

Weekend and short term release etc.

47. (1) Provision may be made by Regulation for schemes of short term release, including –
- (a) weekend release;
 - (b) release from prison to attend a course of instruction;
 - (c) release into the care and supervision of traditional chiefs or other community leaders for the purpose of facilitating the re-entry of the prisoner into his or her village or community; or
 - (d) any other arrangement permitting short term release which may assist in the rehabilitation of a prisoner or facilitate the prisoner's return to his or family, village or community.
- (2) Commissioners Orders may make further provision in relation to any scheme approved under sub-section (1) that is not inconsistent with the relevant Regulations.

PART XII – DISCHARGE OF PRISONERS

Discharge of prisoners

48. (1) Every officer in charge shall be responsible for ensuring that a prisoner is discharged –
- (a) at the end of their effective sentence;
 - (b) in accordance with the order of any court;
 - (c) into the custody of any person having lawful authority over the prisoner in accordance with a law applying in Fiji; and
 - (d) in accordance with any decision made by a competent authority authorising a prisoner's release on parole.
- (2) In the event of any doubt arising as to actual date upon which discharge is due, or the lawful authority of any person into whose custody a prisoner is to be released, the officer in charge shall refer the matter for determination by the Commissioner.
- (3) Where a matter has been referred to the Commissioner under sub-section (2), and the Commissioner is unable to ascertain the effect of any law applying in that context, the Commissioner may refer the matter for determination by the Attorney General.

The Fiji Parole Board

49. (1) The Parole Board of Fiji is hereby established and shall comprise of –
- (a) a retired judge, or legal practitioner qualified for appointment as a judge, who shall be Chairman;

- (b) a registered medical practitioner having experience in the area of psychiatry;
- (c) a member who has knowledge and experience relating to the supervision and support of prisoners after their discharge; and
- (d) a member who has made a study of the causes of delinquency and the treatment of offenders -

appointed by the Judicial Services Commission established under section 131 of the Constitution.

(2) The members of the Parole Board -

- (a) may be appointed for a term not exceeding 3 years, and shall be eligible for re-appointment;
- (b) may resign by giving not less than 30 days notice to the Judicial and Legal Services Commission;
- (c) shall be entitled to receive sitting allowances fixed by the Higher Salaries Commission.

(3) The Parole Board may regulate its own procedures but shall comply with any matters prescribed by Regulation.

(4) The functions of the Parole Board are to make recommendations to the Minister relating to -

- (a) the release on licence of any person serving a sentence, including a sentence for life, or the recall to prison of any person who has been released on licence;
- (b) the conditions to apply to any release on licence, including a variation or cancellation of any conditions previously applied;
- (c) any other matter referred to it by the Minister related to the release on licence or the recall of persons previously released; and
- (d) any other matter prescribed by Regulation.

Support for prisoners after release

50. Commissioners Orders may make provision for the Prisons Service to undertake appropriate activities and provide support services in relation to prisoners who have been discharged.

PART XIII - OFFENCES

Offences by Prisons Officers

51. (1) Any Prisons Officer who -

- (a) begins, excites, causes or joins any mutiny or sedition within the Prisons Service or in any prison;
- (b) fails to use his or her utmost endeavours to suppress any mutiny or sedition within the Prisons Service or in a prison;
- (c) fails to report the existence of any mutiny or sedition within the Prisons Service or in a prison, or any information that he has that indicates that mutiny or sedition may arise, to a senior officer;
- (d) deserts from his or her assigned place of duty with the intention of not returning to the Prisons Service;
- (e) allows any prisoner who is committed to his or her charge, or whom it is his or her duty to keep or guard, to escape;
- (f) persuades, procures or assists any other Prisons Officer to desert;
- (g) fails to give information to a senior officer about the desertion or intended desertion of another Prisons Officer; or
- (h) strikes or offers violence to a superior officer –

commits an offence and shall be liable to imprisonment for a term not exceeding 5 years.

(2) Any officer who, having ceased to be an officer, fails or refuses to deliver up to the person appointed by the Commissioner for this purpose, all arms, ammunition, equipment, clothing and other items supplied during his or her term as an officer, and which are the property of the Government, commits an offence and shall be liable upon conviction to a fine not exceeding \$2,000 or to imprisonment for a period not exceeding 6 months, or both.

(3) Notwithstanding sub-section (2), at the discretion of the Commissioner and officer may make payment for any article referred to in sub-section (2) (with the exception of any firearm, ammunition or instrument of restraint), and the amount of payment shall be as determined by the Commissioner.

Inciting and Harboring

52. (1) Any person who by any direct or indirect means –

- (a) procures, persuades or attempts to persuade a Prisons Officer to desert;
- (b) knowingly harbours or assists any deserting Prisons Officer;
- (c) knowingly employs a deserting Prisons Officer –

commits an offence and shall be liable to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months, or both.

(2) Any person who –

- (a) directly or indirectly instigates, commands, counsels or solicits any mutiny or sedition amongst any Prisons Officers or prisoners;
- (b) directly or indirectly instigates, commands, counsels or solicits any disobedience to a lawful command; or
- (c) willfully attempts to seduce any Prisons Officer to breach his or her oath of allegiance –

commits an offence and shall be liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 2 years, or both.

(3) Any person who –

- (a) harbours any prisoner illegally at large;
- (b) knowingly employs any prisoner illegally at large; or
- (c) knowingly and without lawful excuse assists any prisoner illegally at large –

commits an offence and shall be liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 2 years, or both.

Unlawful entry, prohibited articles etc.

53. (1) Persons may only enter a prison with the authority of the Commissioner, a Divisional Supervisor or the relevant officer in charge and any unauthorised person who is within the boundaries of a prison commits an offence and shall be liable to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months, or both.

(2) Any person other than a Prisons Officer who –

- (a) is found in possession of any article which has been supplied to an officer for the purpose of his or her duty;
- (b) is found in possession of any other property of the Prisons Service and cannot satisfactorily account for how he or she came to be in possession of the property;
- (c) without lawful authority, purchases or receives any article or property issued to a Prisons Officer or belonging to the Prisons Service; or
- (d) who aids or abets any officer in selling or disposing of any article or property belonging to the Prisons Service without lawful authority –

commits an offence and shall be liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months, or both.

- (3) Any person who –
- (a) brings, sells or attempts by any means whatsoever to introduce into a prison, or to give to a prisoner, any prohibited article; or
 - (b) communicates with a prisoner for the purpose of breaching this section –
- commits an offence and shall be liable to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months, or both.

PART XIV – MISCELLANEOUS

Regulations, Commissioner Orders etc.

54. (1) The Minister may make Regulations for the purpose of giving effect to the provisions of this Act, including Regulations making provision in relation to –
- (a) the regulation and government of prisons, and the maintenance of security and good governance in prisons;
 - (b) the recognition and implementation of human rights and applicable international standards;
 - (c) the appointment, discharge and duties of officers and employees of the Prisons Service, consistent with the determinations and procedures of the Disciplinary Services Commission;
 - (d) prescribing offences against discipline applying to officers and prisoners;
 - (e) prescribing rights of prisoners whilst in custody, including matters related to –
 - (i) visits from friends, relatives and other prescribed persons;
 - (ii) communications by post, or other prescribed means;
 - (iii) procedures for complaint and representation to prison authorities, the Human Rights Commission and the Ombudsman Commission;
 - (iv) exercise and recreation; and
 - (v) any other rights applying to prisoners awaiting trial;
 - (f) the duties and functions of Medical Officers, visiting justices and committees, and other persons authorised to undertake official prison visits, including the payment of allowances and the reimbursement of expenses consistent with any relevant law;

- (g) the admission and classification of prisoners, including procedures applying to the detention or transfer of persons in accordance with Fiji's obligations under international conventions;
- (h) interviews of prisoners by police officers in course of their investigations, which –
 - (i) may include arrangements for taking prisoners to crime scenes and their participation in identification processes; and
 - (ii) shall have regard to the constitutional rights of the prisoners and the role of their lawyers;
- (i) the transfer of prisoners and the responsibilities of officers and other persons in relation to the security of prisoners when being transferred;
- (j) separation of prisoners, and the review of prisoners under separation;
- (k) the use of dogs in maintaining good order and security, and other arrangements for the response to unrest and violence within prisons;
- (l) schemes for early release and other appropriate arrangements for the rehabilitation of prisoners;
- (m) schemes providing support for prisoners after their release, including cooperative arrangements with the Fijian Affairs Board, other relevant Ministries and agencies, church bodies and community based groups;
- (n) the provision of medical and related services within prisons, and arrangements for dealing with infectious diseases;
- (o) arrangements for female prisoners and their children consistent with the rights and obligations of CEDAW and CRC, and in particular the rights of mothers to feed and care for their infant children whilst in prison;
- (p) the encouragement and administration of prison enterprises and training programs;
- (q) arrangements for unconvicted and civil prisoners, including procedures applying to the periodic review of orders for the detention of any unconvicted person made under any law;
- (r) reporting, investigating and otherwise dealing with the death of prisoners in custody;
- (s) procedures for prison visits and dealing with matters relating to the taking of items, articles and things into prisons during visits; and

- (t) offences for breach of any Regulation, which may provide for penalties of fines not exceeding \$1,000 or imprisonment for a term not exceeding 6 months, or both.
- (2) Commissioners Orders made under this Act –
- (a) shall come into effect upon being signed by the Commissioner;
 - (b) may relate to any aspect of prisons administration and management, and shall be consistent with the provisions of this Act and the Regulations;
 - (c) shall be reviewed at such intervals as are determined by the Commissioner;
 - (d) shall give full recognition and effect to the basic rights stated in the Constitution, and in particular –
 - (i) the right of prisoners to adequate facilities permitting the proper preparation of defences and appeals, including access to legal advisers by prison visit or other communication (with appropriate regard to the confidentiality of the solicitor/client relationship) and to legal resources;
 - (ii) the rights and special needs of the disabled;
 - (iii) the avoidance of discrimination on any grounds;
 - (iv) the right to practice a religion of choice, including the observance of daily or periodic rituals and practices;
 - (v) the right to basic education, and in particular the right of access to education by young prisoners and by juveniles held on remand;
 - (vi) the right of unconvicted prisoners and prisoners serving sentences of less than 12 months to vote in elections; and
 - (vii) the right of prisoners to access the officers and resources of the Human Rights Commission.
 - (e) shall be circulated to all Divisional Supervisors and officers in charge, and shall be brought to the attention of all officers;
 - (f) may be repealed or altered from time to time by the Commissioner; and
 - (g) may provide for the delegation of any power of the Commissioner to any officer.

Repeal of the Prisons Act (Cap No 86)
55. The *Prisons Act (Cap. 86)* is repealed.

Transitional arrangements, consequential amendments and savings

56. (1) For the purpose of ensuring a smooth transition for the Prisons Service in the implementation of the provisions of this Act, the Minister may extend the application of any Regulation or Order made under the repealed Act for such term as he or she may determine by notice published in the Gazette.

(2) After the commencement date –

- (a) current appointments of officers made under the repealed Act, including the Commissioner;
- (b) the terms and conditions of employment applying to officers and employees under the repealed Act;
- (c) the duties assigned to any officer under the repealed Act;
- (d) disciplinary proceedings taken against officers or prisoners, and punishments imposed under such proceedings, under the repealed Act;
- (e) the exercise of any power under the repealed Act;
- (f) the admission, classification, early release and discharge of any prisoner under the repealed Act;
- (g) the calculation and application of any remission of sentence under the repealed Act;
- (h) the implementation of any scheme for prison labour or rehabilitation and training undertaken under the repealed Act; and
- (i) the commencement of any criminal prosecution for an offence against the repealed Act -

shall continue to be valid and shall have full force and application until affected by the exercise of any authority under this Act, and where appropriate shall be deemed to have been made or taken under this Act.

(3) A reference in any written law to the former office of Controller of Prisons shall be deemed to be a reference to the Commissioner under this Act.

Amendments to the Juveniles Act (Cap. 56)

57. Section 2 of the *Juveniles Act (Cap. 56)* is amended as follows –

- (a) by deleting the definition of “juvenile” and replacing it with the following -
“ “juvenile” means a person who has not attained the age of 18 years, and includes a child and a young person”; and
- (b) by deleting the definition of “young person” and replacing it with the following –

“ “young person” means a person who has attained the age of 14 years, but who has not attained the age of 18 years”.

DRAFT PRISONS AND CORRECTIONS BILL

EXPLANATORY NOTES

- Clause 1** This gives the short title of the Act – Prisons and Corrections Act. The arrangements for bringing the Act into effect shall be determined by the Attorney General or First Parliamentary Counsel.
- Clause 2** This gives the definitions in the Act.
- Clause 3** This states the Guiding Principles which must be taken into account when the Act is interpreted or applied.
- Clause 4** This continues the Fiji Prisons Service as it is currently constituted and requires that it be administered in accordance with the provisions of the new law.
- Clause 5** The Head of the Fiji Prisons Service shall continue to be the Commissioner. The powers and responsibilities of the Commissioner are stated. The Commissioner is given an overriding power to ensure that the security and good governance of prisons is maintained at all times.
- Clause 6** The Minister may determine the other ranks of the Prisons Service by order published in the Gazette. A broad range of classifications of officers may be applied to reflect the change in philosophy of the Service from containment to corrections. Employees who are not officers of the Service shall be administered by the PSC in the manner which applies to ordinary public servants. All officers and employees are subject to the direction of the Commissioner.
- Clause 7** The procedures for the appointment and promotion of officers are the responsibility of the Disciplined Services Commission. These may be prescribed by Regulation or in conditions of employment approved by the DSC.
- Clause 8** A broad range of obligations applying to all officers in the exercise of their duties is prescribed.
- Clause 9** The powers, privileges and legal protections applying to officers are stated comprehensively. They shall have the immunities applying to police officers when they are involved in apprehending escapees. Powers to order the dispersal of rioters are vested in senior officers. Immunities from criminal and civil liability shall apply when officers are exercising their powers and duties in good faith.
- Clause 10** Disciplinary offences applying to officers shall be prescribed in Regulations or the Commissioners Orders. Disciplinary procedures shall be the responsibility of the DSC, which must apply the principles of natural justice.

- Clause 11** Prison officers may not form or join trade unions but may join approved Associations established under Regulations.
- Clause 12** The Minister may declare places or buildings to be permanent or temporary prisons. The existing prisons shall be deemed to have been declared under this section. The Minister may determine the maximum of the prisoners which may be held in each prison. Circumstances are stated in which the Commissioner may make arrangements for keeping prisoners in temporary prisons.
- Clause 13** The Commissioner may appoint senior officers to be Divisional Supervisors and officers in charge for each prison. The current appointments to these offices shall be deemed to have been made under this section.
- Clause 14** Regulations and Commissioners Orders shall make provision for the appointment of officers to other positions within prisons to perform designated functions and duties. A general power to make any necessary appointments is vested in the Commissioner, Divisional Supervisors and officers in charge.
- Clause 15** Medical officers for each prison are to be appointed by the CEO of the Ministry of Health. Regard must be had to the particular needs of female prisoners when appointments are made. The Commissioner has some power to appoint medical officers when the situation requires that such appointments be made.
- Clause 16** The responsibility for ensuring that prisons are inspected lies with the Commissioner. The Commissioner may designate senior officers to be prisons inspectors. The Commissioner Orders shall make provision for prison inspections and for the preparation of reports relating to them.
- Clause 17** Medical officers must visit prisons at least each week. The matters to be considered during such visits are listed.
- Clause 18** Provision is made for the role of visiting justices who are members of the magistracy. Monthly visits are required. The Regulations shall make further detailed provision in this regard.
- Clause 19** The Minister may approve the appointment of visiting committees for any prison. A list of matters to be considered when such appointments are made is provided for. This includes the need to ensure the appropriate representation of local women's groups.
- Clause 20** Judges and officers of the Human Rights Commission and the Ombudsman Commission are given rights to undertake prison visits and to meet with prisoners.
- Clause 21** The Commissioner may approve the appointment of church representatives, chiefs and respected persons to be official prison visitors. The spiritual

needs and religious affiliations of the particular prisoners must be taken into account. Facilities must be provided for meetings with prisoners to take place and religious texts may be given to prisoners. Prisoners may not be forced to participate in religious services.

- Clause 22** The Minister may appoint official inquiries into any aspect of the administration of the prisons system and such inquiries shall have the powers and immunities applying to Commissions of Inquiry.
- Clause 23** Provision is made for the admission of prisoners in accordance with legal process. Duties are assigned to officers in charge at the time of admission. Upon admission a prisoner is deemed to be in the legal custody of the Prisons Service. If it appears that a prisoner may be under the age of 18 years then arrangements must be made for the court to confirm the imprisonment order.
- Clause 24** Female prisoners, young prisoners at risk and unconvicted prisoners must be held in separate custody. In other cases there are restrictions placed on the separation of prisoners.
- Clause 25** A detailed list of information to be given to all prisoners upon admissions of stated.
- Clause 26** The medical officer must undertake medical examinations of all prisoners upon admission but there may be no program of compulsory testing for HIV/AIDS.
- Clause 27** The Commissioners Orders shall prescribe procedures for the classification of prisoners. A remission of one-third of sentence is retained in this Act.
- Clause 28** Remission may be forfeited by misbehaviour. Commissioners Orders shall make provision for the forfeiture and restoration of remission. The Minister may approve further remissions upon the recommendation of the Commissioner. Rights of appeal shall be prescribed by Regulation or in the Commissioners Orders.
- Clause 29** The current approved rations shall be deemed to be the "basic rations" to be provided to all prisoners. Approvals may be given for rations to be supplemented. Rations must reflect the different ethnic tastes of the prisoners but there may be no discrimination on this basis. The Commissioner Orders will make provision in relation to providing food to prisoners during visits.
- Clause 30** Transfers shall be done in accordance with Regulations or Commissioners Orders. The circumstances in which prisoners may be removed from prisons are prescribed in detail.
- Clause 31** Medical officers are responsible for the general care of prisoners. Medical examinations may be ordered and shall be undertaken at the request of prisoners. The medical officer may make arrangements for the specialist

treatment of prisoners. Only a medical officer may order the separation of a prisoner on medical grounds. HIV/AIDS may not be a reason in itself for ordering separation.

- Clause 32** Arrangements must be made to permit access by prisoners to other health services and programs offered by the Ministry of Health.
- Clause 33** Medical records must be maintained and confidentiality must be observed in relation to them.
- Clause 34** Appropriate steps must be taken to avoid the spread of infectious diseases. Overriding powers are vested in the Commissioner in this respect. Commissioner Orders may prescribe means by which the spread of disease may be minimised.
- Clause 35** The primary objective in the prisoner classification processes is rehabilitation. Other objectives are stated.
- Clause 36** The classification procedures shall be prescribed by Regulations or in Commissioner Orders and these must be consistent with the objectives stated in clause 35.
- Clause 37** Prison offences applying to prisoners shall be prescribed in Regulations or Commissioners Orders and these must be prominently displayed in all prisons. They must be printed in the English, Fijian and Hindustani languages. A prisoner may face disciplinary action and criminal proceedings arising from the same incident.
- Clause 38** No punishment involving corporal punishment, the use of instruments of restraint, the withdrawal of basic food rations or the complete denial of visitation rights may be imposed. Non-contact visits may be applied.
- Clause 39** The Regulations shall prescribe procedures for impose discipline on prisoners. These may be exercised by Divisional Supervisors, officers in charge and senior officers, or by Tribunals. Natural justice must be observed. The Commissioner may review punishments and findings. No prisoner may be used to impose punishment on any other prisoner. However mentoring amongst prisoners may be appropriate.
- Clause 40** Officers may not use force against prisoners except for self-defence, to prevent escape or when actual or passive resistance is used against an officer. No more force than is necessary may be used. Training in relation to the use of force must be provided to all officers.
- Clause 41** Arms may be issued to officers on the order of senior officers. They may only be issued for the purposes of preventing escape, combined outbreak attempts or where violence is being used to any person and there is a danger of bodily harm.

- Clause 42** Chains and irons may never be used to restrain prisoners. No instrument of restraint may be used as a punishment. Handcuffs may be used as a precaution against escape during prisoner transfers or where other attempts to restrain a prisoner have failed. Strait jackets may only be used on medical grounds. Regulations may authorize the use of other instruments of restraint but certain criteria and requirements must be met.
- Clause 43** Convicted prisoners may be required to perform labour and a list of requirements applying to the types of labour is prescribed. Prisoners may be required to keep their cells and belongings clean. Regulations shall prescribe payments to prisoners for their labour and certain criteria are to be applied. The pay rates must be reviewed at least at five yearly intervals.
- Clause 44** Unconvicted prisoners may decline work but otherwise clause 43 applies to their labour.
- Clause 45** Regulations shall promote the establishment and operation of prison enterprises.
- Clause 46** Early release schemes shall support the rehabilitation of prisoners. Certain qualifying criteria for such schemes are prescribed. Other aspects of such schemes shall be prescribed by Regulations.
- Clause 47** Week end release and other arrangements for short term release may be made by Regulation.
- Clause 48** Prisoners must be discharged at the end of their effective sentences. The Commissioner has an overriding discretion to determine release dates where some doubt as to the actual day for release exists.
- Clause 49** A Parole Board is established. Its membership, functions and powers are prescribed. The Judicial Services Commission is responsible for appointing members.
- Clause 50** It is appropriate for the Prisons Service to participate in post release support for prisoners and the Commissioner may determine the nature of this involvement.
- Clause 51** Offences by prison officers are prescribed.
- Clause 52** It is an offence to incite a prison officer to desert or to assist any deserting officer. Instigating mutiny or sedition amongst officers is an offence. Harboursing escaped prisoners is also an offence.
- Clause 53** It is an offence to unlawfully enter a prison or to bring prohibited articles into a prison.
- Clause 54** This empowers the making of Regulations and Commissioners Orders and identifies the specific areas where these may be required.

Clause 55 The *Prisons Act (Cap. 86)* is repealed by this clause.

Clause 56 Transitional arrangements are made. The Minister may extend the application of any Regulation made under the repealed Act. All current appointments, terms and conditions, disciplinary proceedings, classifications and remissions continue to apply until altered in accordance with this Act.

Clause 57 Some consequential amendments are made to the *Juveniles Act* to amend the age of juveniles and young offenders to have an upper limit of 18 years. The current age of 17 years

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ISSUES PAPERS

FIJI LAW REFORM COMMISSION

REVIEW OF PRISONS LEGISLATION

ISSUE PAPER No. 1 – ASPECTS OF PRISONS ADMINISTRATION

PART 1 - BACKGROUND

1.1 The Review

Under section 5(2) of the *Fiji Law Reform Commission Act (Cap 26)* the Attorney General and Minister for Justice of Fiji, Senator Qoriniasi Bale, referred the *Prisons Act (Cap 86)*, the Prisons Regulations, Prisons Standing Orders and Prisons Operational Standards for review by the Fiji Law Reform Commission. This reference was made on the 27th November 2003.

1.2 The Time Frame for the Review

1. For the review of the *Prisons Act* and the preparation of a draft Bill – 30th April 2004.
2. For the review of the Prisons Regulations, Standing Orders and Operational Standards, and the preparation of draft replacements – 30th December 2004.

1.3 Appointment of Consultants

Pursuant to section 3(6) of the *Law Reform Commission Act* the Attorney-General appointed the following persons to advise the Commission in this Review –

Graham Bruce Powell – Legislative Drafting Specialist
Anthony Kelly – Corrections Expert

1.4 UNDP support

The Partnership with the Fiji Law Reform Commission

This Review has been facilitated by support given by UNDP under the 2003-2007 MCPO. Under this arrangement UNDP has acknowledged the Fiji Law Reform Commission as “the primary partner in this project”.

The Objectives

“The overall development objective is to revise prison legislation to improve the quality of service delivery within the Prison institutions in conformity with international standards such as human rights and other related legislations”.

Fiji's National Development Plan

The objectives of this Review are consistent with the provisions of Fiji's *Strategic Development Plan 2003-2005 (Parliamentary Paper No. 72 of 2002)*. It is conceded in this Plan that "the prison population exceeds capacity and the staff-prisoner ratio of 1:10 is well above the international standard of 1:4".

The Plan sets the following specific goals –

<i>To provide efficient and cost effective prisons and rehabilitation services</i>	<ul style="list-style-type: none">• Reduction in repeat offenders by 5 % per annum• 50 % reduction in escapees by 2004• A 10 % annual decline on the prison population• Increased proportion of ex-offenders successfully completing rehabilitation programs• Feasibility of contracting out some services established by 2003
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PART 2 – SOME PRELIMINARY OBSERVATIONS

2.1 Preliminary Observations

The matters identified in this Paper are intended to promote discussion and feedback. The consultants do claim expertise in these areas, most notably that of Tony Kelly who has had vast experience in the administration of prisons in Australia, PNG and Cambodia. However there is much to be learnt and to be considered in the Fiji context and so all views are invited, all experiences shall be instructive and all matters identified and raised shall be taken into account.

2.2 The Fijian Experience

In the late 1970's Fiji experienced a period of violent upheaval in many of its prisons. These were reported on in a timely and thoroughly competent fashion. However it seems that many of the valid recommendations made were not immediately acted upon and much still remains to be done. Since this period of trouble there have been other isolated incidents of serious disorder within Fiji's prisons but these upheavals were dealt with by the intervention of the Prisons Service.

While it is self evident that many of the problems associated with the administration of Fiji's prisons may be said to be resource related (lack of personnel, training, funding and institutional support) it is equally clear that Fiji's laws in this context are outdated and in need of comprehensive review.

PART 3 – SOME KEY ISSUES

3.1 The Officers and Positions identified in the current laws

Detailed provision is made in the current Act concerning the offices and positions within the Service including "junior officer", "officer in charge", "other persons employed in the prisons", "senior officer", "subordinate officer", "superior" or "superior officer", and "supervisor".

The head of the Prisons Service is known as the "Controller".

"Controller"	Is the term used for the Commissioner of Prisons
"Supervisor"	Is the officer appointed by the Controller to be the supervisor of any or all of the prisons within any Division of Divisions
"Officer in charge"	Is the officer appointed by the Controller to be in charge of a prison
"Senior officer"	Is any officer whose appointment is gazetted
"Subordinate officer"	Is any male or female officer declared by the Minister to be a subordinate officer
"Junior officer"	Is any officer, other than a subordinate officer, whose appointment has not been gazetted
"Superior" or "Superior officer"	Is any officer of higher rank than the officer performing any act or doing any thing
"Medical officer"	Is the qualified medical practitioner appointed under section 44 to be the medical officer of any prison.
"Other persons employed in the prisons"	Includes executive officers, clerks, storekeepers and other persons employed in the prisons who are not covered by other definitions in the Act
"Chief officer"	Is defined in the <i>Prisons Regulations</i> , in relation to a prison, as being the officer next in seniority to the senior officer appointed as officer in charge, or where there is no senior officer appointed as officer in charge, is the officer in charge of the prison.
"Prison officer"	Is defined in the <i>Prisons Regulations</i> to be any member of the Prisons Service, and any public officer seconded to or attached to the Service
"gatekeeper"	Regulations 28 – 31 of the <i>Prisons Regulations</i> make comprehensive provision in relation to the duties of officers acting in this position

Prison officers and staff as provided for by the Prisons Act (and as defined in section 2), or in the Prisons Regulations

Observations – 3.1

The term "Controller" should be replaced by "Commissioner" to reflect the terminology of the Constitution, and to accord with actual practice.

Confirmation of the other titles of officers and of the terms used in the Act in relation to prison officers is required. Appropriate titles can be inserted as definitions in the draft Bill.

The definitions of "civil prisoner" and "criminal prisoner" shall probably be retained in the draft Bill, but some consideration of this is required. (see 3.2)

3.2 *Civil Prisoners – debtors, fine defaulters etc*

Rights are given to civil prisoners and unconvicted criminal prisoners to purchase or receive, during prescribed hours, food, clothing, bedding and other necessaries, and to

maintain themselves (section 70). These may not be given or loaned to other prisoners. These privileges can be withdrawn in the event of such a breach. Otherwise the regular prisoner provisions shall be supplied to such prisoners.

DEBTORS ACT (1886) (CAP. 32)

A person may be committed by the Supreme Court, to a term of imprisonment not exceeding 6 months or until payment of the sum due (section 4). This power may only be exercised where the court is satisfied that the person has or has had the means to pay but has neglected or refused to do so.

Where a court is satisfied that a defendant in action for the recovery of more than \$10 is about to abscond, the court may issue a warrant of arrest and commit the person to prison (section 6). Release shall be affected by the grant of bail or the lodgment of security fixed by the court (not exceeding the sum of the probable debt or damages).

It should be noted that under Rule 5 a plaintiff applying for committal of a judgment debtor or defendant shall pay the subsistence costs as prescribed by the *Prisons Act*. This must be paid to the officer in charge at Suva, Lautoka or Labasa by monthly payment in advance.

A defendant shall be released before the expiration of the term upon satisfaction of the judgment, or at the request of the creditor, or by the creditor's failure to pay the subsistence costs (Rule 6).

Observations – Part 3.2

These issues need review in the broader context of dealing with civil prisoners. An additional charge might be made against the creditor who has sought imprisonment to meet the additional expenses involved in applying these arrangements. All these matters might be better dealt with in the subsidiary legislation.

3.3 · *Establishment of Prisons*

Under section 3 the Minister is empowered to declare places or buildings to be prisons by Notice published in the Gazette. Existing prisons are deemed to be prisons under the Act.

Declarations of Prisons

Proclamation 8 of 1965 (Legal Notice 88 of 1972)

Proclaimed Suva, Rotuma, Lautoka, Ba, Labasa, Savusavu and Taveuni Prisons, and Naboro Prison Farm

Legal Notice 120 of 1977

Proclaimed Nasinu Prison

Legal Notice 112 of 1990

Ceased a building in Labasa as a temporary prison, and revoked Legal Notice 1445 of 1989 declaring it as such (unsighted).

Legal Notice 95 of 2000

Declared Nukulau and Makuluva Prisons

Declarations of Prisons under section 3

The Controller may, with the approval of the Minister, move prisoners to a place determined to be a "temporary prison" (section 4). Certain instances where this may be warranted are stated, but the power is a general one.

Observations – 3.3

The current power of the Minister to declare (and to close) prisons should be retained.

The current declared prisons should be retained but confirmation that all existing prisons have been duly declared is required.

It may be appropriate to make some reference to a rationalisation of prisons, and for some aspects of such a process to be prescribed.

3.4 *The Fiji Prisons Service*

The Fiji Prisons Service is established under section 5. Officers of the existing Service under the repealed Ordinance are deemed to be officers of the Fiji Prisons Service (section 6).

The Minister may determine the rank structure by Notice published in the Gazette (section 7).

Ranks of the Prisons Service – Declared by the Minister (Legal Notice 109 of 1971)

Senior officers – Controller of Prisons, Deputy Controller of Prisons, Superintendent of Prisons and Assistant Superintendent of Prisons

Junior officers – Chief Prisons Officer and Principal Prisons Officer

Subordinate officers – Prisons officers classes A, B and C

The current classifications of Prison Officers

Administrative control of the Service is vested in the Controller, including the power to make orders for observance by all officers, and the power to control all prisoners and to allocate them to such prisons as he or she thinks fit (section 8). Under this section however, the Minister may issue orders and directions to be observed by the Controller, and the Public Service Commission retains the power of appointment and discipline of officers. These powers may be delegated to the Controller.

NOTE: An Act amending the *Public Service Act* made in 1999 deleted references to the Public Service Commission and replaced them with the Disciplined Service Commission. This change was made to sections 8, 11, 14, 15, 20, 31 and 32.

Prisons Regulations 1968

Under regulation 5 the Controller must ensure that the provisions of the Act and these Regulations are strictly carried out, and uniformity of administrative process in the prisons must be secured.

The Deputy Controller may exercise any of the powers of the Controller, subject to the orders and directions of the Controller (section 9).

The Supervisors of each of the prisons may be appointed by the Controller from the officers of the Service (section 10). The supervisors may, subject to the directions or orders of the Controller, supervise and control the prison and its prisoners, and shall be responsible for the conduct and treatment of the prison's officers and prisoners. The Controller remains empowered to exercise any of the powers of a supervisor.

Minister	<ul style="list-style-type: none"> To give orders and directions to the Controller concerning prisons and prison officers (s.8(1))
Controller (Commissioner)	<ul style="list-style-type: none"> Administrative command of all prisons and prison officers (s.8(1)) Power of appointment and discipline of prison officers if delegated by DSC (s.8(1)) Power to make orders to be observed by prison officers (s.8(2)) Power of control of all prisoners, including power to allocate them to prisons (s.8(3)) Power of appointment of prison supervisors (s.10(1)) Power to give orders and directions to prison supervisors (s.10(2)) Power to exercise any power of a supervisor given under the Act (s.10(3))
Deputy Controller	<ul style="list-style-type: none"> Power to exercise the Controller's powers, subject to the Controller's orders and directions (s.9)
Disciplined Services Commission	<ul style="list-style-type: none"> Powers of appointment and discipline of prison officers (s.8(1)) Power to delegate powers of appointment and discipline to the Controller (s.8(1))
Prison Supervisors	<ul style="list-style-type: none"> Power of supervision and control of a prison (s.10(1)) Responsibility for the conduct and treatment of officers and prisoners within the prison (s.10(2))

Table: Powers relating to prison administration within the Fiji Prisons Service

Observations – 3.4

The current Fiji Prisons Service shall be continued under the draft Bill. Current officers and employees will be retained in existing positions and at current levels (subject to later review to ensure consistency with the Act).

The power of the Minister to determine the rank structure may be retained, however the creation of a Prisons Board might be considered.

A clear statement of respective responsibilities is required to clarify the roles of –

- The Minister
- The DSC
- The PSC
- The Commissioner
- A Prisons Board?
- Supervisors
- Officers in charge

3.5 *Appointment, Service and Discharge of Officers*

Under section 11, senior officers of the Fiji Prisons Service are appointed by the DSC. The Controller has the power of appointment of other officers, subject to the provisions of any delegation made by the DSC. Under section 11(4) the Controller is specifically empowered to engage subordinate officers where their number is insufficient to secure the good management and government of a prison. And in the case of a prisons where there are no, or no sufficient, female officers to supervise female prisoners, the officer in charge of the prisons may engage female subordinate officers, if so approved by the Controller (section 11 (5)).

All officers are required to make an oath or affirmation upon joining the Service, which must be made before the Controller or a senior officer (section 11(3)).

Prisons Service Regulations 1965

The requirement to take an oath or affirmation is re-stated in regulation 2. The form of the oath or affirmation is contained in the First Schedule.

The period of service of subordinate officers shall be fixed by the Minister under section 12. However, this provision does not apply to the subordinate officers appointed by the Controller or supervisors under section 11.

Prisons Service Regulations 1965

Under regulation 4 no subordinate officer shall be appointed or re-appointed after attaining 55 years.

Officers may not resign from the Service without the Controller's approval (section 13).

During times of war, insurrection and hostilities, an officer may be required to remain in the Service even though his or her period of service has expired (section 14).

Subject to a right to make representations to the Controller, an officer who is not a senior officer, may be discharged from the Service by the Controller on a wide range of grounds (section 15(1) and (3)). One month's notice, or one month's pay in lieu of notice, must be given to any officer so discharged (section 15(2)).

All officers leaving the Service must deliver up all arms, ammunition, equipment, clothing and other government property or face a criminal offence (section 16). However the Controller may authorise the retention of any such property upon payment being made for it.

Prisons Service Regulations 1965

Under regulation 22 the Controller determines what arms, ammunition, clothing and equipment are to be issued. All such equipment remains government property. It may only be used for prisons purposes.

Observations – 3.5

The powers of the Commissioner in relation to the appointment and discipline of junior officers might more closely reflect those of the Commissioner of Police.

The provisions relating to taking oaths, discharge from the Service etc might be substantially retained.

The period of service might be better clarified.

3.6 Powers and Duties of Officers of the Prisons Service

Prisons inspections are to be undertaken by the Controller or at the Controller's direction (section 17).

Prisons Regulations 1968

Regulation 4 obliges the Controller to thoroughly and systematically inspect or cause to be inspected each prison at least twice each year. A report of any noteworthy matters must be furnished to the Minister. An Annual Report must be prepared and furnished to the Minister before 30th April each year, and must refer to all matters of interest connected with the administration of Fiji's prisons.

Regulation 6 specifies some detailed requirements to be observed when inspections are conducted. These include the inspection of records, visiting every part of a prison, speaking to every prisoner who has made a request to see the inspecting officer, inquire into all prisoner complaints and applications and record all orders and directions made in the Officers Visiting Book.

All officers may exercise their lawful powers, and shall obey lawful directions given by superior officers (section 18).

Prisons Regulations 1968

The duties of supervisors are exhaustively stated in regulation 7.

The duties of officers in charge are exhaustively stated in regulation 8.

The duties of chief officers are provided for in regulations 10 – 16. The chief officer –

- is the principal discipline officer of the prison, and must maintain discipline and the observance of laws and orders
- must visit the whole prison and each prisoner at least twice in every 24 hour period, and note any departure from this requirement
- must conduct a weekly visit, between 11 pm and 5 am, to each part of the prison and note in red ink the condition of the prison
- must ensure that prisoners are able to make complaints and applications, and that these are recorded in the Complaints and Applications Book
- must attend and supervise the issuing of prisoner's meals

(In a women's prison the senior woman prison officer shall perform the duties of the chief officer)

The duties of prison officers are provided for in regulations 17 – 27. Prison officer must –

- immediately report breaches of the Act, Regulations and Standing Orders to their immediate superior officer
- not be absent during hours of duty without leave from the officer in charge
- not use force against a prisoner unless in self-defence or to prevent escape
- not inflict punishment or privation except in accordance with the Act or Regulations
- prevent unauthorised communications between prisoners
- not unnecessarily converse with a prisoner, allow any familiarity, or discuss duties, matters of discipline, prison arrangements or private affairs
- not give a testimonial for a prisoner
- not receive private visitors (if a subordinate officer)
- not take keys to the prison outside or leave them lying about, and must deliver them to the officer in charge when leaving the prison
- not introduce or use liquor within a prison
- not introduce or use tobacco within a prison except with permission of the officer in charge
- enter a cell at night alone, except in cases of emergency
- enter a women's cell without a female officer, if the officer is male
- inform the chief officer of the name of any prisoner desiring to speak with him or her
- count the prisoners in their charge every half hour, and on receiving charge of a party, handing over charge or when leaving any building or work
- count prisoners upon proceeding to their labour and thereafter keep them in safe custody
- search any prisoner returning to prison for prohibited articles
- not leave any prisoners in their charge, unless relieved of duty by another officer
- perform discipline duty of required

And under regulation 112 they have a duty to prevent prisoners from escaping.

Each officer is deemed to be permanently on duty and may be sent to any part of Fiji (section 19).

Conflict of interests must be avoided and the DSC must approve any outside employment or the holding of any office. No business dealing may be had with any prisoner and no fees or gratuities may be received from any prisoner, or a relative or friend of a prisoner (section 20).

Prisons Service Regulations 1965

Under regulation 21 no officer may take part in professional sport.

Subject to provisos based upon reasonableness, an officer may use arms against a prisoner who is escaping, or making an escape attempt, or to prevent a combined outbreak from a prison (section 21(1)). Arms may be used against a prisoner using violence against an officer or other person. In most instances warning must be first given. In the presence of a superior officer, orders must be given before arms may be used. The aim must be to disable rather than to kill, as far as is possible.

The powers, protections and privileges of police officers are given to prison officers in relation to the movement of prisoners, and during the apprehension of escaped prisoners (section 22). The power given to police officers under the *Penal Code* to order the dispersal of rioters and such assemblies, are given to senior officers (section 22(2)).

Except in cases of sickness or emergency no officer may enter a prisoner's cell alone at night (section 23).

Prisons Regulations 1968

This is re-stated in regulation 23(1).

The officer in charge of a prison may cause photographs, descriptions, measurements, fingerprints, palm prints and footprints to be taken of prisoners, and for these to be recorded (section 24). A cross reference is made to the powers of police officers under section 18 of the *Police Act* in this context. In all other cases it is an offence for photographs to be taken of a prisoner without the approval of the Controller (section 24(3)).

Prison officers are protected from liability in relation to any action taken pursuant to a court warrant (section 25).

Observations – 3.6

The Commissioner's obligations in relation to prison inspections should be retained but a more detailed requirement in relation to reporting may be warranted. It is advisable that this provision be combined with those relating to Visiting Justices and Committees and entitled "Prison Inspections and Official Visitors".

The provisions of section 21 relating to the use of arms should be combined with those of section 51 relating to the use of mechanical restraints (which should be re-named "instruments of restraint") and entitled "Use of Force and Firearms".

The restriction on entering cells at night (section 23) should be a Standing/Commissioner's Order.

Nearly every other aspect of Part V could be removed to the subsidiary legislation.

Some guidance as to full range of appropriate provisions may be gained from the Queensland *Corrective Services Act 2000* sections 199 – 204.

3.7 *Prison Inspections and Official Visitors*

The most senior magistrate assigned to each Division is the visiting justice for each prison in that Division (section 44). A weekly visit to each prison by the visiting justice is required. There is some power to delegate this role to another magistrate within the Division.

The powers and duties of visiting justices are as prescribed (section 45). Witnesses may be summoned and oaths administered (section 46).

The Minister may appoint Committees of not less than 4 persons to be official visitors to a prison. The powers and duties of official visitors are as prescribed (section 47).

Prisons Regulations 1968

The precise duties of visiting justices are stated in regulation 157. Their powers are prescribed in regulation 158. Other provisions in Part XVII deal with the powers and duties of official visitors and visits by Visiting Committees.

Observations – 3.7

As noted above the requirement for the Commissioner to conduct periodic inspections might be better placed in this context.

The effectiveness of current arrangements should be considered. Consultations are required with the judiciary.

The proviso in section 44 which absolves a Visiting Justice from conducting a monthly inspection in the event of "illness or other sufficient cause" is not really appropriate. Alternative inspection arrangements should be considered.

3.8 *Discipline of Prison Officers*

Senior officers who are suspended or interdicted shall remain in the Service, although their powers, privileges and benefits shall be held in abeyance (section 26).

The Controller may interdict any junior or subordinate officer from duty under section 27, pending a trial for an offence or an appeal. In such a case the officer shall remain in the

Service, with powers, privileges and benefits held in abeyance. The officer shall not be entitled to receive pay, but some discretion in this regard is vested in the Controller.

A list of offences by officers is prescribed in section 28. These include mutiny or sedition, incitement, desertion, failing to give information of the desertion of another officer and striking a superior officer in the execution of his duty.

Offences against discipline by non-senior officers may be prescribed (section 29). Such proceedings do not displace other actions (e.g. criminal proceedings), but no officer may be punished twice for the same offence.

Prisons Service Regulations 1965

Offences against discipline by junior and subordinate officers are prescribed in regulation 18. 39 separate offences are listed.

Tribunals to try offences against discipline are established under section 30. Persons vested with authority in this regard include the Controller, supervisors and senior officers. The observance of natural justice is required by section 30(2). Under section 31 the Controller may review any proceeding held by a supervisor or senior officer.

Prisons Service Regulations 1965

The procedure to be observed by all Tribunals is prescribed by regulation 19.

A decision to remove a junior or subordinate officer from office, or to reduce rank or grade, shall be told to the officer, and he or she shall be advised that representations may be made to the DSC (section 32).

Tribunals shall have powers to summon and examine witnesses, and to require the production of documents. Non-compliance shall attract criminal penalties (section 33).

The Controller may suspend any punishment for a period of up to 6 months (section 34).

Where a supervisor or senior officer feels that a punishment is required that is in excess of the powers conferred by this Part, the case may be stayed and referred to the Controller (section 35).

Upon conviction by a court of any officer (other than a senior officer), the Controller may dismiss the officer from the Service, or may reduce the officer's rank or grade (section 36).

The Controller has discretion to recover fines imposed upon officers from the pay due to that officer (section 37). And where the offence relates to the loss, damage or conversion of any government property, the officer may be ordered to make restitution (section 38).

No pay shall accrue to any officer (other than a senior officer) who is absent for a period of more than 24 hours, or who is serving a period of imprisonment (section 39). There is however some discretion vested in the Controller.

All fines paid in accordance with this Part shall be paid to the Chief Accountant and deposited in the Prisons Service Welfare Fund (section 40). Payments from the Welfare Fund are subject to the control of the Controller. A list of approved purpose appears in section 40(3).

Prison Officers are prevented from joining any trade union or industrial association (section 41). However the Minister may make an order providing for the establishment and regulation of any Prison Officers Association.

Prison Officers' Association Orders – 26th January 1966 and 7th October 1970 (amended in 1990)

(Note: This Order purports to be made under section 43 but in fact the power lies in section 41(3). It was originally made by the Governor but after 1970 the power lies with the Minister)

The Association is open to all subordinate officers. It is Fiji-wide with provision made for a Committee to include representatives from all Divisions.

Formation of Prison Officers' Association – Legal Notice 112 of 1970

Observations – 3.8

The use of the word interdicted might be re-considered.

Discipline issues might be made subject to approved procedures and therefore much less prescription of these matters might appear in the draft Bill.

The arrangements for approving Prison Officer Associations might be reviewed and appropriate arrangements determined (which may be the current ones).

3.9 Medical Officers

The power of appointment of qualified medical officers (government or otherwise) for each prison is vested in the PS for Health (section 42). The duties may be prescribed and, subject to the control of the officer in charge, the medical officer shall have the general care of the health of prisoners. Where consideration on medical grounds is warranted for any prisoner, the medical officer shall make a report to the officer in charge. Prison visits are required each week. However if there is no resident medical officer appointed to Suva prison, a visit shall be made there at least 3 times each week.

Prisoner must be examined upon admission and discharge, and are to be kept apart until this is done upon admission (section 43). **Special requirements apply to prisoners under sentence of death.** Prisoners in solitary confinement are to be examined at each visit. Prisoners in a prison hospital are to be examined daily. The officer in charge may order medical examinations, and prisoners shall be examined at their own request.

Prisons Regulations 1968

The duties of Medical Officers are comprehensively prescribed in regulations 32-47. Regulation 37 relates to reports on prisoners under sentence of death, and under

regulation 44 they must be in attendance at all executions and when corporal punishment is administered. (However the courts have determined that corporal punishment is unconstitutional).

Observations – 3.9

The current arrangements for appointing medical officers must be reviewed. If appropriate, power could be given to the Commissioner to enter into suitable contractual arrangements for such services to be retained. These arrangements should reflect the needs in the HIV/AIDS context. (This is the subject of a separate Issues Paper).

The references to prisoners under the death sentence can be removed. References to corporal punishment should also be removed. Whether the concept of solitary confinement is to remain must be determined. In any event it should be referred to as “prisoner separation”, and should be used only for the purpose of preserving good order within the prison. The Regulations should state the circumstances in which a prisoner may be separated from the general prison community, and the Commissioner should be empowered to designate separation areas within a prison.

3.10 Admission and Confinement of Prisoners

Prisoners may only be admitted prison under a remand warrant, order of detention, warrant of conviction or of committal, purporting to be signed by a person with authority to sign it (section 48). The officer in charge must be satisfied that the person is the person to whom the warrant or order relates. But a technical error shall not be grounds for refusing admission.

The prisoner must be informed of the right of appeal within 24 hours of first being committed after conviction (section 49).

Under section 50, female prisoners must be confined separately from males, and must be prevented from interacting with them. Female prisoners must be attended by female officers, and male officers are prevented from entering the female areas, unless accompanied by a female officer. Keys to these areas must be under the control of female officers. Subject to prescribed conditions, infant children must be admitted with their mothers and supplied with clothing and necessaries at public expense. However, the supervisor or senior officer may cause the child to be handed over to friends or relatives if appropriate arrangements can be made.

Prisons Regulations 1968

The ban on male officers entering female areas without a female officer being present is re-stated in regulation 23(2).

Very comprehensive provision is made in Part V of the *Prisons Regulations* relating to the admission of prisoners, their rights and privileges, and all aspects of their treatment. Their diets are prescribed in detail in the First Schedule.

Classification of prisoners at allocation centres is provided for in regulation 58. further comprehensive provision in this regard is made in Part VI. The classifications are –

- unconvicted class (remandees, debtors, civil prisoners)
- young prisoner class
- star class (first and second offenders with relatively good character)
- ordinary class
- short sentence class
- women's class

Prisoners committed for non-payment of fines, compensation, debts or costs must be informed on admission of the lawful means by which release may be obtained (regulation 60).

Part VII makes comprehensive provision for the Progressive Stage System to be applied to all convicted criminal prisoners. The rates of gratuity payments to be made under this system are prescribed in the Second Schedule. They appear to be in need of review (30-60 cents per month).

Part VIII prescribes the rights of prisoners in relation to letters and visits (including those by lawyers and police).

Complaints and petitions by prisoners are provided for by Part IX.

Observations – 3.10

Some additional clarification of the processes for admission and discharge may be required (i.e. which persons are to be interred and when are prisoners to be discharged). There are a number of laws that make provision for the incarceration of persons and the processes by which the Prisons Service are to deal with these persons need consideration. These matter relate to illegal immigrants, aliens, debtors and juveniles.

Appropriate arrangements for prisoners with infectious illnesses might be made in this context.

A complete review of the prisoner classification system is necessary. This is the subject of a separate Issues Paper (No. 2 – Containment/Corrections Implications).

3.11 Custody and Removal of Prisoners

Section 51 prevents mechanical restraints from being used a punishment. They may however be used to prevent a prisoner from injuring himself or another person, to ensure safe custody when moving and under the instructions of a medical officer. They cannot be used for longer than is necessary, and not for more than 24 hours unless ordered by a visiting justice, the Controller or a medical officer.

Under section 52 a prisoner confined in any prison is deemed to be in the lawful custody of the officer in charge. The prisoner is subject to prison discipline and regulations for the entire period of confinement, even when he or she is not within the precincts of the prison.

Police officers, and other persons authorised by judges etc, may convey a prisoner to or from any prison at which he or she may be lawfully confined (section 52). If transport is

not available, or for any other good reason, the prisoner may be detained in suitable places until moved to the prison. During conveyance to or from a prison, a prisoner is deemed to be in lawful custody.

Under section 53 courts are empowered to issue an order to the officer in charge to have a prisoner brought to a court to face criminal proceedings, or to give evidence in any case. The officer in charge must make arrangements for keeping the prisoner in safe custody,

The Controller may direct that a prisoner be removed to any other prison (section 54).

The Controller (and in an emergency, a supervisor) may order the removal of prisoners in the event of a risk of contagious or infectious disease (section 55). The place to which the prisoners are removed shall be deemed to be a prison.

Section 56 makes detailed provision for handling prisoners who are of unsound mind. There are references in this section to provisions of the *Mental Treatment Act* (which is soon to be reviewed) and to the *Criminal Procedure Code*.

Prisons Regulations 1968

Medical Certificates and Order for the removal of a prisoner to a mental hospital shall be in the appropriate form prescribed in the Fourth and Fifth Schedules (regulations 168-169).

Under section 57 a sick prisoner may be removed to a hospital on the order of the officer in charge, but only if a medical officer has given a certificate to this effect. The hospital's medical officer in charge must certify the need to keep the prisoner in hospital –

- (a) upon the prisoner's admission; and
- (b) at the end of each month thereafter.

When a medical officer in charge of any officer is of the view that it is no longer necessary for a prisoner to remain there, he or she shall issue a certificate to that effect (section 60). The officer in charge of the prison shall forthwith cause the prisoner to be removed to the prison.

Prisoners removed to hospitals and mental hospitals are deemed to be in lawful custody (section 58). Medical officers and other officers of hospitals must take reasonable precautions to prevent escape, and such measures as are reasonably necessary are deemed to be lawful (section 59).

Observations – 3.11

These provisions should be reviewed and rationalised if necessary.

The provisions relating to the use of restraints should be moved to a Part under the title of "Use of Force and Firearms". The terminology used for mechanical restraints should be changed to "instruments of restraint".

It may be appropriate to prescribe the matters dealing with prisoners who are mentally or physically unwell in the Regulations.

It is not really appropriate for hospital staff to act as prisons officers as anticipated by section 59. The Prison's Service must be responsible for keeping prisoners in hospital secure.

3.12 Labour of Prisoners

Every convicted prisoner may be kept to labour, within or outside a prison, in any employment that may be prescribed (section 62). Remuneration may be paid as is prescribed. Prisoners shall be required to keep their cells, furniture, clothing and utensils clean, but shall not be otherwise employed without their consent. The officer in charge shall supervise the labour of prisoners.

Prisons Regulations 1968

The rights, duties and restrictions applying to prison labour are provided for in Part X. No provision prescribing remuneration has been sighted.

Observations – 3.12

These issues need to be reviewed and appropriate provision made in the draft Bill.

3.13 Maintenance

Rights are given to civil prisoners and unconvicted criminal prisoners to purchase or receive, during prescribed hours, food, clothing, bedding and other necessaries, and to maintain themselves (section 70). These may not be given or loaned to other prisoners. These privileges can be withdrawn in the event of such a breach. Otherwise the regular provisions shall be supplied to such prisoners.

Observations – 3.13

These issues need review in the broader context of dealing with civil prisoners. An additional charge might be made against the creditor who has sought imprisonment to meet the additional expenses involved in applying these arrangements. All these matters might be better dealt with in the subsidiary legislation.

The Law Society should be consulted on these issues.

3.14 Prohibited Articles

Powers to examine and search persons and things entering or being brought into a prison are given under section 71. The officer in charge is to be informed of any prohibited article being found.

A person commits an offence if he or she brings or sells anything to a prisoner, or communicates with a prisoner, contrary to any Regulation (section 72). Each officer in