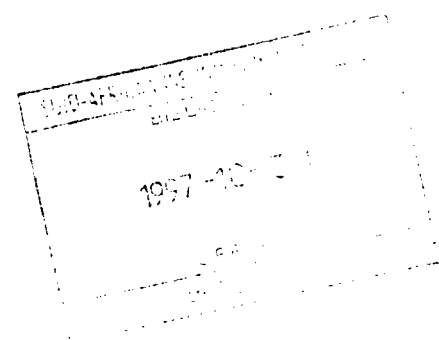


REPUBLIC OF SOUTH AFRICA

CORRECTIONAL SERVICES AMENDMENT BILL

(As introduced)

(MINISTER OF CORRECTIONAL SERVICES)



[B 99—97]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP KORREKTIEWE DIENSTE

(Soos ingedien)

(MINISTER VAN KORREKTIEWE DIENSTE)

[w 99—97]

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GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments,

BILL

To amend the Correctional Services Act, 1959, so as to define or delete certain expressions; to empower the Minister to contract out prisons to private contractors; to make provision for the establishment of a Judicial Inspectorate; to provide for the appointment of an Inspecting Judge and Independent Prison Visitors; to empower the Inspecting Judge to establish Visitors' Committees; to provide for an internal service evaluation; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa. as follows:—

Amendment of section 1 of Act 8 of 1959, as amended by section 1 of Act 75 of 1965, section 46 of Act 70 of 1968, section 1 of Act 88 of 1977, section 1 of Act 58 of 1978, section 1 of Act 22 of 1980, Government Notice No. 2302 of 31 October 1980, section 5 1 of Act 43 of 1981, section 1 of Act 65 of 1982, section 1 of Act 104 of 1983, section 1 of Act 6 of 1985, section 1 of Act 92 of 1990, section 1 of Act 122 of 1991, section 1 of Act 68 of 1993, section 1 of Act 116 of 1993, section 1 of Act 135 of 1993, section 1 of Act 79 of 1996 and section 35 of Act 47 of 1997

1. Section 1 of the Correctional Services Act, 1959 (hereinafter referred to as the 10 principal Act). is amended—

- (a) by the insertion before the definition of “bury” of the following definitions: 15
“ ‘Area Manager’ means a correctional official appointed as such by the
Commissioner. in charge of all correctional officials who are on the
establishment of the Department at a Correctional Services Management Area
or office or who have been attached thereto for duty;
‘Associate Inspecting Judge’ means a judge appointed under section 25B;”;
- (b) by the insertion after the definition of “Commission for Administration” of 20
the following definitions:
“ ‘community corrections’ means all forms of non-custodial measures and 20
supervision applicable to persons who are subject to such measures in the
community and who are under the supervision of the Department;
‘contract’. in relation to a contracted out prison. includes a contract for any or
all of the design. construction, financing, management and operation of that
prison; 25

'contracted out prison' means a prison or part of a prison referred to in section 20A ;

'Contractor', in relation to a contracted out prison, includes the private entity who has contracted with the State for any or all of the design, construction, financing, management and operation of a prison;

'Controller' means a senior correctional official in the employ of the Department appointed in terms of section 20B;";

- (c) by the insertion after the definition of "credits" of the following definition:
" 'custody official' means an employee of a Contractor, who is duly certified to carry out custodial duties at or in respect of a contracted out prison, and may include, if the contract so authorizes, any person employed by a sub-contractor who is so certified;";
- (d) by the insertion after the definition of "determinate sentence" of the following definitions:
" 'Director' means a Director in the employ of the Contractor appointed in terms of section 20D(1);
'Head of the Prison' means a correctional official designated by the Commissioner to manage a particular prison;
'Independent Prison Visitor' means an Independent Prison Visitor appointed under section 25G;";
- (e) by the insertion after the definition of "indeterminate sentence" of the following definition:
" 'Inspecting Judge' means a judge appointed in terms of section 25A;";
- (f) by the insertion after the definition of "Institutional Committee" of the following definition:
" 'Judicial Inspectorate' means the inspectorate established by section 25.:";
- (g) by the insertion after the definition of "juvenile" of the following definition:
" 'management area' means an area determined by a Provincial Commissioner which consists of one or more prisons or offices and which is under the management of a correctional official designated as an Area Manager;";
- (h) by the addition at the end of the definition of the word "prison" of the following words: "and further includes a contracted out prison;";
- (i) by the insertion after the definition of "probationer" of the following definition:
" 'Provincial Commissioner' means a correctional official designated by the Commissioner to manage and control the activities of the Department in a province as recognised in the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);";
- (j) by the insertion after the definition of "take" of the following definition:
" 'Temporary Manager' means a senior correctional official in the employ of the Department appointed for the purposes referred to in section 20J;";
- (k) by the insertion after the definition of "this Act" of the following definition:
" 'Visitors' Committee' means a committee established in terms of section 25I;"

Insertion of section 20A in Act 8 of 1959

2. The following section is inserted in the principal Act after section 20:

"Minister empowered to enter into contract for the management and operation of a prison

20A. (1) The Minister may, subject to any law governing the award of contracts by the State, enter into a contract with any private entity to design, construct, finance, manage and/or operate any prison or part of a prison established or to be established in terms of section 20.

- (2) The contract shall not—
 - (a) assign to the Contractor the power to—
 - (i) conduct any disciplinary hearing against a prisoner;
 - (ii) apply and administer correctional supervision; and
 - (iii) place any prisoner on parole.
 - (b) be for a period of more than 25 years.
- (3) The Contractor shall—
 - (a) ensure that all prisoners are treated with dignity and in a humane manner;
 - (b) comply with all international conventions governing the detention or imprisonment of persons and to which the Republic of South Africa is a party;
 - (c) not be entitled to subcontract, cede or delegate any of the management and operational functions under the contract unless authorized to do so under the contract;
 - (d) facilitate the exercise and the performance, by any statutory body and any other person, of the powers, functions and duties assigned to each of them under this Act or according to law; and
 - (e) apply to the Essential Services Committee established under section 70 of the Labour Relations Act, 1995 (Act No 66 of 1995), within 21 days after having been notified of the award of such contract. to have the whole of the service to be provided under the contract declared an essential service.
- (4) (a) The Contractor shall only be entitled to promulgate prison rules if such rules have been submitted to the Commissioner for review and approval.
- (b) The Commissioner shall. after consultation with the Contractor. be entitled to—
 - (i) reject the proposed rules in their entirety: or
 - (ii) vary such-rules.

Insertion of section 20B in Act 8 of 1959

3. The following section is inserted in the principal Act after section 20A:

“Appointment of Controller

20B. The Commissioner shall appoint a Controller for every contracted out prison.”

Insertion of section 20C in Act 8 of 1959

4. The following section is inserted in the principal Act after section 20B:

“Powers, functions and duties of Controller

20C. (1) The Controller shall—

- (a) keep under review and monitor the daily management and operation of the contracted out prison;
- (b) report to the Commissioner on the daily management and operation of a contracted out prison;
- (c) be authorized to order the Director and custody officials in the employ of the Contractor to—
 - (i) order the separate detention of a prisoner or prisoners of a specific class in the circumstances contemplated in section 23;
 - (ii) temporarily confine a prisoner in a cell as contemplated in section 79 subject to any approval or orders given by the Controller.;
 - (iii) apply an approved mechanical means of restraint as contemplated in section 80 to a prisoner detained in a single cell for a period not exceeding 30 days.

(2) The detention of a prisoner in a single cell shall be in the manner prescribed by the Controller: Provided that such detention shall not be applied as a disciplinary measure.

(3) The Contractor shall facilitate the exercise and performance, by the Controller, of all the powers, functions and duties contemplated in subsection (1).” 5

Insertion of section 20D in Act 8 of 1959

5. The following section is inserted in the principal Act after section 20C:

“Appointment of Director

20D. (1) The Contractor shall appoint a Director whose appointment shall be subject to the prior written approval of the Commissioner, as the head of the contracted out prison. 10

(2) The Director shall also be subject to certification as contemplated in section 20F.”

Insertion of section 20E in Act 8 of 1959

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6. The following section is inserted in the principal Act after section 20D: .

“Powers, functions and duties of Director

20E. (1) The Director of every contracted out prison shall—

- (a) be responsible for the daily management and operation of that prison;
- (b) be in charge of such prison for the purposes contemplated in sections 26, 27, 29, 31, 86 and 87 of this Act, and shall have powers, functions and duties similar to those conferred on a correctional official in charge of a prison: 20
- (c) for the purposes of section 80 of this Act and section 340 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), have powers, functions and duties similar to those conferred on a Head of a Prison; 25
- (d) in cases of urgency and subject to such orders as the Controller may give, authorize the temporary application of the measures contemplated in section 20C(1)(c) if he reasonably believes that delay in obtaining such authorization would defeat the object of section 20C(1)(c); and 30
- (e) have the powers, functions and duties conferred on a custody official in section 20F.”

Insertion of section 20F in Act 8 of 1959

7. The following section is inserted in the principal Act after section 20E:

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“Appointment of custody officials

20F. (1) The Contractor shall appoint custody officials to perform custodial duties.

(2) No employee of the Contractor shall perform custodial duties unless he is certified as a custody official by the Commissioner. 40

(3) A custody official shall be certified by the Commissioner only if he satisfies the requisite qualifications, level of training and competency prescribed by regulation.

(4) The Commissioner shall keep a register, to be known as the register of custody officials, containing— 45

- (a) the full names and identity number of each custody official, which has been certified to perform custodial duties;

- (b) particulars of each custody official whose certification has either been suspended or revoked;
- (c) such further particulars as the Commissioner may deem-necessary.
- (5) (a) The certification of any custody official maybe suspended by the Director.
- (b) A custody official’s certification may only be suspended by the Director. as contemplated in paragraph (a)—
 - (i) pending trial for any criminal offence;
 - (ii) pending any disciplinary hearing into a charge of misconduct arising from, or in connection with, the performance of his duties; or
 - (iii) pending any investigation into his fitness or competency to perform custodial duties.
- (c) The power to suspend a custody official’s certification may only be exercised if the official concerned received notification thereof and was given an opportunity to make representations in respect of the proposed suspension.
- (d) The Controller shall notify the Commissioner in writing of the decision to suspend the certification of a custody official.
- (6) (a) The Commissioner may after he has been informed of the suspension—
 - (i) terminate the suspension of a custody official at any time; or
 - (ii) revoke the certification of a custody official.
- (b) The power to revoke a custody official’s certification may only be exercised—
 - (i) after the custody official concerned—
 - (aa) has been convicted of any criminal offence;
 - (bb) has been found guilty of misconduct relating to, or in connection with, custodial duties; and
 - (cc) has been found, pursuant to an investigation into his fitness or competency to perform custodial duties. not to be a fit and proper person to perform such duties; and
 - (ii) if the official concerned received notification and was given an opportunity to make written representations in respect of the proposed revocation.”.

Insertion of section 20G in Act 8 of 1959

8. The following section is inserted in the principal Act after section 20F:

“Powers, functions and duties of custody officials

- 20G. (1) (a) A custody official shall—
- (i) prevent the escape of any prisoner from lawful custody;
 - (ii) prevent, or detect and report the commission or attempted commission. by any prisoner. of any unlawful act;
 - (iii) ensure good order and discipline;
 - (iv) if authorized thereto under a contract, keep in custody and escort any prisoner within and outside a contracted out prison or any hospital. court, or any other prison or place to which such prisoner is lawfully required to be conveyed and handed over under this Act; and
 - (v) perform any other duty lawfully assigned to him under the contract or according to the law.
- (b) In performing the custodial duties referred to in paragraph (a), every custody official shall also have the power, subject to the limitations and restrictions contained in this Act and those contained in any other law, to use force to perform those duties.
- (c) In the event of a custody official using force, only the minimum degree of force may be used and such force must be proportionate to the objective sought to be achieved.

