

REPUBLIC OF NAURU

(Act No.8 of 2009)

AN ACT

to make provision for the establishment and administration of the
Correctional Service

(Certified: 28 August 2009)

Republic Of Nauru
Correctional Service Act 2009
(No.8 of 2009)

ARRANGEMENT OF SECTIONS

Section

PART I — PRELIMINARY

1. Short Title
2. Repeal
3. Interpretation
4. Purposes and Objects of this Act

PART II —CORRECTIONAL SERVICE

5. Establishment of the Correctional Service
6. Establishment of Correctional Centres
7. Chief Correctional Officer
8. Chief Correctional Officer's Responsibilities

PART III — ADMINISTRATION

9. Officers and Employees of the Correctional Service
10. Conditions and Proscriptions Applicable to Officers
11. Responsibilities of Officers
12. Discipline of Officers
13. Officer Protection From Personal Liability
14. Use of Police Officers as Correctional Officers

PART IV —INSPECTIONS AND VISITS

15. Inspections by the Resident Magistrate or Ombudsman
16. Inspections on Behalf of the Minister
17. Right of Entry and Inspection by Judges, Resident Magistrate, Ombudsman
18. Visits by Religious Representatives

PART V —ADMISSION AND MANAGEMENT OF PRISONERS

19. Least Restrictive Conditions
20. Lawful Custody
21. Admission of Prisoners
22. Information to be Provided
23. Classification of Prisoners
24. Obligations of Prisoners
25. Rights of Prisoners
26. Prisoner Deaths

PART VI —MEDICAL ISSUES

- 27. Standard Of Treatment
- 28. Medical Test or Treatment
- 29. Spread of Disease

PART VII —DISCIPLINE OF PRISONERS

- 30. Correctional Centre Offences
- 31. Correctional Centre Offence Proceedings
- 32. Penalties
- 33. Improper Punishment

PART VIII —SECURITY

- 34. Objectives of Correctional Centre Security
- 35. Use of Force
- 36. Use of Instruments of Restraint
- 37. Protective Equipment
- 38. Searches
- 39. Searches of Visitors
- 40. Prohibited Article

PART IX — SKILLS, WORK AND RECREATION

- 41. Development of Skills
- 42. Approved Correctional Centre Work
- 43. Cleaning of Facilities
- 44. Recreation and Development

PART X — RELEASE OF PRISONERS

- 45. Discharge of Prisoners
- 46. Remission of Sentence
- 47. Unauthorised Absence of Prisoner
- 48. Review of Sentence for Health Reasons

PART XI — OFFENCES

- 49. Harboursing
- 50. Unlawful Possession of Correctional Service Property
- 51. Offences in Relation to Prohibited Articles
- 52. Failure to Leave a Correctional Centre
- 53. Disorderly Manner in a Correctional Centre
- 54. Resisting or Obstructing an Officer
- 55. Arrest Without Warrant

PART XII — MISCELLANEOUS

- 56. Regulations
- 57. Administrative Guidance
- 58. Administration of Act
- 59. Transitional Arrangements

60. Savings
61. Act to bind the Republic



**An Act
to make provision for the establishment and administration of the Correctional Service;**

[certified: 28 August 2009]

Enacted by the Parliament of Nauru as follows:

PART I — PRELIMINARY

Short Title

1. This Act may be cited as the *Correctional Service Act 2009* and shall come into force on the date that it receives the certificate of the Speaker in accordance with Article 47 of the Constitution.

Repeal

2. The Nauru Gaol and Prison Ordinance 1921, Goal and Prison Rules 1921 and Suspension of Sentences Ordinance 1921 are hereby repealed.

Interpretation

3. In this Act, unless the context otherwise requires —

“convicted prisoner” means a person who is serving a term of imprisonment in a correctional centre, whether on appeal or otherwise;

“correctional centre” means any land, building, property, vessel or vehicle declared to be a correctional centre or a temporary correctional centre under Part II;

“effective sentence” means the term of imprisonment that a prisoner is to serve, after taking into account remission granted and forfeited under the Act;

“instruments of restraint” means handcuffs, ankle cuffs, batons, strait jackets, chemical substances and any other item or device prescribed by regulation;

“Minister” means the minister responsible for justice;

“officer” means a correctional officer, or, where the context requires, means any or all correctional officer/s other than the Chief Correctional Officer;

“Parole Board” means the parole board established under the Criminal Justice Act 1999;

“prisoner” means any person in lawful custody under this Act whether or not they are detained in a correctional centre;

“prohibited article” means any illegal drugs, equipment for the administration of illegal drugs, weapons, metal articles, mobile phones or other portable communication devices or any other property prescribed by regulation to be prohibited under section 40;

