1992 No. 48 s 207 sch  
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                  def **“police officer”** om R1 (see RA s 39)  
                  def **“probationer”** om 1992 No. 48 s 207 sch  
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**Death of prisoner**

- s 43**           amd 1994 No. 87 s 3 sch 2

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s 57            amd 1993 No. 70 s 804 sch

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- s 200** prev s 200 om 1992 No. 48 s 207 sch  
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- s 201** prev s 201 om 1992 No. 48 s 207 sch  
 pres s 201 (prev s 263) renum 1992 No. 48 s 207 sch

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- s 202** prev s 202 om 1992 No. 48 s 207 sch  
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- s 203** prev s 203 om 1992 No. 48 s 207 sch  
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- s 204** prev s 204 om 1992 No. 48 s 207 sch  
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- s 205** prev s 205 om 1992 No. 48 s 207 sch  
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**SCHEDULE 1**

om R1 (see RA s 40)

**SCHEDULE 2**

om 1994 No. 87 s 3 sch 2

**8 Transitional and savings provisions**

**Corrective Services (Consequential Amendments) Act 1988 No. 88 s 6**  
provides—

**Savings and transitional—Security Patients’ Hospital at Wacol Prison**

**6.(1)** On and from the date appointed under section 7 of the *Corrective Services (Administration) Act 1988*—

- (a) the Security Patients’ Hospital at Wacol Prison, declared under the *Prisons Act 1958–1988*, shall continue to be a security patients’ hospital within the meaning of that Act and, subject to this section, the provisions of that Act and the *Mental Health Services Act 1974–1988* shall apply to that security patients’ hospital as if the *Corrective Services Act 1988* had not commenced and as if the provision in Schedule I of this Act amending the definition “security patients’ hospital” in section 5 (1) of the *Mental Health Services Act 1974–1987*, had not commenced;
- (b) the Commission shall have all the powers and functions that, immediately before that day, were conferred or imposed by or under the *Prisons Act 1958–1988* or the *Mental Health Services Act 1974–1987* upon the Comptroller-General of Prisons in respect of security patients’ hospitals and patients detained therein;
- (c) the power of the Commission to appoint general managers, custodial correctional officers and other officers under the *Corrective Services (Administration) Act 1988* includes power to

appoint in respect of the Security Patients' Hospital at Wacol Prison a general manager and such custodial correctional officers and other officers as it thinks fit for the purpose of discharging the functions referred to in paragraph (b);

- (d) the person who holds office as general manager of the Security Patients' Hospital at Wacol Prison or the person for the time being performing the duties of that office shall have all the powers and functions that, immediately before that day, were conferred or imposed by or under the *Prisons Act 1958–1988* or the *Mental Health Services Act 1974–1987* upon the superintendent of a security patients' hospital within the meaning of the *Prisons Act 1958–1988*;
- (e) a reference in Part IX of the Mental Health Services Regulations 1985 to a prison officer shall be read as a reference to a custodial correctional officer within the meaning of the *Corrective Services Act 1988*.

(2) The Governor in Council may declare that the Security Patients' Hospital at Wacol Prison cease to be a security patients' hospital whereupon the provisions of subsection (1) shall be of no further force or effect.