(d) A custody official shall only use force when authorized thereto by the Director. unless the custody official reasonably believes that the Director would necessarily authorize the use of force and that the delay in obtaining such authorization would defeat the objective.

(e) Any custody official who uses force without the prior authorization of the Director shall report this to the Director as soon as reasonably practicable.

(f) The Director shall upon receiving such report, without delay notify the Controller thereof.

(2) (a) Subject to such conditions as the Commissioner may impose, the Director may authorize a custody official to be armed with a firearm.

(b) The Director may only grant such authorization to a custody official who has specifically been trained in the use of that particular firearm.

(c) Subject to the provisions of subsection (1), a custody official authorized to be armed with a firearm may use the firearm whenever it is necessary to prevent the escape of any prisoner or for the defence of himself or any other person.

(d) A custody official shall report the use of a firearm to the Director, whether or not it was discharged.

(e) The Director shall. upon receiving such report, without delay notify the Controller thereof.

(3) Paragraphs (b) to@ of subsection(1) and subsection (2) shall apply, with the necessary changes required by context to all weapons other than firearms.

(4) (a) A custody official performing custodial duties shall also have the power to-

(i) search, in accordance with the Act, any prisoner who is confined in such prison, or who is temporarily outside such prison including the conveyance of any prisoner in the circumstances contemplated in subsection (1)(a)(iv); and

(ii) search any other person who is in or is seeking to enter the prison, and any article in the possession of such person.

(b) The power conferred by paragraph (a)(ii) shall not be construed as authorizing a custody official to require a person to remove any of his clothing other than an outer coat, jacket, gloves or footwear.

(5) A custody official shall, for the purposes contemplated in the proviso to section 82 of this Act. be deemed to be a correctional official designated by the Commissioner to exercise the powers, functions and duties referred to in that proviso.”.

Insertion of section 20H in Act 8 of 1959

9. The following section is inserted in the principal Act after section 20G:

“Appointment of medical officer and other staff

20H. (1) The Contractor shall employ and appoint as many registered medical practitioners as medical officers and other staff as may be deemed expedient to render the services and perform the functions required under a contract.

(2) Every medical officer so appointed shall be regarded as a medical officer for the purposes of section 6 of this Act, and have such powers, functions and duties as are assigned to such a medical officer in terms of this Act.”.

Insertion of section 201 in Act 8 of 1959

10. The following section is inserted in the principal Act after section 20H:

“Preservation of secrecy

201. (1) Every employee of the Contractor and, if the right to subcontract exists, any employee of the subcontractor, shall preserve and aid in preserving secrecy with regard to all matters that may come to his knowledge in the performance of his duties, unless the employee concerned is—

- (a) reasonably obliged to disclose any such matter in the course of his duty;
- (b) authorized by the Commissioner to disclose any such matter;
- (c) obliged under the provisions of any law to disclose such matter; or
- (d) directed by a court of law to disclose any such matter.

(2) Any person who contravenes the provisions of subsection(1) shall be **guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.”.**

Insertion of section 20J in Act 8 of 1959 15

11. The following section is inserted in the principal Act after section 20I:

“Minister’s powers in emergency at contracted out prisons

20J. (1) (a) If, in the opinion of the Minister—

- (i) the Director has lost, or is likely to lose, effective control of a contracted out prison or any part of it; and
- (ii) it is necessary, in the interest of preserving the safety of any person or of preventing serious damage to any property, to secure effective control of such prison or such part of it,

he may appoint a Temporary Manager to act as the head of that prison for such period as he may deem necessary.

(b) The period referred to in paragraph (a) shall—

- (i) commence at the time specified in the Temporary Manager’s written notice of appointment; and
- (ii) terminate at the time specified in the Temporary Manager’s written notice of termination of such appointment.

(c) During the period referred to in paragraph (b)—

- (i) all the powers, functions and duties which would otherwise be exercised and performed by the Director shall be performed by the Temporary Manager;
- (ii) the Contractor and, if the contract so authorizes, any subcontractor, shall do all that is possible to facilitate the exercise and performance by the Temporary Manager of those powers, functions and duties; and
- (iii) the custody officials and the Contractor’s other staff, including the staff of any subcontractor, employed at the prison shall comply with any directions given by the Temporary Manager in the exercise and performance of those powers, functions and duties.

(d) As soon as practicable after making or terminating the appointment of the Temporary Manager, the Minister shall give notice of appointment, or notice of termination, to the Contractor, the Director and the Controller.”.

Insertion of section 20K in Act 8 of 1959

12. The following section is inserted in the principal Act after section 20J:

“Reference to Department and correctional officials to apply to Contractor and custody officials in certain instances

20K. In sections 31,42, 42A, 44(1)(a)(ii), 45,46,47, 49(3), 50,77,87, 94(1)(a),(g) and (i), and 94(2), references to the Department or a correctional official, or to both the Department and such official, as the case may be, shall be construed to refer to and include the Contractor and a custody official.”.

Substitution of section 25 of Act 8 of 1959, as amended by section 5 of Act 58 of 1978

13. The following section is substituted for section 25 of the principal Act:

“Establishment of Judicial Inspectorate 10

25. (1) An Independent Inspectorate called the Judicial Inspectorate, is established under the control of an Inspecting Judge.

(2) The objects of the Judicial Inspectorate shall be to facilitate the inspection of prisons in order to report on the treatment of prisoners and conditions in prisons.”.

Insertion of section 25A in Act 8 of 1959

14. The following section is inserted in the principal Act after section 25:

“Inspecting Judge

25A. (1) The President shall appoint the Inspecting Judge who shall be—

(a) a judge of the High Court who is in the active service as defined in section 1 (1) of the Judges Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989); or

(b) a judge who has been discharged from the active service in terms of section 3 of the said Act.

(2) The Inspecting Judge in active service shall be seconded from the Supreme Court of Appeal or the High Court to which the Inspecting Judge was appointed and shall hold office as such during the period of active service or until the Inspecting Judge requests to be released to resume judicial duties.

(3) The Inspecting Judge shall continue to receive the salary, allowances, benefits and privileges attached to his office as a **judge**.”.

Insertion of section 25B in Act 8 of 1959

15. The following section is inserted in the principal Act after section 25A:

“Associate Inspecting Judges

25B. (1) The Minister of Justice may, at the request and on the advice of the Inspecting Judge, from time to time appoint one or more Associate Inspecting Judges, from judges who are in active service in terms of section 1(1) of the Judges Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), or judges who have been discharged from active service in terms of section 3 of the said Act, to assist the Inspecting Judge. Such Associate Inspecting Judge shall have the same powers, functions and duties as the Inspecting Judge, but shall be under the authority and control of the Inspecting Judge.

(2) The term of office of an Associate Inspecting Judge shall be for a fixed period or until the completion of the assignment for which the appointment was made.”.

Insertion of section 25C in Act 8 of 1959

16. The following section is inserted in the principal Act after section 25B:

“Conditions of service of retired judges

25C. (1) Should an appointed judge be a judge retired from active service in terms of section 3(1)(a) of the Judges Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), any period of service as Inspecting Judge or as Associate Inspecting Judge shall be reckoned as service performed in terms of section 7(1) of the said Act and the provisions of subsections (3) and (6) thereof shall apply to such appointment. 5

(2) Should the appointee be a judge retired from active service in terms of section 3(1)(h), (c) or (d) of the said Act, the remuneration payable to such appointee shall be determined by the Minister of Justice or as agreed with the prospective appointee.”. 10

Insertion of section 25D in Act 8 of 1959

17. The following section is inserted in the principal Act after section 25C: 15

“Inspectors and staff

25D. (1) The Inspecting Judge shall appoint inspectors, a secretary and such other staff as are required to enable the Inspecting Judge to perform the assigned functions. 20

(2) Such employees, if not correctional officials, shall for administrative purposes be designated as correctional officials seconded to the Judicial Inspectorate, but shall be under the control and authority of the Inspecting Judge. 20

(3) The salary and conditions of service of an employee shall be determined by the Inspecting Judge in accordance with the Public Service Act, 1994 (Proclamation 103 of 1994), and after consultation with the Director-General of the Department of Public Service and Administration.”. 25

Insertion of section 25E in Act 8 of 1959

18. The following section is inserted in the principal Act after section 25D: 30

“Powers, functions and duties of Inspecting Judge

25E. (1) The Inspecting Judge shall inspect or arrange for the inspection of prisons in order to report on the treatment of prisoners and conditions in prisons. 35

(2) The Inspecting Judge shall only receive and deal with the complaints submitted by the National Advisory Council, the Minister, the Commissioner, or a Visitors’ Committee and, in cases of urgency, from the Independent Prison Visitor. 35

(3) The Inspecting Judge shall submit a report on each inspection to the Minister and to such other persons as the Inspecting Judge, in consultation with the Minister, considers appropriate. 40

(4) (u) The Inspecting Judge shall submit an annual report to the President and the Minister. 40

(b) The report shall be tabled in Parliament by the Minister. 45

(5) The Inspecting Judge shall conduct such investigations as the Inspecting Judge considers necessary to carry out proper inspections and to submit proper reports, and— 45

(a) for this purpose the Inspecting Judge may make an enquiry and hold any hearing;

(b) for [he purposes of such a hearing, sections 3, 4 and 5 of the Commissions Act, 1947 (Act No. 8 of 1947), shall apply as though the Inspecting Judge and the secretary of the Judicial Inspectorate are the chairperson and secretary of a commission.

(6) The Inspecting Judge may delegate any of his powers, functions and duties to inspectors, except where a hearing is to be conducted by the Inspecting Judge personally.

(7) The Inspecting Judge may appoint persons with appropriate qualifications from outside the Public Service to assist in any specialised aspect of inspection or investigation at a rate of remuneration determined in accordance with the Public Service Act, 1994 (Proclamation 103 of 1994), and after consultation with the Director-General of the Department of Public Service and Administration.

(8) The Inspecting Judge may make rules, not inconsistent with this Act, as are considered necessary or expedient for the efficient functioning of the Judicial Inspectorate.”.

Insertion of section 25F in Act 8 of 1959

19. The following section is inserted in the principal Act after section 25E:

“The Expenses of Judicial Inspectorate

25F. The Department shall be responsible for all the expenses of the Judicial Inspectorate.”.

Insertion of section 25G in Act 8 of 1959

20. The following section is inserted in the principal Act after section 25F:

“Appointment of Independent Prison Visitors

25G. (1) The Inspecting Judge shall, after publicly calling for nominations and consulting with community organisations, appoint one or more Independent Prison Visitors for every prison.

(2) An Independent Prison Visitor shall hold office for such period as determined by the Inspecting Judge.

(3) **The Inspecting Judge may at any time suspend or terminate the services of the Independent Prison Visitor if valid grounds exist.**”.

Insertion of section 25H in Act 8 of 1959

21. The following section is inserted in the principal Act after section 25G:

“Powers, functions and duties of Independent Prison Visitor

25H. (1) The Independent Prison Visitor shall deal with the complaints of individual prisoners or groups of prisoners—

(a) by visiting prisons regularly;

(b) by interviewing individual prisoners or groups of prisoners in private;

(c) by recording complaints in an official diary and monitoring the manner in which they have been dealt with; and

(d) by discussing complaints with the Head of the Prison, or the relevant subordinate correctional official, with a view to resolving the issues internally.

(2) An Independent Prison Visitor shall, in the exercise and performance of such powers, functions and duties, have access to any part of the prison and to any document or record.

(3) The Head of the Prison shall take all measures to assist the Independent Prison Visitor in the exercise and performance of the assigned powers, functions and duties.

(4) The Independent Prison Visitor shall report any unresolved complaint to the Visitors' Committee and may, in cases of urgency, refer such complaint to the Inspecting Judge.

(5) The Inspecting Judge may, by rules, or on the appointment of an Independent Prison Visitor, specify the number of visits to the prison over a stated period of time and the minimum duration of a visit, or any other aspect of the work of the Independent Prison Visitor.

(6) Each Independent Prison Visitor shall submit a quarterly report to the Inspecting Judge stating, amongst other things, the duration of visits, the number and nature of complaints dealt with, and the number and nature of those referred to the relevant Visitors' Committee.

(7) The Minister may, on the recommendation of the Department of Public Service and Administration and with the concurrence of the Minister of Finance, determine remuneration and allowances to be paid to Independent Prison Visitors who are not in the full-time service of the State.”.

Insertion of section 25I in Act 8 of 1959

22. The following section is inserted in the principal Act after section 25H:

“Visitors’ Committee

25I. (1) The Inspecting Judge shall establish a Visitors’ Committee for each management area consisting of the Independent Prison Visitors appointed for prisons in that area.

(2) A Visitors’ Committee shall meet at least quarterly.

(3) The functions of a Visitors’ Committee are to—

- (a) consider unresolved complaints with a view to their resolution;
- (b) submit to the Inspecting Judge those complaints which the Committee cannot resolve;
- (c) organise the schedule of visits;
- (d) extend and promote the community’s interest and involvement in correctional matters; and
- (e) submit minutes of its meetings to the Inspecting Judge.”.

Insertion of section 25J in Act 8 of 1959

23. The following section is inserted in the principal Act after section 25I:

“Internal service evaluation

25J. (1) An internal service evaluation shall be conducted by the Commissioner to promote the economical and efficient management of the Department and to ensure that the objects and principles of this Act are met.

(2) A service evaluation shall at regular intervals assess the soundness, adequacy and effectiveness of internal control at national and provincial level, individual prisons and community corrections, and in that regard—

- (a) evaluate whether the departmental operations are conducted effectively;
- (b) review the reliability of financial, operational and management information;
- (c) ascertain whether departmental assets and interests are controlled and safeguarded from losses;
- (d) evaluate effective utilisation of human and other resources;

(e) monitor whether established objectives and goals for programmes are achieved; and

(f) combat theft, fraud, corruption and any other dishonest practices.

(3) The Commissioner shall establish appropriate mechanisms for the execution of an internal service evaluation function.

(4) A report on the process of internal service evaluation and on the results of the internal service evaluation shall be included in the annual report of the Commissioner to Parliament.

(5) The Commissioner shall send a copy of an internal service evaluation to the Inspecting Judge if he so requests.

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Short title and commencement

24. This Act shall be called the Correctional Services Amendment Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE CORRECTIONAL SERVICES AMENDMENT BILL, 1997

PART 1

OBJECTS AND EXPLANATION

The Department of Correctional Services is often criticized for not being transparent, for ill-treating prisoners and for not being open to public scrutiny.

Thus the Department has the need for an independent, unbiased and transparent structure to investigate and to report exclusively on correctional matters.

In order to fulfill this need the Bill proposes a structure in which a judge will be appointed who will function independently of the Department, but will be supported by the Independent Prison Visitors that will act as a filter in terms of complaints and grievances of prisoners. Complaints and grievances which cannot be resolved by the Independent Prison Visitors, will be dealt with by the Independent Judge.

The Independent Prison Visitors will be persons appointed from the community with unhindered access to the prison for which they are appointed.

The inspection function of officials of the Department is also contained in the Bill. This function focuses on service evaluation in the Department and the efficient application of resources.

In the second place the Bill empowers the Minister to appoint a private contractor to manage a prison. This is done in view of the approval by Cabinet of the Asset Procurement and Operating Partnership concept which *inter alia* entails the financing, design, construction, maintenance and management of four correctional facilities by way of a pilot project.

PART 2

CLAUSE BY CLAUSE ANALYSIS

2.1 Clause 1 amends the definition clause.

2.2 Clause 2 empowers the Minister to enter into contracts for the management and operation of a contracted out prison.

2.3 Clause 3 gives the Commissioner a power to appoint a Controller who will monitor the daily management and operation of a contracted out prison.

2.4 Clause 4 deals with the powers, duties and functions of a Controller.

2.5 Clause 5 empowers the Contractor to appoint a Director as head of a contracted out prison.

2.6 Clause 6 deals with the powers, functions and duties of a Director.

2.7 Clause 7 deals with the appointment of custody officials who will perform custodial duties.

2.8 Clause 8 lays down the powers, functions and duties of custody officials.

2.9 Clause 9 gives the Contractor a power to appoint medical staff to render services and perform the functions required under the contract.

2.10 Clause 10 deals with the preservation of secrecy, where every person employed by the Contractor will preserve secrecy with regard to all matters that may come to his knowledge in the performance of his duties.

2.11 Clause 11 empowers the Minister to appoint a Temporary Manager to act as head of a contracted out prison where the Director has lost control or is likely to lose control.

2.12 Clause 12 interprets the terms "Contractor" and "custody officials" with reference to "Department" and "correctional official".

2.13 Clause 13 establishes a Judicial Inspectorate that will facilitate inspection of prisons in order to report on the treatment of prisoners and conditions in prisons.

2.14 Clause 14 empowers the President to appoint the Inspecting Judge who will be the head of the Judicial Inspectorate.

2.15 Clause 15 provides for the appointment of Associate Judges who will assist the Independent Judge and be under his control.

2.16 Clause 16 deals with the conditions of service of retired judges.

2.17 Clause 17 empowers the Inspecting Judge to appoint inspectors and staff required by him to perform assigned functions.

2.18 Clause 18 deals with the powers, functions and duties of the Inspecting Judge.

2.19 Clause 19 deals with the finances of the Judicial Inspectorate.

2.20 Clause 20 deals with the appointment of Independent Prison Visitors and their terms of office.

2.21 Clause 21 lays down the powers, duties and functions of Independent Prison Visitors.

2.22 Clause 22 empowers the Inspecting Judge to establish a Visitors' Committee consisting of the Independent Prison Visitors appointed at the prison in that area.

2.23 Clause 23 lays down the procedure for conducting internal service evaluation to promote economic and efficient management of the Department.

2.24 Clause 24 contains the short title and provides for commencement of the provisions of the Bill.

PART 3

BODIES CONSULTED

The following Departments and bodies were consulted:

- Judiciary
- National Advisory Council of Correctional Services
- Universities
- SAPHOR
- Lawyers for Human Rights
- State Departments
- Department of State Expenditure
- Department of Finance
- Office of the Deputy President
- Department of Trade and Industry
- The Development Bank of Southern Africa
- Construction Industry
- Financial Institutions
- Provincial Public Works Departments.

PART 4

PARLIAMENTARY PROCEDURE

In the opinion of the Department of Correctional Services and State Law Advisers the Bill must be dealt within accordance with the procedure prescribed by section 75 of the Constitution.