

# Corrections (Amendment) Bill

## EXPLANATORY MEMORANDUM

The Bill consolidates amendments to Corrections legislation in relation to sentence administration, the management of prisoners and penalties for prison offences.

To further strengthen powers to deal with prisoner discipline, provisions relating to the manner in which prison offences may be dealt with, the detection of drug use and introduction of unauthorised articles by visitors have been included in the Bill.

The Bill gives recognition to the requirements for extended leave of absence from prison for prisoners placed under police protection or where fine defaulters have their sentence converted to a requirement to perform unpaid community work.

To enhance prison management and enable prisoner behaviour to be more effectively assessed, the Bill provides for the abolition of a prisoner's right to remission and introduces merit time to be earned by a prisoner for good conduct and industry and satisfactory participation in an approved programme.

The Bill also progressively reduces the maximum period of pre-release until final abolition of the programme occurs.

As an alternate form of prisoner management within the community a home detention programme is established for prisoners eligible to participate and approved by the Adult Parole Board.

Imprisonment for fine defaulters as an option of last resort by the courts gives recognition to the more appropriate alternatives for dealing with fine defaulters.

Information regarded as confidential is more clearly stated by the Bill which specifies information that pertains to prison management and security.

The Bill also provides for sentences of imprisonment to be expressed by the court in a manner that more clearly indicates the manner in which it is to be served by specifying a prison term and a parole term.

### Notes on Clauses

#### PART 1—PRELIMINARY

*Clause 1* sets out the purposes of the Act.

*Clause 2* provides for the Act to come into operation on a day or days to be proclaimed, except for certain amendments of a statute law revision nature which are deemed to have come into operation on 1 March 1988.

#### PART 2—AMENDMENT OF *CORRECTIONS ACT 1986*

*Clause 3* refers to the *Corrections Act 1986* as the Principal Act.

*Clause 4* inserts in section 4 a provision that a person subject to a home detention order or transferred under section 56 is not in the custody of the Director-General.

*Clause 5* introduces a new section 29A which enables a Governor of a prison to direct a prisoner to submit to tests for drug use by an officer where it is necessary in the interests of the management, good order or security of the prison.

*Clause 6* substitutes a new definition of “confidential information” in section 30 of the Principal Act.

*Clause 7* inserts in section 45 the power of a Governor of a prison to detain a visitor in possession of anything likely to jeopardize the security of the prison or the safety of persons and deliver them into police custody.

*Clause 8* inserts in section 48 a definition of “officer” and amends the definition of “prison offence”. It also empowers the chief prison officer to record an offence committed by a prisoner and adopt various measures to deal with the offence. Three or more prison offences recorded in the register in a calendar month will result in the prisoner forfeiting the eligibility to earn merit time. Power is given to the Governor to give less than 72 hours notice of a hearing for a prison offence to a prisoner and approve representation where the prisoner charged agrees to attend. Where a prisoner refuses to attend the Governor may proceed to hear the charge in his or her absence. A Governor in making an order at a hearing must take into account any action already taken by the chief prison officer before making an order that may result in the prisoner losing or forfeiting eligibility to a maximum of 10 days merit time per prison offence but not more than 30 days merit time for all the prison offences arising from the incident.

*Clause 9* provides the Director-General with the power to withdraw a prisoner’s privileges where a prisoner has been involved in a prison offence and it is in the interests of the management, good order and security of the prison.

*Clause 10* amends section 57 to empower the Director-General to grant leave of absence in excess of three days for prisoners performing unpaid community work or subject to police protection. The period of leave for a prisoner imprisoned for fine default and performing unpaid community work may be the whole or remaining part of his or her term of imprisonment.

*Clause 11* substitutes a new Division 4 in Part 8 which abolishes entitlement to remission and enables a prisoner to earn merit time for good conduct, industry and participation in an approved programme. Merit time will apply to all prisoners except those receiving a sentence for murder, death commuted to life or ordered to be held at the Governor’s pleasure. In sentencing a person a court may take into account the period of merit time which a person is eligible to earn. Transitional provisions will provide for prisoners serving a sentence of imprisonment prior to the commencement of this Division to be credited with merit time in lieu of their entitlement to remission for the portion of the sentence of imprisonment already served and any remaining entitlement to remission is withdrawn.

*Clause 12* provides for amendments to the pre-release scheme to provide for pre-release permits to be issued for a period not exceeding a prescribed maximum. Permits are cancelled if a sentence of imprisonment is imposed for an offence committed or for fine default occurring during the period of the permit.

*Clause 13* inserts in section 80 a phasing out of the pre-release scheme.

*Clause 14* inserts in Part 8 a new Division 7—Home Detention Programme which will apply to prisoners serving a prison term of 12 months or more and eligible to be released on parole in 6 months or less with a suitable residence for the purposes of the programme. Application to participate in the programme will be made to the Adult Parole Board who may make an order that a person is released to the home detention programme subject to the conditions stated in the order.

The Director-General may suspend a home detention order before the period of the order if a person has committed a prison offence. If during the order any condition has not been complied with the order may be suspended by the Director-General and a warrant issued for the return of the person to an institution specified in the warrant.

Where a home detention order has been suspended the Board must reconsider the order as soon as possible after the suspension has taken effect. The Board may vary or revoke the

order or any conditions attached to the order and arrange for medical or other reports prior to making a determination.

Where a home detention order is revoked, the Board may issue a warrant to return a person to an institution specified in the warrant and the original authority for the person's imprisonment is again in force and the period of the home detention order will be regarded as time served for the sentence of imprisonment.

*Clause 15* provides for consequential amendments to the Principal Act on abolition of the pre-release scheme.

*Clause 16* provides for consequential and other minor amendments to the Principal Act to include definitions of merit time and home detention programme and substitute "sentence of imprisonment" for "prison sentence" and "prison term" for "minimum term".

### **PART 3—AMENDMENT OF *PENALTIES AND SENTENCES ACT 1985***

*Clause 17* refers to the *Penalties and Sentences Act 1985* as the Principal Act for Part 3.

*Clause 18* inserts in section 3 a definition of merit time.

*Clause 19* inserts in section 19 provision for sentences for prison offences to be served cumulatively on sentences of imprisonment already imposed on a prisoner.

*Clause 20* provides for the fixing of a prison term and inserts a new section 19B which provides for a court to express a sentence as a prison term and a parole term.

*Clause 21* inserts in section 29 (2) (h) provision that a community based order is not to include a condition as to restitution, compensation or damages.

*Clause 22* inserts in section 33 provision for a community corrections officer to appear to prosecute breaches of community based orders.

*Clause 23* inserts in section 70 provision for imprisonment for fine default to be an option of last resort.

*Clause 24* provides for amendments consequential on the abolition of remissions.

*Clause 25* provides for the repeal of section 19 on the abolition of the pre-release scheme.

### **PART 4—AMENDMENT OF *CRIMES ACT 1958***

*Clause 26* provides for amendment to the *Crimes Act 1958* to provide for escape from prison and related offences and escape from the custody of an officer or member of the police acting in the execution of a warrant issued when a home detention order is suspended or revoked to be a summary offence with a maximum penalty of five years imprisonment.

### **PART 5—CONSEQUENTIAL AMENDMENTS**

*Clause 27* provides for consequential amendments to the *Community Services Act 1970*, the *Parole Orders (Transfer) Act 1983* and the *Prisoners (Interstate Transfer) Act 1983*.

