

South Australia



**CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT ACT  
1996**

**No. 12 of 1996**

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**SCHEDULE**

*Amendment of penalties*



ANNO QUADRAGESIMO QUINTO

**ELIZABETHAE II REGINAE**

A.D. 1996

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No. 12 of 1996

**An Act to amend the Correctional Services Act 1982.**

[Assented to 24 April 1996]

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Correctional Services (Miscellaneous) Amendment Act 1996*.

(2) The *Correctional Services Act 1982* is referred to in this Act as "the principal Act".

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Amendment of s. 27—Leave of absence from prison**

3. Section 27 of the principal Act is amended—

(a) by inserting in paragraph (c) of subsection (1) "paid employment or in" after "in";

(b) by inserting after subsection (2) the following subsection:

(2a) If leave of absence is to be granted to a prisoner for participation in paid employment, the Chief Executive Officer may impose a condition requiring the prisoner to pay to the Chief Executive Officer a specified amount per week towards the cost of his or her board and lodging while so employed.

**Amendment of s. 33—Prisoners' mail**

4. Section 33 of the principal Act is amended—

(a) by striking out subsections (1) and (2) and substituting the following subsection:

(1) Subject to this section—

(a) prisoners are entitled to receive and send letters; and

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- (b) letters sent to prisoners must be handed to them as soon as reasonably practicable after delivery to the institution; and
- (c) letters sent by prisoners must be forwarded as soon as reasonably practicable.;
- (b) by striking out from subsection (4) "a prisoner" and substituting "prisoners";
- (c) by striking out from subsection (4) "a letter contains a prohibited item or a sum of money" and substituting "any letter contravenes this section";
- (d) by striking out subsection (5);
- (e) by striking out subsection (9);
- (f) by striking out from subsection (10) "is opened and perused pursuant to this section and";
- (g) by striking out from subsection (11) "is opened and perused pursuant to this section and";
- (h) by striking out from the definition of "**authorised officer**" in subsection (14) "**Minister**" and substituting "**Chief Executive Officer**".

**Amendment of s. 37A—Release of eligible prisoners on home detention**

5. Section 37A of the principal Act is amended by striking out subsection (6) and substituting the following subsection:

(6) In this section—

"**non-parole period**", in relation to a prisoner serving a sentence imposed for an offence against a law of the Commonwealth, includes the minimum term to be served under a recognisance release order;

"**residence**" includes, if the prisoner is an Aborigine who resides on tribal lands or an Aboriginal reserve, any area of land specified in the instrument of release.

**Amendment of s. 51—Offences by persons other than prisoners**

6. Section 51 of the principal Act is amended—

(a) by inserting in paragraph (b) "without the permission of the manager" after "institution";

(b) by striking out the penalty provision and substituted the following penalty provision:

Maximum penalty: Imprisonment for 6 months.;

(c) by inserting after its present contents (now to be designated subsection (1)) the following subsection:

(2) It is a defence to a charge of an offence of introducing into a correctional institution without the permission of the manager an item prohibited by the regulations if the defendant proves that he or she had reasonable grounds for being in possession of the item and at no time had any intention of parting with possession of it while within the institution.

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**Amendment of s. 77—Proceedings before the Board**

7. Section 77 of the principal Act is amended by inserting after subsection (3) the following subsections:

(4) The Board may, on written request, give details of the orders made by the Board in any proceedings relating to a prisoner or parolee to—

- (a) a person who made submissions to the Board in the proceedings; or
- (b) a member of the prisoner's or parolee's family or a close associate of the prisoner or parolee; or
- (c) a legal practitioner who represents the prisoner or parolee; or
- (d) any other person who the Board thinks has a proper interest in the release of such information.

(5) The Board's decision to release or not to release information under subsection (4) is final and is not reviewable by a court.

**Substitution of s. 85B**

8. Section 85B of the principal Act is repealed and the following sections are substituted:

**Power of search and arrest**

**85B.** (1) The manager of a correctional institution may cause any person who enters the correctional institution to be detained and searched for the presence of items prohibited by the regulations, if there are reasonable grounds for suspecting that the person is in possession of such an item without the permission of the manager.

(2) The manager of a correctional institution may cause any vehicle that enters the institution to be detained and searched for the presence of items prohibited by the regulations, if there are reasonable grounds for suspecting that such an item is being carried on or in the vehicle without the permission of the manager.

