

REPUBLIC OF VANUATU

BILL FOR CORRECTIONAL SERVICES (AMENDMENT) ACT NO. OF 2018

Explanatory Note

The Bill amends the Correctional Services Act No. 10 of 2006 (“the Act”).

The Department of Correctional Services (“the Department”) has a very important role for ensuring that offenders are rehabilitated so they do not reoffend or commit any other crime.

The Act was passed in 2006. Some amendments were made to the Act in 2007, but the Act has not been reviewed since then. It is important that the Act is reviewed and amendments are made to cater for matters experienced by the Department for the past 11 years.

The amendments are necessary to:

- (a) improve and strengthen the administrative functions of the Director, the correctional centre managers and probation managers; and
- (b) align the provisions of the Act with Human Right Conventions that Vanuatu has ratified, such as the UN Convention against Torture (CAT) and the Convention on the Right of Persons with Disabilities (CRPD). The intention is to remove the use of solitary confinement as a punishment, and to strengthen the provisions around the use of reasonable force against detainees.
- (c) remove provisions that are not practical in the Act, and make them practical to the Vanuatu context. For example, is for the ‘immediate’ medical checks for new detainees, which is unrealistic as there are no medical officers working in the Correctional Centres. The amendment made in item 11 is more practical for the Vanuatu context.

The amendments also address other issues which the Department has been experiencing and will improve the correctional system

Minister of Justice and Community Services



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An Act to amend the Correctional Services Act No. 10 of 2006.

Be it enacted by the President and Parliament as follows-

1 Amendment

The Correctional Services Act No. 10 of 2006 is amended as set out in the Schedule.

2 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

AMENDMENTS OF CORRECTIONAL SERVICES ACT NO. 10 OF 2006

1 Section 2

Insert in their correct alphabetical positions:

“**correctional officer** means a person appointed as a correctional officer under section 13;

probation officer means a person appointed as a probation officer under section 46;”

2 Section 2 (Definition of “Staff”)

After “correctional officers”, insert “, probation officers and administrative officers”

3 After paragraph 4(1)(d)

Insert

“(da) to ensure the safety and welfare of staff; and”

4 Paragraph 4(1)(r)

Delete “general”, insert “lawful”

5 Section 15

Repeal the section, substitute

“**15 Staff to comply with directions, instructions, guidelines or policies**

- (1) A staff must comply with all lawful directions, instructions, guidelines or policies issued by the Director, a correctional centre manager, a probation manager or any other staff with a management role.
- (2) Despite subsection (1), a staff must not carry out any directions, instructions, guidelines or policies of the Director, a correctional centre manager, a probation manager or any other staff with a management role that contravenes any provisions of this Act or in his or her opinion is considered unlawful.
- (3) A staff who refuses to carry out unlawful directions, instructions, guidelines or policies under subsection (2), will not be subject to a disciplinary action.

- (4) A staff must provide a report to the Director on any direction, instruction, guideline or policy of a correctional centre manager or a probation manager or any other staff with a management role that contravenes any provisions of this Act or is considered unlawful.
- (5) A staff must provide a report to the Public Service Commission on any direction, instruction, guideline or policy of the Director that contravenes any provisions of this Act or is considered unlawful.”

6 Subsection 18(1)

After “designate”, insert “, after consultation with the Director,”

7 Subsection 18(3)

- (a) Delete “Public Solicitor,”, substitute “Public Solicitor or”
(b) Delete “or any authorised official appointed by the Minister”

8 Paragraph 19(5)(d)

Delete “; and”, substitute “.”

9 Paragraph 19(5)(e)

Repeal the paragraph.

10 After subsection 19(5)

Insert

“(5A) In addition to subsection (5), the correctional centre manager must arrange for the detainee to have a physical and mental state examination by a qualified medical practitioner or a registered nurse, within 7 days after the admission of the detainee to the correctional centre.”

11 Paragraph 20(2)(b)

Delete “confined”, substitute “detained”

12 Subsection 20(3)

Repeal the subsection.

13 Subsection 20(4)

Delete “or an authorized person”

14 Paragraph 21(1)(a)

Delete “confined”, substitute “detained”

15 Paragraph 21(2)(c)

Repeal the paragraph, substitute

“(c) detainees with psychosocial disabilities or intellectual disability; and”

16 Subsection 21(3)

Delete “16” (wherever occurring), substitute “18”

17 Paragraph 22(2)(h)

Delete “two hours”, substitute “one hour”

18 Paragraph 22(2)(i)

Delete “private”

19 At the end of section 22

Add

“(6) For the purpose of this section, **outdoor** means outside of a cell but not outside of a compound or secure area of the correctional facilities.”

20 Subsection 23(3)

After “detainee,” insert, “including whether the detainee is a person with disability”

21 Subsection 27(2)

After “members”, insert “appointed by the Director”

22 Paragraph 27(3)(b)

Delete “2 official visitors”, substitute “2 persons of high standing in the community”

23 Paragraph 32(2)(d)

Delete “confinement”, substitute “separation”

24 After paragraph 32(2)(e)

Insert

“(ea) reclassification; or”

25 At the end of section 32

Add

“(3) To avoid doubt, the punishments under subsection (2), do not take away the rights of a detainee provided under section 22.”

26 Subsections 33(1) and (2)

Delete “correctional centre manager or the Disciplinary Committee” substitute, “Director”

27 Subsections 33(4),(5), and (6)

Repeal the subsections, substitute

- “(4) The Director will hear and determine appeals under this section.
- (5) The Director may:
- (a) confirm or overturn the finding and as appropriate, quash, or confirm the punishment imposed; or
 - (b) substitute it with an appropriate punishment under subsection (2).”

28 Subsection 37(1)

After “Director” (wherever occurring), insert “or correctional centre manager”

29 At end of section 37

Add

- “(3) A staff must not use force when handling a detainee unless:
- (a) he or she is ordered to use force under subsection (1); or
 - (b) it is used for self -defence; or
 - (c) a detainee attempts to escape; or
 - (d) to prevent a detainee from damaging any property of the centre; or
 - (e) a detainee physically resists an order provided under this Act.
- (4) A staff must use reasonable force that is necessary and fair in the circumstance in which the force is required to be used and must immediately report any incident to which force is being used to the correctional centre manager and the Director.”

30 Section 38

Delete “separate confinement” (wherever occurring), substitute “separation”

31 Subsection 38(3)

Delete “confinement”, substitute “separation”

32 Subsection 39(3)

- (a) Delete “a Registrar of a Court,”

(b) Delete “, an investigator”

33 Section 50 (Definition of “Board”)

Repeal the definition, substitute

“**Board** means the Community Parole Board appointed to adjudicate on parole matters”

34 Subsection 51(4)

Delete “shall be the longer of a period of 12 months or until the end date of his or sentence expiry date”, substitute “will end on the expiry date of his or her sentence”

35 Subsection 54(1)

After “parole”, insert “or any parole recall order”

36 Paragraph 58(d)

Delete “compassionate grounds” (wherever occurring), substitute “medical grounds”

37 Paragraph 59(2)(a)

After “probation officer”, insert “or correctional centre officer”

38 Subsection 61(1)

Delete “compassionate”, substitute “medical”

39 Paragraph 61(1)(c)

Delete “.”, substitute “; or

- (d) the offender has admitted to his or her probation officer that he or she has committed an offence.”