“protective equipment” means shields, helmets, batons, handcuffs, body armour, instruments of chemical restraint, or other item or device used for the protection of officers from physical injury;

“regulated privileges” means privileges that may be granted to or withdrawn from prisoners in accordance with regulations made pursuant to paragraph (r) of subsection 56(2);

“remand prisoner” means any prisoner who has not been convicted and sentenced to a term of imprisonment by a court;

“Resident Magistrate” means the resident magistrate of the District Court, qualified and appointed under the Courts Act 1972;

“Secretary for Justice” means the person for the time being holding or acting in the position of head of the government department responsible for justice;

“young prisoner” means any prisoner under the age of 18 years, and includes any prisoner under the age of 21 years, who, in the opinion of the Chief Correctional Officer or Court may be at risk of harm in a correctional centre.

Purposes and Objects of this Act

4. The purposes and objects of this Act are to --

(a) provide for the establishment, maintenance and operation of the Correctional Service based on internationally accepted standards for the fair and humane treatment of prisoners consistent with the law and cultural values of Nauru;

(b) ensure that terms of imprisonment are administered in a fair and effective manner;
and

(c) maintain the safety of the community, prisoners and officers and promote public confidence in the Correctional Service.

(d) assist, as far as is reasonably practicable, the rehabilitation of prisoners and their integration back into the community;

PART II —CORRECTIONAL SERVICE

Establishment of the Correctional Service

5. The Correctional Service is hereby established.

Establishment of Correctional Centres

6. (1) The Minister may, by regulation, declare any land, building, property, vessel or vehicle, or part thereof to be a correctional centre.

(2) Any place currently used as a prison becomes a correctional centre when this Act commences.

(3) The Minister shall determine by notice in the Gazette, the nominal holding capacity of each correctional centre.

(4) The Chief Correctional Officer may, after consulting the Minister and Secretary for Justice, make arrangements for keeping prisoners in a temporary correctional centre if -

(a) the number of prisoners in any correctional centre is greater than the nominal holding capacity for that correctional centre; or

(b) there is a situation at any correctional centre which constitutes a health or safety risk to officers, prisoners, visitors or the community; or

(c) there are special circumstances which, in the opinion of the Chief Correctional Officer, make it necessary to establish a temporary correctional centre for the security or good governance of any other correctional centre.

Chief Correctional Officer

7. (1) The Chief Secretary shall, in consultation with the Minister, appoint a Chief Correctional Officer as the head of the Correctional Service.

(2) The Chief Correctional Officer shall -

(a) have the administrative command and direction of all correctional service officers in accordance with the provisions of this Act and the Public Service Act 1998;

(b) ensure the safety, security and good governance of the Correctional Service;

(c) maintain control of all prisoners and allocate them to appropriate correctional centres;

(d) designate the classification, purpose and function of any correctional centre or part of a correctional centre;

(e) require any person purporting to exercise any lawful power of inspection or entry in a correctional centre to comply with any direction relating to correctional centre safety, security and management; and

(f) be accountable to the Secretary for Justice and the Chief Secretary for the performance of his duties.

(3) The Chief Correctional Officer may delegate, in writing, the exercise of any of his functions or responsibilities under this Act to any officer or other employee of the Correctional Service.

(4) The Chief Correctional Officer may resign after giving one month notice in writing or otherwise as approved by the Chief Secretary.

Chief Correctional Officer's Responsibilities

8. The Chief Correctional Officer, in addition to any other functions conferred under this or any other Act, has the following responsibilities --

(a) to ensure that information systems and records are uniform and accurate in each correctional centre and in the office of the Chief Correctional Officer;

(b) to maintain a system for the recording, storage and return of the property of prisoners;

(c) to ensure requests and complaints from prisoners are dealt with in a prompt and effective manner;

(d) to manage emergencies and disasters in an effective manner;

(e) to monitor, record and report upon all significant incidents;

(f) to maintain discipline and order through supervision in a fair and equitable manner;

(g) to ensure that prisoners are provided with the information required under section 22;

(h) to ensure that the safety of the community, and of staff, visitors, prisoners is protected;

(i) to ensure that all prisoners are encouraged to build their self-respect and a sense of personal responsibility so as to improve morale and develop in them habits of good citizenship and hard work with a view to them leading good and useful lives in their communities after their discharge; and

(j) to ensure, progressively and to the extent practicable within the limits of available resources, that prisoners are provided with facilities, programs and services designed to encourage rehabilitation and discourage offending.

PART III — ADMINISTRATION

Officers and Employees of the Correctional Service

9. (1) All persons who are employed in the service of the prison as reserve officers of the Nauru Police Force shall on the commencement date become officers of the Correctional Service under this Act and shall cease to be reserve officers of the Nauru Police Force.

(2) The Chief Correctional Officer shall assign to each officer the rank of Senior Correctional Officer or Correctional Officer, or, if Cabinet has by regulation made provision for

additional ranks within the Correctional Service, any such other rank as the Chief Correctional Officer deems appropriate.

(3) The terms and conditions of service of officers of the Correctional Service are governed by this Act and by the regulations, and in respect of any matter not covered by this Act or the regulations, by the Public Service Act 1998, provided that any provision of the Public Service Act that is inconsistent with this Act or with the regulations shall not apply to officers of the Correctional Service.

(4) All persons other than those referred to in subsection (1) who are employed in the service of the prison shall on the commencement date continue to be employed as public servants in the Correctional Service under the provisions of the Public Service Act 1998 and of this Act.

Conditions and Proscriptions Applicable to Officers

10. The following provisions shall apply to all officers --

(a) all officers may be ordered to report for duty in any correctional centre or other location as determined by the Chief Correctional Officer;

(b) all officers may be recalled to duty during times when they are not rostered on duty at a correctional centre;

(c) all officers are considered to be shift workers for the purpose of section 34 of the Public Service Act 1998;

(d) no officer may receive any fee or gift from any person in relation to their employment.

(e) no officer may have any business dealings or any other commercial relationship with a convicted prisoner; and

(f) no officer may form any relationship with a prisoner which, in the opinion of the Chief Correctional Officer, is likely to compromise the security or good governance of a correctional centre.

Responsibilities of Officers

11. (1) Every officer shall --

(a) exercise the powers and duties conferred under this Act;

(b) obey all lawful directions which are given by a senior officer, including the Operating Policies and Procedures issued by the Chief Correctional Officer; and

(c) carry out their duty with proper care and diligence and with due respect for the rights of prisoners.

(2) Any breach of this section or of section 10 is a disciplinary offence under this Act.

Discipline of Officers

12. (1) Disciplinary offences applying to all officers are those prescribed in this Act and in the regulations.

(2) Hearings and determinations in disciplinary proceedings against officers shall be conducted by the Chief Correctional Officer in accordance with the rules of natural justice and with any procedures prescribed by regulation.

(3) Hearings and determinations in disciplinary proceedings against the Chief Correctional Officer shall be conducted by the Chief Secretary in accordance with the rules of natural justice and with any procedures prescribed by regulation.

(4) Officers may appeal against a determination in a disciplinary proceeding to the Public Service Appeals Board.

(5) An officer suspended from duty under disciplinary procedures shall be entitled to receive not less than one half of his usual pay, unless the Chief Secretary determines in writing that the officer shall be suspended without pay.

(6) If an officer has been suspended from service pending the hearing and determination of a disciplinary proceeding, and the determination of the proceeding finds that the officer did not commit a disciplinary offence, the officer shall be entitled to the full amount of pay and other benefits which would have accrued during the period of suspension.

Officer Protection from Personal Liability

13. Any officer who, in good faith, exercises a power or function that is conferred or imposed by or under this Act is not personally liable for any injury or damage caused by the exercise of that power or function.

Use of Police Officers as Correctional Officers

14. (1) The Chief Correctional Officer may request the Director of Police to provide police assistance to the Correctional Service in any circumstances in which he believes such assistance is necessary for the security or safety of any person.

(2) A police officer who is providing assistance to the Correctional Service under this section shall have the same powers and responsibilities in relation to prisoners as a correctional officer under this Act.

PART IV —INSPECTIONS AND VISITS

Inspections by the Resident Magistrate or Ombudsman

15. (1) The Resident Magistrate or, if Parliament has made provision for an Ombudsman, the Ombudsman, shall conduct an inspection of each correctional centre at least twice in each calendar year, to assess compliance with the provisions and objectives of this Act, and shall submit to the Chief Correctional Officer and the Minister a report on each inspection.

(2) The Minister shall cause each report on an inspection of a correctional centre to be laid on the table of Parliament within three sitting days of the receipt of the report.

Inspections on Behalf of the Minister

16. The Minister may authorise any person to inspect a correctional centre, including --

- (a) to undertake visits as directed;
- (b) to prepare and submit a report to the Minister or other person according to specified requirements; and
- (c) to make appropriate recommendations to the Minister in relation to any aspect of the administration and management of a correctional centre or the welfare of any prisoners, visitors and officers.

Right of Entry and Inspection by Judges, Resident Magistrate, Ombudsman

17. Judges, the Resident Magistrate, the Ombudsman and any person authorised in writing by the Minister or by the Ombudsman, may enter and inspect a correctional centre at any time.

Visits by Religious Representatives

18. (1) The Chief Correctional Officer may authorise persons nominated by the religions and denominations of the prisoners at a correctional centre as religious representatives for the correctional centre.

(2) Authorisations made under subsection (1) shall take into account the rights of the prisoners and the spiritual needs of prisoners.

(3) A religious representative may --

- (a) meet with individual prisoners or groups of prisoners;
- (b) provide religious books to prisoners;
- (c) conduct religious ceremonies and observances; and
- (d) provide appropriate counselling and support to prisoners.

(4) A prisoner shall not be required to attend or participate in religious services and observances, nor to meet with any religious representative.

PART V —ADMISSION AND MANAGEMENT OF PRISONERS

Least Restrictive Conditions

19. (1) Prisoners are to be placed in the least restrictive conditions suitable to their classification.

(2) Segregation or placement in a management or security unit should be only to minimise the risk associated with the reason for placement.

(3) Restrictions on remand prisoners shall be limited to those that are necessary to maintain the good order, security and management of the correctional centre, the safety of the community and the safety of the prisoner.

Lawful Custody

20. (1) Prisoners are to be legally detained by the Correctional Service and full and accurate records of prisoner's warrants, sentences imposed by the Courts, discharges, bails and fines are to be maintained.

(2) Prisoners shall be first admitted to a correctional centre on the authority of a warrant of arrest, order of a court, written refusal to grant bail by a lawfully authorised police officer, or on the authority provided for by any other law.

(3) Upon presentation of a person to be held in custody in a correctional centre, the Chief Correctional Officer or a Senior Correctional Officer must be satisfied -

(a) that the person is the person to whom the warrant, order, written refusal or other instrument of authority relates; and

(b) of the apparent age of the person.

(4) Where there is doubt as to the identity of a person or as to the validity of the warrant, order, written refusal, or other instrument of authority, the Chief Correctional Officer or Senior Correctional Officer shall be entitled to refuse the admission of the person and to require that the person be taken back to the court or person who has signed the warrant, refusal or instrument of authority in order for matters of identity and process to be confirmed and rectified.

(5) Upon admission all prisoners shall be deemed to be in the lawful custody of the Chief Correctional Officer and shall be subject to the provisions of this Act for the entire period that they are in custody, even when a prisoner is not within the confines of a correctional centre.

(6) A child below the age of six months may be admitted with the mother who is lawfully detained, at the discretion of the Chief Correctional Officer.

(7) The Chief Correctional Officer may admit a child over the age of six months but under the age of two years with the mother who is lawfully detained, provided that --

- (a) there are special circumstances;
- (b) it is in the best interests of the child; and
- (c) the correctional centre can, as far as is reasonably practicable, ensure that the basic needs of the child are adequately met.

Admission of Prisoners

21. (1) The correctional centre reception process must ensure that all prisoners are --
- (a) identified;
 - (b) assessed for risk of suicide or self-harm;
 - (c) assessed for urgent welfare, medical or psychiatric needs; and
 - (d) provided with suitable accommodation or services for their health or welfare.
- (2) From the time of admission, arrangements shall be made –
- (a) for female prisoners to be kept separate from male prisoners; and
 - (b) young prisoners to be kept separately from adult prisoners or prisoners of other classifications.
- (3) Notwithstanding the provisions of subsection (2), the Chief Correctional Officer may issue instructions for either separation or contact between any prisoners of the same sex, or between young and adult prisoners, where it is for the purposes of -
- (a) the personal safety of any person;
 - (b) the maintenance of family or social relationships in the best interests of the prisoner/s; or
 - (c) the safety, security or good governance of a correctional centre.
- (4) The Chief Correctional Officer may issue instructions for the separation of any prisoners in order to manage the containment or treatment of any medical condition or infectious disease as recommended by a medical practitioner.

Information to be Provided

22. (1) On admission, all prisoners are to be provided with sufficient information to understand the practices and procedures of the correctional centre.
- (2) As soon as practicable after admission, all prisoners shall be given information about -
- (a) any right of appeal;
 - (b) the rights of prisoners;

- (c) the obligations of prisoners;
- (d) correctional centre offences and prohibited articles;
- (e) classification procedures;
- (f) work programs;
- (g) relevant medical, health and hygiene matters; and
- (h) the law in relation to the release of prisoners under Part X.

Classification of Prisoners

23. (1) All prisoners shall be classified in accordance with the regulations.
- (2) The following objectives shall apply to the classification of prisoners --
- (a) facilitation of rehabilitation and maintenance of effective security; and
 - (b) facilitation of appropriate arrangements for the accommodation and other needs of --
 - (i) female prisoners;
 - (ii) young prisoners;
 - (iii) remand prisoners;
 - (iv) prisoners in custody in relation to a civil matter; and
 - (v) prisoners assessed as being at risk in a correctional centre.
- (3) Cabinet shall make regulations prescribing categories, criteria and procedures for the classification of prisoners, including provision for the two-part classification of prisoners: the first part reflecting whether the prisoner is a convicted prisoner and whether convicted of a criminal or civil offence, and the second part reflecting the level of danger or security risk posed by the prisoner.
- (4) The classification of a prisoner shall not affect their entitlement to all of the rights protected under section 25, but may affect their access to regulated privileges.

Obligations of Prisoners

24. The obligations of a prisoner are --
- (a) to comply with lawful directions and with Operating Policies and Procedures applicable to the conduct of prisoners and the authority of officers;
 - (b) to refrain from committing a correctional centre offence; and
 - (c) to work towards his/her effective rehabilitation and reintegration into the community.

Rights of Prisoners

25. (1) A prisoner is entitled to the following rights --
- (a) to have available adequate bed and/or bedding;
 - (b) access to washing facilities for personal hygiene;
 - (c) access to clean and sufficient drinking water and food;
 - (d) to have natural or artificial light;
 - (e) to have sanitary facilities and products;
 - (f) to have clean and sufficient clothing;
 - (g) to have the opportunity to undertake sufficient physical exercise beyond the confines of their cell;
 - (h) subject to subsection (4) of section 31, to have access to legal representatives, including the right to communicate in confidence and privacy;
 - (i) to have access to medical care and treatment;
 - (j) to receive and send written correspondence;
 - (k) to receive visits from family, friends and members of their community, subject to the visiting rules prescribed by regulation; and
 - (l) to have a correctional centre offence dealt with according to the rules of natural justice, including the provision of an interpreter, where necessary.
- (2) Cabinet shall make regulations prescribing the rules to be applied to correctional centre visits, which regulations shall provide for visits to be permitted on at least two days per week and for at least one hour per visit.
- (3) Notwithstanding paragraph (c) of section 33, a prisoner's right under paragraph (k) of subsection (1) of this section may be restricted for up to 30 days by way of punishment for a correctional centre offence.

Prisoner Deaths

26. (1) The Correctional Service has a duty to prevent prisoner deaths due to unnatural causes.
- (2) The Chief Correctional Officer shall establish an effective reporting system for prisoner deaths.
- (3) An inquest in accordance with the Inquests Act 1977 shall be conducted in relation to every prisoner death.

(4) The Chief Correctional Officer and all correctional officers shall provide all necessary assistance to any police investigation or inquest into the death of a prisoner.

PART VI —MEDICAL ISSUES

Standard Of Treatment

27. Medical treatment shall be provided for prisoners to a community standard.

Medical Test or Treatment

28. Prisoners shall be notified of the results of any medical test or treatment and provided with any necessary support.

Spread of Disease

29. (1) The Chief Correctional Officer shall ensure that conditions within correctional centres do not facilitate the spread of disease.

(2) The Chief Correctional Officer shall implement the recommendations made by the Ministry responsible for health aimed at reducing the risk of the outbreak of disease.

(3) Information about the medical condition of any prisoner shall be disclosed to the Chief Correctional Officer by the treating medical practitioner or by the prisoner as soon as possible if action is or may be required to ensure the safety and well-being of officers, prisoners, visitors or any other person.

PART VII —DISCIPLINE OF PRISONERS

Correctional Centre Offences

30. (1) Cabinet shall make regulations in relation to correctional centre offences by prisoners.

(2) The rules relating to correctional centre offences shall be explained verbally to all prisoners upon admission to a correctional centre, and shall be displayed in writing at all correctional centres in a manner that enables all prisoners to view them.

(3) When a prisoner is charged with a correctional centre offence, criminal proceedings may also be taken against the prisoner arising from the same circumstances, and the Court may take into account any penalty imposed under this Act, when sentencing a prisoner for the criminal offence.

Correctional Centre Offence Proceedings

31. (1) Hearings and determinations in correctional centre offence proceedings against prisoners may be conducted by the Chief Correctional Officer or a tribunal established and empowered by regulation.

(2) Correctional centre offences shall be dealt with in an effective, just, fair, consistent and timely manner, and proceedings under this Part shall be conducted according to the rules of natural justice.

(3) Where necessary, a prisoner subject to correctional centre offence proceedings shall be provided with an interpreter.

(4) A prisoner is not entitled to legal representation in relation to a correctional centre offence.

(5) There is no right of appeal to a court or any other body in relation to correctional centre offence proceedings under this Part, except where provision is made by regulation for appeal from a determination of the Chief Correctional Officer to a tribunal established and empowered by regulation for that purpose.

Penalties

32. The following limitations apply to the penalties that may be imposed by the Chief Correctional Officer or tribunal for a correctional centre offence --

- (a) forfeiture of remission of sentence for a period not exceeding 90 days;
- (b) separation for a period not exceeding 28 days; or
- (c) removal or restriction of any of the regulated privileges enjoyed by a prisoner for a period not exceeding 60 days.

Improper Punishment

33. No prisoner may be subjected, by way of punishment, to --

- (a) corporal punishment in any form;
- (b) the use of instruments of restraint; or
- (c) withdrawal or infringement of the rights to which they are entitled under section 25.

PART VIII — SECURITY

Objectives of Correctional Centre Security

34. The objectives of the correctional centre security system are to provide measures to --

- (a) prevent a prisoner from escaping;
- (b) provide a healthy, safe and secure working and living environment for staff, visitors and prisoners;

(c) control any article within a correctional centre that may pose a risk to the good governance, order or security of the correctional centre; and

(d) place all prisoners appropriately within a correctional centre according to their legal status, classification, management requirements and individual needs.

Use of Force

35. (1) Officers may not use force against any prisoner, except --

- (a) for self-defence or the defence of any person;
- (b) in the event of an escape, attempted escape or unauthorised entry; or
- (c) when a prisoner resists an officer acting in the lawful discharge of his duty.

(2) When the use of force is permitted an officer may not use more force than is necessary in the circumstances, and shall make a report of all relevant matters to the Chief Correctional Officer in accordance with the regulations.

(3) Each officer shall be trained in relation to the use of force for the purpose of restraining aggressive prisoners, and for dealing with prisoners practising passive resistance.

Use of Instruments of Restraint

36. (1) Instruments of restraint may only be used as a precaution against escape, or upon the order of the Chief Correctional Officer if other means of controlling a prisoner have failed.

(2) Instruments of restraint may only be used for the minimum time necessary and the following requirements shall apply to their use --

- (a) they shall not be applied in such a way as to cause unnecessary pain to the prisoner; and
- (b) they shall be applied in a manner which preserves the dignity of the prisoner as far as is practicable.

(3) Chains and irons to restrain prisoners shall not be used in any circumstances.

(4) A strait jacket may only be used on medical grounds, and the authority of a medical practitioner shall be obtained before its use, or as soon as is reasonably practicable after it has been applied.

Protective Equipment

37. (1) Protective equipment may only be issued to officers upon the order of the Chief Correctional Officer or a Senior Correctional Officer, and may only be used for the purpose of preventing --

- (a) an escape, if the use of protective equipment is the only means of preventing the escape;

(b) any combined break-in or outbreak or any attempt to barricade or to force or break open any door, gate, enclosure, wall or fence of a correctional centre, if the use of protective equipment is the only means of preventing such actions; or

(c) any violence or harm to an officer or other person, if the officer or person is in danger of suffering bodily harm.

(2) No officer shall be issued with protective equipment unless the officer has undertaken a course of training in relation to its use.

Searches

38. (1) Subject to section 39, an officer may search any person within, entering or requesting entry to a correctional centre, provided that a search may only be conducted by an officer of the same gender as the person being searched.

(2) An officer may conduct an inspection or examination of any property or item in the possession of a prisoner within a correctional centre.

(3) An officer may inspect, examine and search any property or item being brought into a correctional centre.

(4) The Chief Correctional Officer may refuse to allow any article or thing to be brought into, or to remain in a correctional centre if he is of the opinion that it may compromise the safety, security or good governance of a correctional centre.

Searches of Visitors

39. (1) A person who seeks entry to a correctional centre as a visitor may be required to submit to a pat search as a condition of entry if asked to do so by a correctional officer.

(2) In this section a “pat search” means a search to detect the presence of a prohibited article carried out by -

(a) quickly running the hands over the person’s outer clothing;

(b) using an electronic or mechanical scanning device over, or in close proximity to the person’s outer clothing; or

(c) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

(3) A pat search may only be conducted by a person of the same gender as the person being searched.

(4) If a person refuses to submit to a pat search, a correctional officer may --

(a) prohibit the person from entering the correctional centre;

(b) order the person to leave the correctional centre; or

- (c) immediately remove the person from the correctional centre.

(5) Notwithstanding this section, a Judge, the Resident Magistrate or the Ombudsman, when seeking entry to a correctional centre, may be searched only with their consent, and may not be prohibited from entry for refusal to undergo a search.

Prohibited Article

- 40. (1) Cabinet may by regulation declare any property to be a “prohibited article”.
- (2) Every prohibited article shall be seized and dealt with in accordance with the regulations.

PART IX — SKILLS, WORK AND RECREATION

Development of Skills

41. To the extent that it is reasonably practicable, all prisoners are to be given opportunities to develop personal and employment skills to assist their effective rehabilitation and reintegration into the community.

Approved Correctional Centre Work

42. All prisoners may be requested to undertake work, within or outside a correctional centre in accordance with the regulations, provided that --

- (a) the nature of the work preserves the human dignity of all prisoners and takes account of their religious observances and practices;
- (b) a prisoner is not required to work for more than 8 hours each day, or for more than six days per week, and that due regard is given to the observance of public holidays and religious practices; and
- (c) the prisoner is medically fit to perform the particular work.

Cleaning of Facilities

43. All prisoners shall be required to keep their cells and rooms, common areas, kitchen, toilet and bathing facilities, furniture, clothing and utensils clean and in good repair.

Recreation and Development

44. The Chief Correctional Officer and all officers shall encourage prisoners to maintain their mental and physical health, to use leisure time constructively, and to develop positive social skills through a range of active and passive recreational activities.

PART X — RELEASE OF PRISONERS

Discharge of Prisoners

45. (1) The Chief Correctional Officer 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; and
- (c) in accordance with any decision made by the Parole Board.

(2) The Secretary for Justice may determine any doubt or dispute as to the date of discharge, which determination may be subject to judicial review.

Remission of Sentence

46. (1) A prisoner serving a sentence of imprisonment of more than one month, other than a prisoner serving a life sentence, may on the ground of his good conduct and industry, be granted remission in accordance with the provisions of this section, provided that nothing in this section shall permit the reduction of any period of imprisonment to a period less than 31 days.

(2) The remission granted under this section shall not exceed one third of the total sentence.

(3) The amount of remission, if any, earned by a prisoner shall be determined in the manner prescribed by regulation, and until such regulations have been made, may be determined by a system of marks approved by the Minister and published in the Gazette.

(4) The effective sentence of each prisoner and the expected date of release based upon that effective sentence shall be calculated and recorded in prison records at least once every month.

Unauthorised Absence of Prisoner

47. Any unauthorised absence from a correctional centre shall not count as time served in relation to the sentence.

Review of Sentence for Health Reasons

48. Where a prisoner is suffering from an illness, disability or other condition, including pregnancy or giving birth to a child, or there are special circumstances that make their detention within a correctional centre impractical or undesirable, the Court that sentenced the prisoner may, at the request of the Minister, review the sentence of the prisoner and make orders --

- (a) for the release of the prisoner; or
- (b) for the prisoner to be moved to suitable accommodation outside of a correctional centre.

PART XI — OFFENCES

Harbouring

49. Any person who --
- (a) knowingly harbours any prisoner on an unauthorised absence from a correctional centre;
 - (b) knowingly employs any prisoner on an unauthorised absence from a correctional centre;
or
 - (c) knowingly and without lawful excuse assists any prisoner who is on an unauthorised absence from a correctional centre,
- commits an offence and is liable to a fine of \$1000 or two years' imprisonment or both.

Unlawful Possession of Correctional Service Property

50. (1) Any person, other than a correctional officer, who without lawful excuse –
- (a) possesses any property or equipment which has been supplied to an officer for the purpose of his or her duty, or any other property of the Correctional Service;
 - (b) knowingly purchases or receives any property or equipment issued to an officer or belonging to the Correctional Service; or
 - (c) aids or abets any officer in selling or disposing of any property or equipment of the Correctional Service;
- commits an offence and is liable to a fine of \$1000 or to two years' imprisonment or both.
- (2) Any person who, without lawful excuse, sells or unlawfully disposes of any property or equipment of the Correctional Service, commits an offence and is liable to a fine of \$2,000 or four years' imprisonment or both.
- (3) Any person who, having ceased to be an officer, within a reasonable time fails or refuses to deliver up to the person authorised by the Chief Correctional Officer for this purpose, all property of the Correctional Service in his possession as determined by the Chief Correctional Officer commits an offence and is liable to a fine of \$500 or six months' imprisonment or both.
- (4) Subject to any limits or conditions imposed by regulation, the Chief Correctional Officer may permit any person who has ceased to be an officer to keep specified property of the Correctional Service.

Offences in Relation to Prohibited Articles

51. (1) Any person who brings, sells or attempts by any means whatsoever to introduce into a correctional centre, or to give to a prisoner, any prohibited article commits an offence and is liable to a fine of \$1000 or to two years' imprisonment or both.

(2) Any prisoner who has in his possession a prohibited article commits an offence and is liable to a fine of \$1000 or to two years' imprisonment or both.

(3) No offence is committed under this section unless there is a notice under the hand of the Chief Correctional Officer posted inside the correctional centre for viewing by all prisoners and other persons in the correctional centre, and a notice posted outside the correctional centre for viewing by all members of the public, specifying all articles that have been declared prohibited articles under section 40.

Failure to Leave a Correctional Centre

52. Any person who fails to leave a correctional centre when directed to so by a correctional officer commits an offence and is liable to a fine of \$500 or to six months' imprisonment or both.

Disorderly Manner in a Correctional Centre

53. Any person who acts in a disorderly manner in a correctional centre commits an offence and is liable to a fine of \$500 or to six months' imprisonment or both.

Resisting or Obstructing an Officer

54. Any person who resists or obstructs an officer in the exercise of his powers, duties or functions under this Act commits an offence and is liable to a fine of \$500 or to six months' imprisonment or both.

Arrest Without Warrant

55. A person who commits an offence under this Part may be arrested without warrant.

PART XII — MISCELLANEOUS

Regulations

56. (1) Cabinet may make regulations in relation to all matters that are required or permitted under this Act or are necessary, or convenient to be prescribed, for giving effect to the purposes and objects of this Act.

(2) Without limiting the generality of subsection (1), Cabinet may make regulations providing for the following matters -

- (a) the qualifications, ranks, appointment, discharge and duties of officers and employees of the Correctional Service;
- (b) other matters relating to officers, including taking of oaths, provision of training, salary, and terms and conditions of employment;
- (c) the management, administration and maintenance of the safety, security and good governance of the Correctional Service and correctional centres;
- (d) disciplinary offences applying to officers, and penalties and procedures relating thereto;
- (e) correctional centre offences applying to prisoners, and penalties and procedures relating thereto;
- (f) rights of prisoners while in custody, including matters related to visits, communications, complaint procedures, and exercise and recreation;
- (g) the admission and classification of prisoners;
- (h) interviews of prisoners by police officers in course of their investigations;
- (i) the transfer or transport of prisoners and the responsibilities of officers and other persons in relation to the security of prisoners being transferred or transported;
- (j) separation of prisoners, and the review of prisoners under separation;
- (k) the establishment and management of correctional centre enterprises including the setting of prices and charges for work or products on a commercial basis, and any other programs or arrangements for the training or rehabilitation of prisoners;
- (l) providing support for prisoners after their release, including arrangements with relevant government and other agencies, religious bodies and community based groups;
- (m) the provision of medical and other services to prisoners, including arrangements for dealing with infectious diseases;
- (n) reporting, investigating and otherwise dealing with the death of prisoners;
- (o) procedures for correctional centre visits and dealing with matters relating to the taking of property into correctional centres;
- (p) offences for breach of any regulation, and penalties for such offences of up to \$200 fine or imprisonment for 3 months or both;
- (q) criteria or rules in relation to the forfeiture of remission earned and procedures for appeals against decisions relating to remission; and
- (r) the grant and withdrawal of privileges to prisoners, dependent upon classification, behaviour or other criteria, including privileges such as the use of television and computer equipment and escorted leave for special family events.

Administrative Guidance

57. The provisions of sections 4, 8, 19, 23(2), 29(1), 34, 41 and 44 are intended to provide guidance in the administration of this Act and to clarify the principles and objectives underlying this Act, and do not create, confer or impose on any person any right, entitlement or duty enforceable at law.

Administration of Act

58. This Act shall be administered by the minister responsible for justice.

Transitional Arrangements

59. (1) Until Cabinet has made regulations under this Act, the Standing Orders that were in use within the prison prior to the commencement of this Act shall continue in force.
- (2) Upon Cabinet making regulations under this Act –
- (a) the Standing Orders shall cease to have effect, and the Chief Correctional Officer may not issue any new or further Standing Orders; and
- (b) the Chief Correctional Officer shall issue a manual of Operating Policies and Procedures which shall contain policies and/or procedures for all matters previously covered by the Standing Orders that are not covered in the regulations, and any other matter not inconsistent with the Act or the regulations that the Chief Correctional Officer, in consultation with the Secretary for Justice, sees fit to include.

Savings

60. (1) Nothing in section 2 of this Act shall invalidate or alter the effect of anything lawfully done under the authority of the Nauru Gaol and Prison Ordinance 1921, Gaol and Prison Rules 1921 or the Suspension of Sentences Ordinance 1921 prior to the commencement date of this Act.
- (2) To the extent that the context permits or requires, a reference in any law –
- (a) to a prison shall be deemed to include a correctional centre;
- (b) to the Superintendent of a prison shall be deemed to refer to the Chief Correctional Officer; and
- (c) to the Nauru Gaol and Prison Ordinance 1921 or any term used therein shall be deemed to refer to or to include reference to this Act or any corresponding term used herein.

Act to bind the Republic

61. This Act binds the Republic.

I hereby certify that the above is a fair print of a Bill for an Act entitled ***Correctional Service Act 2009*** that has been passed by the Parliament of Nauru and is now presented to the Speaker for his certificate under Article 47 of the Constitution.



Clerk of Parliament
28 August 2009

Pursuant to Article 47 of the Constitution, I, Riddel Akua, Speaker of Parliament, hereby certify that the ***Correctional Service Act 2009*** has been passed by the Parliament of Nauru



Speaker of Parliament
28 August 2009