(3) The following provisions apply to a search carried out under subsection (1):

- (a) for the purposes of the search the person cannot be required to remove his or her clothing but may be required—
  - (i) to open his or her mouth; or
  - (ii) to adopt certain postures; or
  - (iii) to submit to being frisked; or
  - (iv) to do anything else reasonably necessary for the purposes of the search,

and if the person does not comply with such a requirement, reasonable force may be applied to secure compliance with the requirement;

- (b) force cannot be applied to open the person's mouth except by or under the supervision of a medical practitioner;

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- (c) nothing may be introduced into an orifice (including the mouth) of the person's body;
- (d) at least 2 persons, apart from the person being searched, must be present at all times during the search;
- (e) the search must be carried out expeditiously and undue humiliation of the person must be avoided.

(4) For the purposes of a search of a vehicle under subsection (2), the driver of the vehicle may be required to do anything reasonably necessary for the purposes of the search, and if the driver does not comply with such a requirement, reasonable force may be used to secure compliance with the requirement.

(5) If an item prohibited by the regulations is found on a person or on or in a vehicle as a result of a search carried out under this section and the prior permission of the manager to be in possession of or to carry the item does not appear to have been obtained—

- (a) the manager may cause the person or driver to be further detained and handed over into the custody of a member of the police force as soon as reasonably practicable; and
- (b) the item may be kept as evidence of an offence or otherwise dealt with in the same manner as a prohibited item may be dealt with under section 33A.

(6) If no item prohibited by the regulations is found on a person as a result of a search carried out under this section but the officer who carried out the search suspects on reasonable grounds that such an item may be concealed on or in the person's body, the manager may cause the person to be further detained and handed over into the custody of a member of the police force as soon as reasonably practicable.

(7) If a person is detained pursuant to subsection (5) or (6), the manager must forthwith cause a member of the police force to be notified of that fact.

(8) The annual report to be submitted under this Act by the Chief Executive Officer in respect of each financial year must include the following information:

- (a) the number of persons detained under subsection (5) in consequence of searches carried out under this section during the relevant year; and
- (b) the number of persons detained under subsection (6) in consequence of such a search; and
- (c) the duration of all detentions effected under those subsections.

**Confidentiality**

**85C.** A person must not divulge information relating to a prisoner, probationer or parolee, being information obtained (whether by the person or some other person) in the administration or enforcement of this Act, except—

- (a) as required or authorised by this Act or any other Act or law; or

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- (b) as reasonably required in connection with the administration or enforcement of this Act or any other prescribed Act; or
- (c) for the purposes of legal proceedings arising out of the administration or enforcement of this Act; or
- (d) to a government agency or instrumentality of this State, the Commonwealth or another State or Territory of the Commonwealth for the purposes of the proper performance of its functions; or
- (e) with the consent of the prisoner, probationer or parolee to whom the information relates.

Maximum penalty: \$10 000

**Release of information to victims, etc.**

**85D.** (1) An eligible person may apply in writing to the Chief Executive Officer for the release to him or her of any of the following information relating to a prisoner:

- (a) the name and address of the correctional institution in which the prisoner is for the time being imprisoned;
- (b) details of any transfer of the prisoner from one correctional institution to another;
- (c) details of the sentence or sentences of imprisonment that the prisoner is liable to serve;
- (d) the date on which and circumstances under which the prisoner was, is to be or is likely to be released from the correctional institution for any reason (for example, on bail, leave of absence, home detention, parole);
- (e) details of any escape from custody by the prisoner.

(2) A person is an eligible person if he or she is—

- (a) a victim of the offence, or one of the offences, for which the prisoner is being imprisoned and has registered as such with the Chief Executive Officer; or
- (b) a member of the prisoner's family or a close associate of the prisoner; or
- (c) a legal practitioner who represents the prisoner; or
- (d) any other person who the Chief Executive Officer thinks has a proper interest in the release of such information.

(3) The Chief Executive Officer has an absolute discretion to grant or refuse an application for release of information to an eligible person.

(4) A decision of the Chief Executive Officer as to whether a person is an eligible person or to grant or refuse an application under this section is final and is not reviewable by a court.

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(5) The Chief Executive Officer must not release information relating to a prisoner's release on parole without the consent of the Parole Board (but the Board may waive this requirement in such circumstances as it thinks fit).

**Amendment of penalties**

9. The principal Act is further amended as indicated in the schedule.

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**SCHEDULE**  
*Amendment of penalties*

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<b>Provision amended</b>	<b>How amended</b>
Section 37B(5)	Strike out the penalty provision and substitute the following:  Maximum penalty: \$2 500.
Section 41(2)	Strike out the penalty provision and substitute the following:  Maximum penalty: \$5 000 or imprisonment for 3 months.
Section 50A(1)	Strike out the penalty provision and substitute the following:  Maximum penalty: Imprisonment for 1 year.
Section 63(2)	Strike out the penalty provision and substitute the following:  Maximum penalty: \$5 000 or imprisonment for 3 months.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor