

REPUBLIC OF SOUTH AFRICA

CORRECTIONAL SERVICES AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No 29893 of 18 May 2007)
(The English text is the official text of the Bill)*

(MINISTER OF CORRECTIONAL SERVICES)

[B 32B—2007]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Correctional Services Act, 1998, so as to insert, substitute, amend or delete certain definitions; to make further provision for the manner in which inmates are detained and the manner in which correctional centres are managed; to authorise the National Council to determine, under certain conditions, the period before an offender may be placed on parole; to make further provision for matters relating to Correctional Supervision and Parole Boards and the Judicial Inspectorate; to provide for compliance management and monitoring of relevant prescriptions, a Departmental Investigation Unit and a unit dealing with the institution of disciplinary procedures; to further regulate matters relating to officials of the Department of Correctional Services and the powers of the Minister to make regulations; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 111 of 1998, as amended by section 1 of Act 32 of 2001

1. Section 1 of the Correctional Services Act, 1998 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the substitution in the definition of “**amenities**” for the words preceding paragraph (a) of the following words:

“**‘amenities’** means recreational and other activities, diversions or privileges which are granted to [**prisoners**] inmates in addition to what they are entitled to as of right and in terms of this Act, and [**include**] includes—”;

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(b) by the insertion after the definition of “**amenities**” of the following definition:

“**‘Area Commissioner’** means a correctional official, appointed by the National Commissioner, in charge of all correctional officials who are on the establishment of a management area or office or who have been attached thereto for duty;”;

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(c) by the deletion of the definition of “**Area Manager**”;

- (d) by the insertion after the definition of “**authorised official**” of the following definition:
 “**‘care’** means the provision of services and programmes aimed at enhancing and maintaining the social, mental, spiritual, health and physical well being of inmates;”;
- (e) by the deletion of the definition of “**Commissioner**”;
- (f) by the insertion after the definition of “**Controller**” of the following definitions:
 “**‘correction’** means provision of services and programmes aimed at correcting the offending behavior of sentenced offenders in order to rehabilitate them;
‘correctional centre’ means any place established under this Act as a place for the reception, detention, confinement, training or treatment of persons liable to detention in custody or to placement under protective custody, and all land, outbuildings and premises adjacent to any such place and used in connection therewith and all land, branches, outstations, camps, buildings, premises or places to which any such persons have been sent for the purpose of incarceration, detention, protection, labour, treatment or otherwise, and all quarters of correctional officials used in connection with any such correctional centre, and for the purpose of sections 115 and 117 includes every place used as a police cell or lock-up;
‘correctional medical practitioner’ means a medical practitioner registered in terms of the Health Professions Act, 1974 (Act No. 56 of 1974), and appointed in terms of section 3(4);”;
- (g) by the insertion after the definition of “**Department**” of the following definition:
 “**‘development’** means the provision of services and programmes aimed at developing and enhancing competencies and skills that will enable the sentenced offender to re-integrate into the community;”.
- (h) by the substitution in the definition of “**disability**” for the words preceding paragraph (a) of the following words:
 “**‘disability’** means a physical [or] mental [condition] ,intellectual or sensory impairments which prevents a [prisoner] person having such an impairment from operating in an environment developed for persons without such an impairment and includes—”;
- (i) by the substitution for the definition of “**Head of Prison**” of the following definition:
 “**‘Head of [Prison] Correctional Centre’** means a correctional official designated by the National Commissioner to manage and control a particular [prison] correctional centre;”;
- (j) by the substitution for the definition of “**Independant Prison Visitor**” of the following definition:
 “**‘[Independant Prison] Independent Correctional Centre Visitor’** means a person appointed under section 92;”;
- (k) by the insertion after the definition of “**Independant Prison Visitor**” of the following definition:
 “**‘inmate’** means any person, whether convicted or not, who is detained in custody in any correctional centre or who is being transferred in custody or is en route from one correctional centre to another correctional centre;”;
- (l) by the deletion of the definition of “**joint venture prison**”;
- (m) by the deletion of the definition of “**medical officer**”;
- (n) by the insertion after the definition of “**mother and child unit**” of the following definition:
 “**‘National Commissioner’** means the National Commissioner of Correctional Services contemplated in section 3(3);”;
- (o) by the insertion after the definition of “**National Council**” of the following definition:
 “**‘needs-based programmes’** means programmes that are developed or rendered according to the identified specific needs of offenders;”;
- (p) by the deletion of the definition of “**prison**”;
- (q) by the deletion of the definition of “**prisoner**”;

- (r) by the deletion of the definition of “**Provincial Commissioner**”;
- (s) by the insertion after the definition of “**publication**” of the following definition:
 “**‘public-private partnership correctional centre’** means a correctional centre or part of a correctional centre referred to in section 103;” 5
- (t) by the insertion after the definition of “**Public Service Act**” of the following definition:
 “**‘Regional Commissioner’** means a correctional official designated by the National Commissioner to manage and control the activities of the Department in a region as determined by the National Commissioner;” 10
- (u) by the substitution for the definition of “sentenced prisoners” of the following definition:
 “**‘sentenced offenders’** means a convicted person sentenced to incarceration or correctional supervision;”.
- (v) by the substitution for the definition of “**unsentenced prisoner**” of the following definition:
 “**‘unsentenced [prisoner] offender’** means any person who is lawfully detained in [prison] a correctional centre and who has been convicted of an offence, but who has not been sentenced to [imprisonment] incarceration or correctional supervision;” 15 20

Amendment of section 2 of Act 111 of 1998

2. Section 2 of the principal Act is hereby amended by the substitution for paragraphs (b) and (c), respectively, of the following paragraphs:

- “*(b)* detaining all [prisoners] inmates in safe custody whilst ensuring their human dignity; and 25
- (c) promoting the social responsibility and human development of all [prisoners] sentenced offenders [and persons subject to community corrections].”.

Substitution of heading to chapter III of Act 111 of 1998

3. The following heading is hereby substituted for the heading in chapter III of the principal Act: 30

“**CUSTODY OF ALL [PRISONERS] INMATES UNDER CONDITIONS OF HUMAN DIGNITY**”.

Amendment of section 4 of Act 111 of 1998

4. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 4 of the principal Act. 35

Amendment of section 5 of Act 111 of 1998, as amended by section 4 of Act 32 of 2001

5. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 5 of the principal Act.

Amendment of section 6 of Act 111 of 1998, as amended by section 5 of Act 32 of 2001

6. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 6 of the principal Act.

Amendment of section 7 of Act 111 of 1998, as amended by section 6 of Act 32 of 2001

7. Section 7 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) [Prisoners] Inmates must be held in cells which meet the requirements prescribed by regulation in respect of floor space, cubic capacity, lighting, ventilation, sanitary installations and general health 50

conditions. These requirements must be adequate for detention under conditions of human dignity.”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) (a) Sentenced **[prisoners]** offenders must be kept separate from **[unsentenced prisoners]** persons awaiting trial or sentence. 5

(b) Male **[prisoners]** inmates must be kept separate from female **[prisoners]** inmates.

(c) **[Prisoners]** Inmates who are children must be kept separate from adult **[prisoners]** inmates and in accommodation appropriate to their age. 10

(d) The Commissioner may detain **[prisoners]** inmates of specific age, health or security risk categories separately.

(e) The Commissioner may accommodate **[prisoners]** inmates in single or communal cells depending on the availability of accommodation. 15

(f) Where there is a danger of **[prisoners]** persons who are awaiting trial or sentence defeating the ends of justice by their association with each other, the National Commissioner must detain them apart.”.

Amendment of section 8 of Act 111 of 1998

8. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 8 of the principal Act. 20

Amendment of section 9 of Act 111 of 1998

9. Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every **[prisoner]** inmate must keep his or her person, clothing, bedding and cell clean and tidy.”. 25

Amendment of section 10 of Act 111 of 1998

10. Section 10 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Department must provide every **[prisoner]** inmate with clothing and bedding sufficient to meet the requirements of hygiene and climatic conditions.”. 30

Amendments of section 11 of Act 111 of 1998

11. The following section is hereby substituted for section 11 of the principal Act:

“Exercise

11. Every **[prisoner]** inmate must be given the opportunity to exercise sufficiently in order to remain healthy and is entitled to at least one hour of exercise daily. If the weather permits, this exercise must take place in the open air.”. 35

Amendment of section 12 of Act 111 of 1998, as amended by section 8 of Act 32 of 2001 40

12. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 12 of the principal Act.

Amendment of section 13 of Act 111 of 1998

13. Section 13 of the principal Act is hereby amended—

(a) by the addition of the following subsection: 45

“(7) (a) The National Commissioner may allow community organisations, non-governmental organisations and religious denominations or organisations to interact with sentenced offenders in order to

facilitate the rehabilitation and integration of the inmates in the community.

- (b) Organisations and denominations referred to in paragraph (a) must be registered with the Department and members thereof maybe screened by the National Commissioner before they can be allowed to interact with sentenced offenders.”; and
- (b) by the substitution of the word “inmate” for the word “prisoner” wherever it occurs in that section.

Amendment of section 14 of Act 111 of 1998

14. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 14 of the principal Act.

Amendment of section 15 of Act 111 of 1998

15. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 15 of the principal Act.

Amendment of section 16 of Act 111 of 1998, as amended by section 9 of Act 32 of 2001

16. Section 16 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
“[Development and support] Correction, development and care programmes and services”; and
- (b) by the substitution for subsections (1), (2) and (3), respectively, of the following subsections:
- “(1) The Department may provide correction, development and [support] care programmes and services even when not required to do so by this Act.
- (2) In all instances, when the Department does not provide such services, the National Commissioner must inform **[prisoners] inmates** of services available from other sources and put **[prisoners] inmates** who request such services in touch with appropriate agencies.
- (3) The Department must take measures, in terms of planning, policy and infrastructure, to accommodate **[prisoners] inmates** with disabilities in order to enable such **[prisoners] inmates**, where practicable to fully exercise the rights and to enjoy the amenities to which every **[prisoner] inmate** is entitled.”.

Amendment of section 17 of Act 111 of 1998

17. The following section is hereby substituted for section 17 of the principal Act:

“Access to legal advice

17. (1) Every **[prisoner] inmate** is entitled to consult on any legal matter with a legal practitioner of his or her choice at his or her own expense.
- (2) The Minister may, by regulation, impose restrictions on the manner in which such consultations are conducted if such restrictions are necessary for the safe custody of **[prisoners] inmates**, but legal confidentiality must be respected.
- (3) The Head of **[Prison] Correctional Centre** must take reasonable steps to enable **[prisoners] inmates** to exercise the substantive rights referred to in section 6(3).
- (4) **[Prisoners facing trial or sentence] Persons awaiting trial or sentence** must be provided with the opportunities and facilities to prepare their defence.

Amendment of section 18 of Act 111 of 1998

18. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 18 of the principal Act.

Amendment of section 19 of Act 111 of 1998

19. The words “inmate” or “inmates” are hereby substituted for the words “prisoner” or “prisoners” wherever they occur in section 19 of the principal Act. 5

Amendment of section 20 of Act 111 of 1998, as amended by section 10 of Act 32 of 2001

20. Section 20 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 10

“(1) A female [prisoner] inmate may be permitted, subject to such conditions as may be prescribed by regulation, to have her child with her until such child is [five] two years of age or until such time that the child can be appropriately placed taking into consideration the best interest of the child. 15

(b) by the insertion after subsection (1) of the following subsection:

“(1A) Upon admission of such a female inmate the Department must immediately, in conjunction with the Department of Social Development, take the necessary steps to facilitate the process for the proper placement of such a child.”. 20

(c) by the substitution for subsection (3) of the following subsection:

(3) Where practicable, the National Commissioner must ensure that a mother and child unit is available for the accommodation of female [prisoners] inmates and the children whom they may be permitted to have with them.”. 25

Amendment of section 21 of Act 111 of 1998, as amended by section 11 of Act 32 of 2001

21. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 21 of the principal Act.

Amendment of section 22 of Act 111 of 1998 30

22. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 22 of the principal Act.

Amendment of section 23 of Act 111 of 1998

23. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 23 of the principal Act. 35

Amendment of section 24 of Act 111 of 1998, as amended by section 12 of Act 32 of 2001

24. Section 24 of the principal Act is hereby amended—

(a) by substituting the word “inmate” for the word “prisoner” wherever it appears in this section; 40

(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) A hearing before a Head of [Prison] Correctional Centre or the authorised official must be conducted informally and without representation.”; 45

(c) by the substitution in subsection (5) for paragraph (d) of the following paragraph:

“(d) in the case of serious or repeated infringements, segregation in order to undergo specific programmes aimed at correcting his or

her behaviour, with a loss of gratuity and restriction of amenities as contemplated in paragraphs (b) and (c).”.

(d) by the substitution for subsection (7) of the following subsection:

“(7) (a) At the request of the [offender] inmate proceedings resulting in any penalty other than [solitary confinement] detention in a single cell must be referred for review to the National Commissioner. 5

(b) The National Commissioner may confirm or set aside the [decision or] penalty and substitute an appropriate order for it.”.

Repeal of section 25 of Act 111 of 1998

25. Section 25 of the principal Act is hereby repealed. 10

Amendment of section 26 of Act 111 of 1998, as amended by section 13 of Act 32 of 2001

26. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 26 of the principal Act.

Amendment of section 27 of Act 111 of 1998, as amended by section 14 of Act 32 of 2001

27. Section 27 of the principal Act is hereby amended—

(a) by the substitution in subsection (3) for paragraph (d) of the following paragraph:

“(d) searches contemplated in subsections (1) and (2) must be authorised by the Head of [Prison] Correctional Centre but searches in terms of subsection (2)(b), (c), (d) and (e) must be executed or supervised by a registered nurse, a correctional medical [officer] practitioner or a medical practitioner other than a correctional official, depending on the procedure necessary to effect the search.”; and 20

(b) by the substitution of the word “inmate” for the word “prisoner” wherever it occurs in this section. 25

Amendment of section 28 of Act 111 of 1998, as amended by section 15 of Act 32 of 2001

28. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 28 of the principal Act. 30

Amendment of section 29 of Act 111 of 1998

29. The following section is hereby substituted for section 29 of the principal Act:

“Security classification

29. Security classification is determined by the extent to which the [prisoner] inmate presents a security risk and so as to determine the [prison] correctional centre or part of a [prison] correctional centre in which he or she is to be detained.”. 35

Amendment of section 30 of Act 111 of 1998, as amended by section 16 of Act 32 of 2001

30. Section 30 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) to give effect to the penalty of the restriction of the amenities imposed in terms of section 24(3)(c) [or], 5(c) or 5(d) to the extent necessary to achieve this objective;” 45

(b) by the substitution of the word “inmate” for the word “prisoner” wherever it occurs in that section.

Amendment of section 31 of Act 111 of 1998, as amended by section 17 of Act 32 of 2001

- 31.** Section 31 of the principal Act is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection: 5
 “(2) [**A prisoner**] An inmate may not be brought before court whilst in mechanical restraints [**except handcuffs or leg-irons**], unless authorised by the court.”;
 - (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph: 10
 “(a) When [**a prisoner is in solitary confinement or in segregation**] an inmate is in segregation and mechanical restraints are to be used, such use of mechanical restraints must be authorised by the Head of [**Prison**] Correctional Centre and the period may not, subject to the provisions of paragraphs (b) and (c), exceed seven days.”;
 - (c) by the addition to subsection (3) of the following paragraph: 15
 “(d) All cases of the use of mechanical restraints must be reported immediately by the Head of the Correctional Centre to the National Commissioner and to the Inspecting Judge.”;
 - (d) by the deletion of subsection (4); and
 - (e) by the substitution of the word “**inmate**” for the word “**prisoner**” wherever 20
 it occurs in that section.

Amendment of section 32 of Act 111 of 1998, as amended by section 18 of Act 32 of 2001

- 32.** Section 32 is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 25
 “(1) (a) Every correctional official is authorised to use all lawful means to detain in safe custody all [**prisoners**] inmates and, subject to the restrictions of this Act or any other law, may use minimum force to achieve this objective where no other means are available.
 (b) A minimum degree of force must be used and the force must be proportionate to the objective. 30
 (c) A correctional official may not use force against [**a prisoner**] an inmate except when it is necessary for—
 (i) self-defence;
 (ii) the defence of any other person; 35
 (iii) preventing [**a prisoner**] an inmate from escaping; or
 (iv) the protection of property.”
 - (b) by the substitution for subsection (5) of the following subsection:
 “(5) If force was used, the [**prisoner**] inmate concerned must undergo an immediate medical examination and receive the treatment prescribed by the correctional medical [**officer**] practitioner.”. 40
 - (c) by the addition after subsection (5) of the following subsection:
 “(6) All instances of use of force in terms of subsections (2) and (3) must be reported to the Inspecting Judge, immediately.”. 45

Amendment of section 33 of Act 111 of 1998, as amended by section 19 of Act 32 of 2001

- 33.** Section 33 of the principal Act is hereby amended—
- (a) by the substitution in subsection (3) for paragraphs (a) and (b), respectively, of the following paragraphs: 50
 “(a) if [**a prisoner**] an inmate fails to lay down a weapon or some other dangerous instrument in spite of being ordered to do so;
 (b) if the security of the [**prison**] correctional centre or safety of [**prisoners**] inmates or others is threatened by one or more [**prisoners**] inmates; or”;
 - (b) by the substitution for subsection (7) of the following subsection: 55
 “(7) If [**a prisoner**] an inmate has been affected by tear-gas he or she must receive medical treatment as soon as the situation allows.”.

Amendment of section 34 of Act 111 of 1998, as amended by section 20 of Act 32 of 2001

34. Section 34 of the principal Act is hereby amended by the substitution in subsection (3) for paragraphs (c) and (d), respectively, of the following paragraphs:

- “(c) to prevent **[a prisoner]** an inmate from escaping; or 5
 (d) when the security of the **[prison]** correctional centre or the safety of **[prisoners]** inmates or other persons is threatened.”.

Amendment of section 37 of Act 111 of 1998

35. Section 37 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 10

“In addition to the obligations which apply to all **[prisoners]** inmates every **[sentenced prisoner]** offender must—”;

- (b) by the insertion after subsection (1) of the following subsection:

“(1A) In order to furnish offenders the opportunity to comply 15
 with the obligations contemplated in subsection (1), the Department must, as far as it is possible, apply a management regime which consists of—

- (a) good communication between correctional officials and inmates, 20
 which is understood by everyone;
 (b) team work;
 (c) direct, interactive supervision of inmates;
 (d) assessment of inmates;
 (e) needs-driven programmes in a structured day and correctional 25
 sentence plan;
 (f) the provision of multi-skilled staff in an enabling and resourced environment;
 (g) a restorative, developmental and human rights approach to inmates;
 and
 (h) delegated authority with clear lines of accountability.”. 30

Amendment of section 38 of Act 111 of 1998

36. Section 38 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 35

“As soon as possible after admission as a sentenced **[prisoner]** offender, 35
 such **[prisoner]** sentenced offender must be assessed to determine his or her—”;

- (b) by the insertion after subsection (1) of the following subsection:

“(1A) (a) As soon as possible after the assessment contemplated in 40
 subsection (1) the Case Management Committee must compile a correctional sentence plan in relation to the future of persons sentenced to incarceration of more than 24 months in the correctional centre.

(b) The correctional sentence plan must address each of the matters and needs referred to in subsection (1) and must, in particular—

- (i) contain proposed intervention aimed at addressing the risks and 45
 needs of sentenced offender, as identified during an in-depth risk assessment, to correct the offending behaviour;
 (ii) spell out what services and programmes are required to target 50
 offending behaviour and to help the sentenced offender develop skills to handle the socio-economic conditions that led to criminality;
 (iii) spell out services and programmes needed to enhance the sentenced offender’s social functioning; and
 (iv) set time frames and specify responsibilities to ensure that the 55
 intended services and programmes are offered to the sentenced offender.”; and

(c) by the substitution for subsection (2) of the following subsection:

“(2) In the case of a sentence of **[imprisonment of 12 months or more]** incarceration exceeding 24 months, the manner in which the sentence should be served must be planned in the light of **[this] the assessment and correctional sentence plan referred to in subsections (1) and (1A)** and any comments by the sentencing court.”. 5

Amendment of section 39 of Act 111 of 1998

37. Section 39 of the principal Act is hereby amended by the substitution in subsection (6) for paragraph (a) of the following paragraph:

“(a) After the National Commissioner is satisfied that **[a prisoner] a sentenced offender** has been released from a **[prison] correctional centre** erroneously, he or she may issue a warrant for the arrest of such **[a prisoner] a sentenced offender** to be re-admitted to **[prison] a correctional centre**, to serve the rest of his or her sentence.”. 10

Amendment of section 40 of Act 111 of 1998

38. The following section is hereby substituted for section 40 of the principal Act:

“Labour of sentenced [prisoners] offenders

40. (1) (a) Sufficient work must as far as is practicable be provided to keep **[prisoners] sentenced offenders** active for a normal working day and **[a prisoner] an offender** may be compelled to do such work. 20

(b) Such work must as far as is practicable be aimed at providing the offender with skills in order to be gainfully employed in society on release.

(2) A sentenced **[prisoner] offender** may not work or conduct any business on his or her own account.

(3) (a) A sentenced **[prisoner] offender** may elect the type of work he or she prefers to perform, if such choice is practicable and in accordance with an appropriate vocational programme. 25

(b) A child who is **[a prisoner] a sentenced offender** may only do work for the purposes of training aimed at obtaining skills for his or her development. 30

(c) A child who is **[a prisoner] a sentenced offender** may not be subjected to work if the work that is to be performed is inappropriate for the age of the child or if the work places the child’s educational, physical, mental, moral or social well-being at risk.

(4) (a) Subject to paragraph (b), the amount of the gratuity that sentenced **[prisoners] offenders** receive for their labour, the administration of the gratuity and the **[prisoners’] sentenced offenders’** conditions of work must be prescribed by regulation. 35

(b) The amount of the gratuity contemplated in paragraph (a) must be determined by the National Commissioner with the concurrence of the Minister of Finance. 40

(5) **[A prisoner] A sentenced offender** may never be instructed or compelled to work as a form of punishment or disciplinary measure.

(6) Work performed by **[a prisoner] a sentenced offender** must be in accordance with the principles contained in section 37(1)(b) and the performance thereof will not constitute an employment relationship with the Department.”. 45

Substitution of section 41 of Act 1998

39. The following section is hereby substituted for section 41 of the principal Act:

“Treatment, development and support services 50

41. (1) The Department must provide or give access to as full a range of programmes and activities including needs-based programmes, as is

practicable to meet the educational and training needs of sentenced **[prisoners]** offenders.

(2) (a) Sentenced **[prisoners]** offenders who are illiterate or children must be compelled to take part in the educational programmes offered in terms of subsection (1). 5

(b) Such programmes may be prescribed by regulation.

(3) The Department must provide social and psychological services in order to develop and support sentenced **[prisoners]** offenders by promoting their social functioning and mental health.

(4) The Department must provide as far as practicable other development and support programmes which meet specific needs of sentenced **[prisoners]** offenders. 10

(5) Sentenced **[prisoners]** offenders have the right to take part in the programmes and use the services offered in terms of subsections (1), (3) and (4). 15

(6) Sentenced **[prisoners]** offenders may be compelled to participate in programmes and to use services offered in terms of subsections (1), (3) and (4) where in the opinion of the National Commissioner their participation is necessary, having regard to the nature of their previous criminal conduct and the risk they pose to the community. 20

(7) Programmes must be responsive to special needs of women and they must ensure that women are not disadvantaged.”.

Amendment of section 42 of Act 111 of 1998, as amended by section 27 of Act 32 of 2001

40. The following section is hereby substituted for section 42 of the principal Act: 25

“Case Management Committee

42. (1) At each **[prison]** correctional centre there must be one or more Case Management Committees composed of correctional officials as prescribed by regulation.

(2) The Case Management Committee must— 30

(a) ensure that each **[sentenced prisoner]** offender has been assessed, and that for sentenced offenders serving more than **[twelve]** 24 months there is a plan specified in section 38**(2)(1A)**;

(b) interview, at regular intervals, each **[prisoner]** sentenced offender sentenced to more than twelve months, review the plan for such **[prisoners]** sentenced offenders and the progress made and, if necessary, amend such plan; 35

(c) make preliminary arrangements, in consultation with the Head of Community Corrections for possible placement of **[a prisoner]** a sentenced offender under community corrections; 40

(d) submit a report, together with the relevant documents, to the Correctional Supervision and Parole Board regarding—

(i) the offence or offences for which the sentenced **[prisoner]** offender is serving a term of **[imprisonment]** incarceration together with the judgment on the merits and any remarks made by the court in question at the time of the imposition of sentence if made available to the Department; 45

(ii) the previous criminal record of such **[prisoner]** sentenced offender;

(iii) the conduct, disciplinary record, adaptation, training, aptitude, industry, physical and mental state of such **[prisoner]** sentenced offender; 50

(iv) the likelihood of a relapse into crime, the risk posed to the community and the manner in which this risk can be reduced;

(v) **[a prisoner]** a sentenced offender who has been declared an habitual criminal which indicates that— 55

(aa) there is a reasonable probability that the **[prisoner]** sentenced offender will in future abstain from crime and lead a useful and industrious life; or

- (bb) the **[prisoner]** sentenced offender is no longer capable of engaging in crime; or
- (cc) for any other reason, it is desirable to place the **[prisoner]** sentenced offender on parole;
- (vi) the possible re-placement of such **[prisoner]** sentenced offender under correctional supervision in terms of a sentence provided for in section 276(1)(i) or 287(4)(a) of the Criminal Procedure Act, or in terms of the conversion of such **[prisoner's]** sentenced offender's sentence into correctional supervision under section 276A(3)(e)(ii), 286B(4)(b)(ii) or 287(4)(b) of the said Act, and the conditions for such placement;
- (vii) the possible placement of such **[prisoner]** sentenced offender on day parole or on parole, and the conditions for such placement; and
- (viii) such other matters as the Correctional Supervision and Parole Board may request; and
- (e) **[at the request of the Area Manager,]** submit a report as contemplated in paragraph (d) to **[him or her]** the National Commissioner in respect of any **[prisoner]** sentenced offender sentenced to **[12 months' imprisonment]** incarceration of 24 months or less.
- (3) **[A prisoner]** A sentenced offender must be informed of the contents of the report submitted by the Case Management Committee to the Correctional Supervision and Parole Board or the **[Area Manager]** National Commission and be afforded the opportunity to submit written representations to the Correctional Supervision and Parole Board or **[Area Manager]** National Commissioner, as the case may be.”.

Amendment of section 43 of Act 111 of 1998

41. Section 43 of the principal Act is hereby amended by the substitution for subsections (1), (2) and (3), respectively, of the following subsection: 30

“(1) A sentenced **[prisoner]** offender must be housed at the **[prison]** correctional centre closest to the place where he or she is to reside after release, with due regard to the availability of accommodation and facilities to meet his or her security requirements and with reference to the availability of programmes.

(2) The transfer of **[a prisoner]** a sentenced offender is subject to the same consideration. 35

(3) **[A prisoner]** A sentenced offender must be examined by the registered nurse or correctional medical [officer] practitioner before his or her transfer. Where such **[a prisoner]** a sentenced offender is being treated by a medical practitioner, he or she must not be transferred until the **[prisoner]** sentenced offender has been discharged from the treatment or the transfer has been approved by the correctional medical [officer] practitioner after consultation with the Head of **[Prison]** Correctional Centre.”. 40

Amendment of section 44 of Act 111 of 1998

42. Section 44 of the principal Act is hereby amended— 45

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The National Commissioner may grant permission in writing on such conditions and for such periods as he or she may specify, for a sentenced **[prisoner]** offender to leave **[prison]** the correctional centre temporarily for the purpose of—”; 50

(b) by the substitution of the word “**sentenced offender**” for the word “**prisoner**” wherever it occurs in that section.

Amendment of section 45 of Act 111 of 1998

43. The following section is hereby substituted for section 45 of the principal Act:

“Placement and release

45. (1) A sentenced [**prisoner**] offender must be prepared for placement, release and reintegration into society by participating in a pre-release programme. 5

(2) Where [**a prisoner**] a sentenced offender is to be placed under correctional supervision or to be released on parole there must be compliance with section 55(3).

(3) At release, sentenced [**prisoners**] offenders must be provided with material and financial support as prescribed by regulation. 10

(4) If the correctional medical [**officer**] practitioner considers it necessary to establish the health status of [**a prisoner**] a sentenced offender at his or her release, the [**prisoner**] offender must undergo a health status examination which may include testing for contagious and communicable diseases as defined in the Health Act, 1977 (Act No. 63 of 1977).” 15

Amendment of section 47 of Act 111 of 1998

44. The following section is hereby substituted for section 47 of the principal Act:

“Clothing

47. No [**unsentenced prisoner**] person who is awaiting trial or sentence may be compelled to wear [**prison**] correctional centre clothes, unless [**the prisoner’s**] such person’s own clothing is improper or insanitary or needs to be preserved in the interests of the administration of justice and the [**prisoner**] he or she is unable to obtain other suitable clothing from another source.” 20
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Amendment of section 50 of Act 111 of 1998

45. Section 50 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) (a) The objectives of community corrections are—

(i) to afford sentenced offenders an opportunity to serve their sentences in a non-custodial manner; 30

(ii) to enable persons subject to community corrections to lead a socially responsible and crime-free life during the period of their sentence and in future;

(iii) to enable persons subject to community corrections to be rehabilitated in a manner that best keeps them as an integral part of society; and 35

(iv) to enable persons subject to community corrections to be fully integrated into society when they have completed their sentences.

(b) These objectives do not apply to restrictions imposed in terms of [**sections**] section 62(f) or 71 of the Criminal Procedure Act.” 40

Amendment of section 51 of Act 111 of 1998

46. Section 51 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) while out of [**prison**] the correctional centre, sentenced offenders who have been granted temporary leave in terms of section 44;” 45

Amendment of section 52 of Act 111 of 1998

47. Section 52 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

- “When community corrections are ordered, a court, the Correctional Supervision and Parole Board, the National Commissioner or other body which has the statutory authority to do so, may, subject to the limitations contemplated in subsection (2) and the qualifications of this Chapter, stipulate that the person concerned—”; 5
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 “(b) does community service in order to facilitate restoration of the relationship between the sentenced offenders and the community;”; 10
- (c) by the substitution in subsection (1) for paragraph (d) of the following paragraph:
 “(d) where possible takes up and remains in employment;”; 10
- (d) by the substitution in subsection (1) for paragraph (k) of the following paragraph:
 “(k) refrains from using [or abusing] alcohol or illegal drugs”; and 15
- (e) by the substitution in subsection (1) for paragraph (q) of the following paragraph:
 “(q) in the case of a child, is subject to the additional conditions as contained in section 69[.] ; or”. 15
- (f) by the addition to subsection (1) of the following paragraph: 20
 “(r) is subject to such other conditions as may be appropriate in the circumstances.”.

Amendment of section 54 of Act 111 of 1998

48. The word sentenced offender is hereby substituted for the word “**prisoner**” wherever it occurs in section 54 of the principal Act. 25

Amendment of section 55 of Act 111 of 1998

49. Section 55 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (a) of the following paragraph:
 “(a) must allow his or her identity and other particulars to be established in the manner and to the same extent as required in section 28 in respect of [**a prisoner**] an inmate; and” 30

Amendment of section 58 of Act 111 of 1998, as amended by section 25 of Act 32 of 2001

50. Section 58 of the principal Act is hereby amended by the substitution in subsection (6) for paragraph (b) of the following paragraph: 35
 “(b) submit a report and advise the Correctional Supervision and Parole Board or the National Commissioner, as the case may be, on the desirability of—
 (i) applying for a change in the conditions of the community corrections imposed on such person; or
 (ii) applying for or issuing a warrant for the arrest of such a person.” 40

Substitution of section 67 of Act 111 of 1998

51. The following section is hereby substituted for section 67 of the principal Act:

“Use [or abuse] of alcohol or illegal drugs

67. Where there is a reasonable suspicion that a person has used [**or abused**] alcohol or illegal drugs in contravention of a condition set in terms of section 52(1)(k), a correctional official may require such a person to allow a designated medical officer to take a blood or urine sample in order to establish the presence and concentration of alcohol or drugs in the blood or urine.” 45

Amendment of section 68 of Act 111 of 1998

52. Section 68 of the principal Act is hereby amended by the addition of the following subsection:

“(4) The National Commissioner may appoint persons in terms of section 96(4) to assist correctional officials in such monitoring.”

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Amendment of section 70 of Act 111 of 1998

53. Section 70 of the principal Act is hereby amended—

(a) by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph:

“(ii) instruct the person to appear before the Correctional Supervision and Parole Board or other body which imposed the conditions of community corrections or, if a Correctional Supervision and Parole Board under whose jurisdiction such person falls imposed the conditions of community corrections, before such Board; or”;

(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) A warrant issued in terms of subsection [(1)(c)] (1)(a)(iii) may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act.”; and;

(c) by the substitution for subsection (4) of the following subsection: 20

“(4) If a person subject to community corrections fails to obey an instruction issued in terms of subsection (1)(b) or (3) the National Commissioner may issue a warrant in terms of subsection [(1)(c)] (1)(a)(iii) and act in terms of subsection (2).”.

Amendment of section 71 of Act 111 of 1998

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54. Section 71 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) If such person fails to appear, the National Commissioner may issue a warrant in terms of section [70(1)(c)] 70(1)(a)(iii) for his or her arrest.”.

Amendment of section 73 of Act 111 of 1998, as amended by section 27 of Act 32 of 2001

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55. Section 73 of the principal Act is hereby amended—

(a) by the substitution for subsections (1), (2), (3) and (4), respectively, of the following subsections:

“(1) Subject to the provisions of this Act— 35

(a) [a sentenced prisoner] a sentenced offender remains in [prison] a correctional centre for the full period of sentence; and

(b) [a prisoner] a sentenced offender sentenced to life [imprisonment] incarceration remains in [prison] a correctional centre for the rest of his or her life. 40

(2) Any sick [prisoner] sentenced offender whose sentence has expired but whose release is certified by the correctional medical [officer] practitioner to be likely to result in his or her death or impairment of his or her health or to be a source of infection to others, may be temporarily detained until his or her release is authorised by the correctional medical [officer] practitioner. 45

(3) A sentenced [prisoner] must be released from [prison] a correctional centre and from any form of community corrections imposed in lieu of part of a sentence of [imprisonment] incarceration when the term of [imprisonment] incarceration imposed has expired. 50

(4) In accordance with the provisions of this Chapter [a prisoner] a sentenced offender may be placed under correctional supervision or on day parole or on parole before the expiration of his or her term of [imprisonment] incarceration.”;

- (b) by the substitution in subsection (5) for paragraph (a) of the following paragraph:

“(a) A sentenced offender may be placed under correctional supervision or on day parole or on parole—

- (i) on a date determined by the Correctional Supervision and Parole Board; or
- (ii) in the case of a sentenced offender sentenced to life incarceration, on a date to be determined by the Minister, after receipt of a recommendation in this regard from the National Council and after taking into consideration the incarceration framework contemplated in section 73A.”; and

- (c) by the substitution for subsections (6) and (7) of the following subsections respectively:

“(6) (a) Subject to the provisions of paragraph (b), **[a prisoner]** a sentenced offender serving a determinate sentence may not be placed on parole until such **[prisoner]** sentenced offender has served either the stipulated non-parole period, or if no non-parole period was stipulated, **[half of the sentence, but parole must be considered whenever a prisoner has served 25 years of a sentence or cumulative sentences]** the period determined by the National Council after taking into consideration the incarceration framework contemplated in section 73A and after having been ratified by the Minister.

(b) A person who has been sentenced to—

- (i) periodical **[imprisonment]** incarceration, must be detained periodically in a **[prison]** correctional centre as prescribed by regulation;
- (ii) **[imprisonment]** incarceration for corrective training, may **[be detained in a prison for a period of two years and may]** not be placed on parole until he or she has served the period **[at least 12 months]** determined by the National Council after taking into consideration the incarceration framework contemplated in section 73A;
- (iii) **[imprisonment]** incarceration for the prevention of crime, may **[be detained in a prison for a period of five years and may]** not be placed on parole until he or she has served **[at least two years and six months]** the period determined by the Minister, in consultation with the National Council and after taking into consideration the incarceration framework contemplated in section 73A and after having been ratified by the Minister;
- (iv) life **[imprisonment]** incarceration, may not be placed on parole until he or she has served **[at least 25 years of the sentence but a prisoner on reaching the age of 65 years may be placed on parole if he or she has served at least 15 years of such sentence]** the period determined by the National Council after taking into consideration the incarceration framework contemplated in section 73A and after having been ratified by the Minister;
- (v) **[imprisonment]** incarceration contemplated in section 51 or 52 of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), may not be placed on parole unless he or she has served **[at least four fifths of the term of imprisonment imposed or 25 years, whichever is the shorter, but the court, when imposing imprisonment, may order that the prisoner be considered for placement on parole after he or she has served two thirds of such term]** the period determined by the Minister, in consultation with the National Council and after taking into consideration the incarceration framework contemplated in section 73A and after having been ratified by the Minister.

(c) A person who has been declared an habitual criminal may **[be detained in a prison for a period of 15 years and may]** not be placed on parole until **[after a period of at least seven years]** he or she has served the period determined by the National Council after taking into consideration the incarceration framework contemplated in section 73A and after having been ratified by the Minister.

(7) (a) A person sentenced to **[imprisonment]** incarceration under section 276(1)(i) of the Criminal Procedure Act, must serve **[at least one sixth of his or her sentence]** the period determined by the National Council after taking into consideration the incarceration framework contemplated in section 73A and after having been ratified by the Minister, before being considered for placement under correctional supervision, unless the court has directed otherwise, but if more than one sentence has been imposed under section 276(1)(i) of the said Act, the person may not be placed under correctional supervision for a period exceeding five years. 5 10

(b) If a person has been sentenced to **[imprisonment]** incarceration under section 276(1)(i) of the Criminal Procedure Act, and to **[imprisonment]** incarceration for a period not exceeding five years as an alternative to a fine the person must serve **[at least one sixth of the effective sentences]** the period determined by the National Council after taking into consideration the incarceration framework contemplated in section 73A and after having been ratified by the Minister, before being considered for placement under correctional supervision, unless the court has directed otherwise. 15

(c) If a person has been sentenced to **[imprisonment]** incarceration for— 20

- (i) a definite period under section 276(1)(b) of the Criminal Procedure Act;
- (ii) **[imprisonment]** incarceration under section 276(1)(i) of the said Act;
- (iii) a period not exceeding five years as an alternative to a fine, the person shall serve **[at least a quarter of the effective sentences imposed]** the period determined by the National Council after taking into consideration the incarceration framework contemplated in section 73A and after having been ratified by the Minister, or the non-parole period, if any, whichever is the longer, before being considered for placement under correctional supervision, **[unless the court has directed otherwise]:** Provided that the sentence contemplated in subparagraph (i) has been converted into correctional supervision in accordance with section 276A(3) of the said Act.”. 25 30 35

Insertion of section 73A in Act 111 of 1998

56. The following section is hereby inserted in the principal Act, after section 73:

“Incarceration framework

73A. (1) The National Council must, in the manner prescribed by the regulations made in terms of section 134(1)(kkI), and in consultation with the National Commissioner determine minimum periods for which offenders must be incarcerated before being considered for placement under community corrections, in this Act referred to as ‘the incarceration framework’ and after having been ratified by the Minister. 40 45

(2) The incarceration framework—

- (a) must prescribe sufficient periods in custody to indicate the seriousness of the offences;
- (b) must apply to all sentenced offenders generally;
- (c) must provide for consistent application of its provisions;
- (d) may provide for different periods in relation to the same offence, depending on the measure of good behaviour or co-operation of a sentenced offender during incarceration; and
- (e) may provide for any ancillary or incidental administrative matter necessary for the proper implementation or administration of the incarceration framework. 50 55

(3) The incarceration framework may not be applied in a manner that would be in conflict with any other law or any direction given or decision made by a court of law.”.

Amendment of section 74 of Act 111 of 1998, as amended by section 28 of Act 32 of 2001

57. Section 74 of the principal Act is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection: 5
 “(3) The National Commissioner must designate **[one of]** the correctional **[officials]** official referred to in subsection (2)(e) to act as a secretary for a Board.”; and
- (b) by the substitution for subsection (8) of the following subsection: 10
 “(8) A member of a Board who is not in the full-time service of the State, may receive such remuneration and allowances as the National Commissioner may, on the recommendation of the **[Commission for Administration]** Department of Public Service and Administration, determine **[with the concurrence of the Minister of Finance]**.”.

Amendment of section 75 of Act 111 of 1998, as amended by section 29 of Act 32 of 2001 15

58. Section 75 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 20
 “A Correctional Supervision and Parole Board, having considered the report on any **[prisoner]** sentenced offender serving a determinate sentence **[exceeding 12]** of more than 24 months submitted to it by the Case Management Committee in terms of section 42 and in the light of any other information or argument, may—”;
- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 25
 “(c) in respect of any **[prisoner]** sentenced offender serving a sentence of life **[imprisonment]** incarceration, make recommendations to the **[court]** Minister on granting of day parole or parole, and, subject to the provisions of section 52, the conditions of community corrections to be imposed **[to] on** the **[prisoner]** sentenced offender.”; 30
- (c) by the substitution in subsection (2) for paragraph (c) of the following paragraph: 35
 “(c) If in the case of a person sentenced to life **[imprisonment]** incarceration the National Commissioner, on the advice of a Supervision Committee, requests a Board to advise on the cancellation of parole or day parole or to amend the conditions of community corrections imposed on a person, the Board must within 14 days consider the matter and make recommendations on cancellation or amendment to the **[court]** Minister but its recommendations may be implemented provisionally prior to the decision of the **[court]** Minister.” 40
- (d) by the insertion after subsection (4) of the following subsection: 45
 “(4A) The Correctional Supervision and Parole Board may, whenever it acts in terms of this section, request any sentenced offender to present oral representations in order to clarify matters contained in his or her representation submitted to the Case Management Committee in terms of section 42(3).”;
- (e) by the substitution in subsection (7) for paragraph (a) of the following paragraph: 50
 “(a) place under correctional supervision or day parole or grant parole to **[a prisoner]** a sentenced offender serving a sentence of **[less than 12 months imprisonment]** incarceration for 24 months or less and prescribe conditions in terms of section 52; or”;
- (f) by the substitution for subsection (8) of the following subsection: 55
 “(8) A decision of the Board is final except that the Minister **[or]**, the National Commissioner or the Inspecting Judge may refer the matter to the Correctional Supervision and Parole Review Board for reconsideration, in which case the record of the proceedings before the Board must be submitted to the Correctional Supervision and Parole Review Board.”; and 60

- (g) by the substitution of the word “**sentenced offender**” for the word “**prisoner**” wherever it occurs in that section.

Amendment of section 76 of Act 111 of 1998

59. Section 76 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: 5
 “(b) a director [**or a deputy director**] of Public Prosecutions or a person nominated by that director;”.

Amendment of section 77 of Act 111 of 1998

60. Section 77 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 10
 “On consideration of a record submitted in terms of section 75 and any submission which the Minister, National Commissioner, Inspecting Judge or [**person**] the sentenced offender concerned may wish to place before the Correctional Supervision and Parole Review Board, as well as such other evidence or argument as is allowed, the Correctional Supervision and Parole Review Board must—”. 15

Substitution of section 78 of Act 111 of 1998

61. The following section is hereby substituted for section 78 of the principal Act:

“Powers of [court] Minister in respect of prisoners serving life sentences

78. (1) Having considered the record of proceedings of the Correctional Supervision and Parole Board and its recommendations in the case of [**a prisoner**] a person sentenced to life [**imprisonment**] incarceration, [**the court**] the National Council may, subject to the provisions of section 73(6)(b)(iv), recommend to the Minister to grant parole or day parole or prescribe the conditions of community corrections in terms of section 52. 20 25

(2) If the [**court**] Minister refuses to grant parole or day parole in terms of subsection (1), [**it**] the Minister may make recommendations in respect of treatment, care, development and support of the [**prisoner**] sentenced offender which may contribute to improving the likelihood of future placement on parole or day parole. 30

(3) Where a Correctional Supervision and Parole Board acting in terms of section 73 recommends, in the case of a person sentenced to life [**imprisonment**] incarceration, that parole or day parole be withdrawn or that the conditions of community corrections imposed on such a person be amended, the [**court**] Minister, on advice of the National Council, must consider and make a decision upon the recommendation. 35

(4) Where the [**court**] Minister refuses or withdraws parole or day parole the matter must be reconsidered by the [**court**] Minister, on advice of the National Council, within two years.”. 40

Substitution of section 79 of Act 111 of 1998

62. The following section is hereby substituted for section 79 of the principal Act:

“Correctional supervision or parole on medical grounds

79. Any person serving any sentence in a [**prison**] correctional centre and who, based on the written evidence of the medical practitioner treating that person, is diagnosed as being in the final phase of any terminal disease or condition, and is considered by the Correctional Supervision and Parole Board or, in the case of a person serving a life sentence, by the Minister, as not being capable of committing a crime in future, may be considered for placement under correctional supervision or on parole, by the National Commissioner, Correctional Supervision and Parole Board or the [**court**] Minister, as the case may be, to die a consolatory and dignified death.”. 45 50

Amendment of section 80 of Act 111 of 1998

63. Section 80 of the principal Act is hereby amended by the substitution for subsections (1) and (2), respectively, of the following subsections:

“(1) A Correctional Supervision and Parole Board may, on the recommendation of the National Commissioner, grant to **[a prisoner]** a sentenced offender, except to **[a prisoner]** a sentenced offender serving a life sentence or a sentence[,] in terms of section 286A of the Criminal Procedure Act, who has acted highly meritoriously, special remission of sentence not exceeding two years either unconditionally or subject to such conditions as the Board may determine. 5

(2) Special remission in terms of this section may not result in the **[prisoner]** sentenced offender serving less than a stipulated non-parole period or **[half of his or her original sentence]**, if no such period has been stipulated, the period determined by the Minister, in consultation with the National Council and after taking into consideration the incarceration framework contemplated in section 73A.”. 10 15

Amendment of section 81 of Act 111 of 1998

64. Section 81 of the principal Act is hereby amended by the substitution for subsections (2) and (3), respectively, of the following subsections:

“(2) The National Council may recommend the advancement of the approved date for placement of any **[prisoner]** sentenced offender or group of **[prisoners]** sentenced offenders under community corrections and the Minister may act accordingly. 20

(3) Community corrections granted in terms of subsection (2) is subject to such conditions as may be imposed by the Correctional Supervision and Parole Board under whose jurisdiction the **[prisoners]** sentenced offenders may fall or the National Commissioner in terms of section 75(7).” 25

Amendment of section 82 of Act 111 of 1998

65. Section 82 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b), respectively, of the following paragraphs:

“(a) at any time authorise the placement on correctional supervision or parole of any sentenced **[prisoner]** offender, subject to such conditions as may be recommended by the Correctional Supervision and Parole Board under whose jurisdiction such **[prisoner]** sentenced offender may fall or, in the case of **[a prisoner]** a person serving a life sentence, by the **[court]** Minister; and; 30

(b) remit any part of **[a prisoner’s]** a sentenced offender’s sentence.”. 35

Amendment of section 83 of Act 111 of 1998

66. Section 83 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragrapha (a) and (h) of the following paragraphs:

“(a) **[two]** three judges of the Supreme Court of Appeal of South Africa or of the High Court of South Africa appointed after consultation with the Chief Justice; 40

(b) two or more persons not in the full-time service of the State;” and

(b) by the insertion in subsection (2) after paragraph (h) of the following paragraph: 45

“(i) two or more persons who are members of Parliament appointed as representatives of the public after consultation with the relevant Parliamentary Committees on Correctional Services.”.

(c) by the substitution for subsection (4) of the following subsection:

“(4) The Minister must appoint one of the judges referred to in subsection (2)(a) as chairperson and the other two as **[vice-chairperson]** vice-chairpersons of the National Council.”. 50

Substitution of heading to Chapter IX of Act 111 of 1998

67. The following heading is hereby substituted for the heading to Chapter IX of the principal Act:

“THE JUDICIAL INSPECTORATE FOR CORRECTIONAL SERVICES”

Substitution of section 85 of Act 111 of 1998

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68. The following section is hereby substituted for section 85 of the principal Act:

“Establishment of Judicial Inspectorate for Correctional Services

85. (1) The Judicial Inspectorate [**of prisons**] for Correctional Services is an [**independant**] independent office under the control of the Inspecting Judge.

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(2) The object of the Judicial Inspectorate for Correctional Services is to facilitate the inspection of [**prisons**] correctional centres in order that the Inspecting Judge may report on the treatment of [**prisoners**] offenders in [**prisons**] correctional centres and on conditions in [**prisons**] correctional centres.”.

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Repeal of section 87 of Act 111 of 1998

69. Section 87 of the principal Act is hereby repealed.

Insertion of section 88A in Act 111 of 1998

70. The following section is hereby inserted in the principal Act after section 88:

“Appointment of the Chief Executive Officer

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88A. (1) The National Commissioner must, on the recommendation of the Inspecting Judge and in consultation with the Director-General of the Department of Public Service and Administration, appoint a suitably qualified and experienced person as Chief Executive Officer, who—

(a) is responsible for all administrative, financial and clerical functions of the Judicial Inspectorate;

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(b) is accountable to the National Commissioner of the Department for all the monies received by the Judicial Inspectorate; and

(c) is under control and authority of the Inspecting Judge.

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(2) The conditions of service, including salary and allowances of the Chief Executive Officer are regulated by the Public Service Act.

(3) Any matters relating to the work performance of the Chief Executive Officer must be referred to the National Commissioner by the Inspecting Judge.”.

Substitution of section 89 of Act 111 of 1998, as amended by section 32 of Act 32 of 2001

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71. The following section is hereby substituted for section 89 of the principal Act:

“Appointment of staff and Assistants

89. (1) The Chief Executive Officer must appoint staff as may be necessary to enable the Judicial Inspectorate for Correctional Services to perform its functions in terms of this Act.

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(2) The conditions of service including salaries and allowances of such staff are regulated in terms of the Public Service Act.

(3) (a) The Chief Executive Officer must appoint one or more persons with legal, medical, penological or any other expertise as assistants and as may be required by the Inspecting Judge from time to time, to assist the Inspecting Judge with any specialised aspect of inspection or investigation.

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(b) Such persons must be appointed for a fixed period or until the completion of a specific task.

(c) The remuneration of such persons must be determined in accordance with the Public Service Act.

(d) Such persons must perform such functions as authorised and directed by the Inspecting Judge.”.

Amendment of section 90 of Act 111 of 1998 5

72. Section 90 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

“(3) the Inspecting Judge must submit a report on each inspection to the Minister and the relevant Parliamentary Committees on Correctional Services.”; and”.

(b) by the deletion of subsections (7) and (8). 10

Amendment of section 92 of Act 111 of 1998

73. Section 92 of the principal Act is hereby amended by the substitution for subsections (1), (2) and (3), respectively, of the following subsections:

“(1) At the request of and in consultation with **[The]** the Inspecting Judge, the Chief Executive Officer must as soon as practicable, after publicly calling for nominations and consulting with community organisations, appoint an **[Independent Prison]** Independent Correctional Centre Visitor for **[any prison or prisons]** each correctional centre. 15

(2) An **[Independent Prison]** Independent Correctional Centre Visitor holds office for such period as the **[Inspecting Judge]** Chief Executive Officer may determine at the time of such appointment in consultation with the Inspector-General for Correctional Services. 20

(3) The **[Inspecting Judge]** Chief Executive Officer may **[at any time, if valid grounds exist,]** suspend or terminate the service of an **[Independent Prison]** Independent Correctional Centre Visitor in terms of any law regulating his or her conditions of employment.”. 25

Amendment of section 93 of Act 111 of 1998

74. Section 93 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 30

“An **[Independent Prison]** Independent Correctional Centre Visitor shall deal with the complaints of **[prisoners]** inmates by—”;

(b) by the deletion of subsection (8).

Substitution of heading to Chapter XI of Act 111 of 1998 35

75. The following heading is hereby substituted for the heading to Chapter XI of the principal Act:

“**[INTERNAL SERVICE EVALUATION AND ERADICATION AND PREVENTION OF CORRUPTION] COMPLIANCE MANAGEMENT**”.

Amendment of section 95 of Act 111 of 1998, as amended by section 34 of Act 32 of 2001 40

76. The following section is hereby substituted for section 95 of the principal Act:

“[Objectives and functions of internal service evaluation] Compliance monitoring

95. (1) The National Commissioner must **[conduct an internal service evaluation]** monitor compliance with relevant prescriptions by means of internal auditing, performance auditing, inspections and investigations to promote the economical and efficient operation of the Department and to ensure that the objectives and principles of this Act are met. 45

(2) Such **[a service evaluation]** compliance monitoring must assess, at regular intervals, the effectiveness of internal control at national and 50

[provincial] regional level, individual [prisons] correctional centres including [joint venture prisons] public-private partnership correctional centres and community corrections, by—

- (a) determining whether the departmental operations are conducted effectively; 5
- (b) reviewing the reliability of financial, operational and management information;
- (c) ascertaining whether departmental assets and interests are controlled and safeguarded from losses;
- (d) assessing the effective utilisation of human and other resources; and 10
- (e) monitoring whether established objectives for programmes are being achieved[;
- (f) **suggesting measures to combat theft, fraud, corruption and any other dishonest practices or irregularities; and**
- (g) **investigating theft, fraud, corruption and any other dishonest practices or irregularities].** 15

(3) The National Commissioner must establish appropriate mechanisms for [internal service evaluation] compliance monitoring.

[(3A) (a) The Commissioner must establish a unit to deal with matters in terms of subsections (2)(f) and (g) and (3). 20

(b) Members of this unit—

- (i) are responsible to initiate disciplinary proceedings resulting from any investigation in terms of subsection (2)(g); and
- (ii) may in the manner prescribed by regulation enter and search any departmental premises and seize any departmental record. 25

(4) The Commissioner must include in the annual report to Parliament, an account of the process and results of the internal service evaluation.

(5) The Commissioner must, on request, send a copy of all internal service evaluation reports to the Inspecting Judge.]” 30

Insertion of sections 95A, 95B and 95C in Act 111 of 1998

77. The following sections are hereby inserted in the principal Act, after section 95:

“Departmental Investigation Unit

95A. The National Commissioner must establish a unit to investigate theft, fraud, corruption and maladministration by correctional officials. 35

Code enforcement

95B. The National Commissioner must establish a unit to institute disciplinary proceedings and to prosecute in disciplinary matters resulting from any investigation contemplated in section 95A.

Report of Commissioner 40

95C. (1) The National Commissioner must include in the annual report to Parliament an account of the process and results of—

- (a) the compliance monitoring in terms of section 95;
- (b) the investigations contemplated in section 95A; and
- (c) the disciplinary proceedings contemplated in section 95B. 45

(2) The National Commissioner must, on request, send a copy of any account contemplated in subsection (1) to the Inspecting Judge.”

Amendment of section 96 of Act 111 of 1998, as amended by section 25 of Act 32 of 2001

78. Section 96 of the principal Act is hereby amended— 50

(a) by the substitution for subsection (2) of the following subsection:

“(2) (a) Subject to the provisions of subsection (1), the relationship between the Department as employer and every correctional official in

the service of the Department is regulated by the provisions of the Labour Relations Act and the Public Service Act.

(b) Notwithstanding item 6(2) of Schedule 8 to the Labour Relations Act, where a service of the Department is designated as an essential service in terms of section 71 of that Act, and an official who provides such service participates in a strike that does not comply with the provisions of chapter IV of that Act and the strike constitutes a threat to the safety of inmates, officials or the public, the official in question may be summarily dismissed, if such dismissal is substantively fair, as contemplated in item 6(1) of that Schedule.”;

(b) by the substitution for subsection (5) of the following subsection:

“(5) The provisions relating to the retirement, resignation or discharge of correctional officials contained in the Correctional Services Act, 1959 (Act No. 8 of 1959), remain in force unless amended in the Bargaining Council for the Department of Correctional Services in terms of the Labour Relations Act and the Public Service Act.”.

Amendment of section 98 of Act 111 of 1998

79. The following section is hereby substituted for section 98 of the principal Act:

“Professionals

98. Any professional correctional official appointed by the National Commissioner to work directly with [prisoners] inmates and [persons] sentenced offenders subject to community corrections retains his or her professional [independence] discretion, but is still subject to all the prescripts not in conflict with his or her ethical or professional code applicable to correctional officials.”.

Amendment of section 99 of Act 111 of 1998

80. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 99 of the principal Act.

Amendment of section 101 of Act 111 of 1998, as amended by section 37 of Act 32 of 2001

81. Section 101 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) maintaining the safe custody of [a prisoner] an inmate, the security of a [prison] correctional centre and controlling access of persons to and permissibility of goods in a [prison] correctional centre;

(b) by the deletion in subsection (1) of the word “or” at the end of paragraph (b), the addition of the word “or” at the end of paragraph (c) and the addition of the following paragraph:

“(d) investigating theft, fraud, corruption and maladministration by correctional officials.”; and

(c) by the substitution for subsection (2) of the following subsection:

“(2) Despite the provisions of subsection (1)—

(a) a correctional official may not search another correctional official or seize his or her property without his or her consent or being authorised to do so by the National Commissioner but a general authorisation to search other correctional officials may be granted to a correctional official who is required to act in order to control access to or maintain secure custody within a [prison] correctional centre, or to give effect to subsection (1)(d); and

(b) action cannot be taken in terms of subsection (1)(c) or (d) outside a prison unless a search warrant has been issued by a magistrate but a correctional official may act in terms of subsection (1)(c) or (d) without a warrant when he or she on reasonable grounds believes that—

- (i) a warrant will be issued authorising action in terms of subsection (1)(c) or (d); and
- (ii) the delay in obtaining such a warrant would defeat the object of the search.”.

Amendment of section 104 of Act 111 of 1998 5

82. The words “**sentenced offender or sentenced offenders**” are hereby substituted for the words “**prisoner or prisoners**” wherever they occur in section 104 of the principal Act.

Amendment of section 106 of Act 111 of 1998

83. The words “**sentenced offender or sentenced offenders**” are hereby substituted for the words “**prisoner or prisoners**” wherever they occur in section 106 of the principal Act. 10

Amendment of section 115 of Act 111 of 1998

84. The words “**inmate or inmates**” are hereby substituted for the words “**prisoner or prisoners**” wherever they occur in section 115 of the principal Act. 15

Amendment of section 116 of Act 111 of 1998

85. The words “**inmate or inmates**” are hereby substituted for the words “**prisoner or prisoners**” wherever they occur in section 116 of the principal Act.

Amendment of section 117 of Act 111 of 1998 as amended by section 39 of Act 32 of 2001 20

86. The words “**inmate or inmates**” are hereby substituted for the words “**prisoner or prisoners**” wherever they occur in section 117 of the principal Act.

Amendment of section 118 of Act 111 of 1998

87. The words “**inmate or inmates**” are hereby substituted for the words “**prisoner or prisoners**” wherever they occur in section 118 of the principal Act. 25

Amendment of section 119 of Act 111 of 1998

88. The words “**inmate or inmates**” are hereby substituted for the words “**prisoner or prisoners**” wherever they occur in section 119 of the principal Act.

Amendment of section 120 of Act 111 of 1998

89. The words “**inmate or inmates**” are hereby substituted for the words “**prisoner or prisoners**” wherever they occur in section 120 of the principal Act. 30

Amendment of section 121 of Act 111 of 1998

90. The words “**inmate or inmates**” are hereby substituted for the words “**prisoner or prisoners**” wherever they occur in section 121 of the principal Act.

Amendment of section 123 of Act 111 of 1998 35

91. Section 123 of the principal Act is hereby amended—

(a) by the substitution for subsection (4) of the following subsection:

“(4) (a) Any person who is not satisfied with the decision of the National Commissioner to grant or refuse permission in terms of subsections (2) and (3), may within 10 days after being informed of the decision refer the matter to the [Inspecting Judge] Minister. 40

(b) The [Inspecting Judge] Minister must confirm or set aside the decision.”; and

- (b) by substituting the word “**inmate**” for the word “**prisoner**” wherever it occurs in this section.

Substitution of section 124 of Act 111 of 1998

92. The following section is hereby substituted for section 124 of the principal Act:

“Unauthorised wearing of departmental dress or insignia or prescribed offender dress” 5

124. Any unauthorised person who wears or uses—
 (a) the departmental dress, distinctive badge or insignia of the Department or of a custody official; or
 (b) the prescribed sentenced offender dress, 10
 or anything deceptively resembling them is guilty of an offence and liable on conviction to a fine or, in default of payment, to [**imprisonment**] incarceration for a period not exceeding [**six**] 18 months or to such [**imprisonment**] incarceration without the option of a fine or both.”.

Amendment of section 133 of Act 111 of 1998

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93. Section 133 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) All State departments must, as far as practicable, purchase articles and supplies manufactured by [**prisoner**] sentenced offender labour from the Department at fair and reasonable prices as may be determined by the Minister of Finance.”. 20

Amendment of section 134 of Act 111 of 1998, as amended by section 41 of Act 32 of 2001

94. Section 134 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) of the words “**inmate or inmates**” for the words “**prisoner or prisoners**” wherever they occur in paragraphs (a), (b), (c), (e), (f), (g), (h), (i), (j), (k) and (l); 25
- (b) by the substitution in subsection (1) for paragraph (m) of the following paragraph:
 “(m) providing money, food, clothing, a travelling allowance or method of transport for [**prisoners**] sentenced offenders prior to their placement for release;” 30
- (c) by the substitution in subsection (1) of the word “**inmate**” for the word “**prisoner**” wherever it occurs in paragraphs (n), (o), (oA) and (oB);
- (d) by the substitution in subsection (1) of the word “**offenders**” for the word “**prisoners**” wherever it occurs in paragraph (p); 35
- (e) by the substitution in subsection (1) of the word “**inmate**” for the word “**prisoner**” wherever it occurs in paragraph (r) and (s);
- (f) by the substitution in subsection (1) of the word “**offender**” for the word “**prisoner**” wherever it occurs in paragraph (t); 40
- (g) by the substitution in subsection (1) of the word “**offenders**” for the word “**prisoners**” wherever it occurs in paragraphs (bb), (cc) and (ee);
- (h) by the substitution in subsection (1) for paragraph (hh) of the following paragraph:
 “(hh) the appointment and conditions of service, including the disciplinary code and procedures, of correctional officials and voluntary workers, excluding officials of the Senior Management Service as defined in the Regulations issued in terms of the Public Service Act, and all personnel matters pertaining to them;” 45
- (i) by the substitution in subsection (2) of the words “**inmate or inmates**” for the words “**prisoner or prisoners**” wherever they occur in paragraphs (a) and (b); 50
- (j) by the substitution in subsection (1) of the words “**inmate or inmates**” for the words “**prisoner or prisoners**” wherever they occur in paragraphs (j), (k), (m), (n) and (w); 55

- (k) by the substitution in subsection (2) of the word “**sentenced offender**” for the word “**prisoner**” wherever it occurs in paragraph (x);
- (l) by the substitution in subsection (2) of the word “**inmate**” for the word “**prisoner**” wherever it occurs in paragraph (y);
- (m) by the substitution in subsection (2) for paragraph (ee) of the following paragraph: 5
 “(ee) the conditions for the issuing, wearing and maintenance of articles of **[uniform]** departmental dress and equipment;”;
- (n) by the insertion after paragraph (kkH) of the following paragraph: 10
 “(kkI) the minimum periods for which sentenced offenders must be incarcerated before being considered for placement under community corrections, as contemplated in section 73A: Provided that the Minister must submit these regulations and any subsequent amendments thereto to the relevant Parliamentary Committees on Correctional Services for approval.” 15
- (o) by the deletion in subsection (2) of paragraph (hh).

Amendment of section 136 of Act 111 of 1998, as amended by section 42 of Act 32 of 2001

95. Section 136 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) of the word “**offender**” for the word “**prisoner**” wherever it occurs; 20
- (b) by the substitution in subsection (3) of the word “**offender**” for the word “**prisoner**” wherever it occurs;
- (c) by the substitution for subsection (4) of the following subsection: 25
 “(4) If a person is sentenced to life **[imprisonment]** incarceration after the commencement of Chapters IV, VI and VII while serving a life sentence imposed prior to the commencement, the matter must[, **after the prisoner has served 25 years accumulatively, be referred to the court which imposed the last sentence of life imprisonment for consideration of]** be referred to the Minister who must, in consultation with the National Council, consider him or her for placement under day parole or parole.” 30

Transitional provision

96. The amendments effected by the Correctional Services Amendment Act, 2007, must with the necessary changes to the context apply to all life sentences imposed since 1 October 2004. 35

Substitution of certain words in Act 111 of 1998

97. The principal Act is hereby amended by the substitution for the words specified in Column 1, wherever they occur, of the words specified opposite thereto in Column 2.

Column 1	Column 2	
“Area Manager”	“Area Commissioner”	40
“Commissioner”	“National Commissioner”	
“Head of Prison”	“Head of Correctional Centre”	
“imprisonment”	“incarceration”	45
“Independant Prison Visitor”	“Independent Correctional Centre Visitor”	
“Independant Prison Visitors”	“Independent Correctional Centre Visitors”	
“Inspecting Judge”	“Inspector-General for Correctional Services”	
“joint venture prison”	“public-private partnership correctional centre”	
“joint venture prisons”	“public-private partnership correctional centres”	50
“Judicial Inspectorate”	“Office of the Inspector-General for Correctional Services”	
“medical officer”	“correctional medical practitioner”	
“prison”	“correctional centre”	

Column 1	Column 2
“prisons”	“correctional centres”
“Provincial Commissioner”	“Regional Commissioner”
sentenced prisoner	sentenced offender
sentenced prisoners	sentenced offenders
unsentenced prisoners	unsentenced offenders

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Short title and commencement

98. (1) This Act is called the Correctional Services Amendment Act, 2007 and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act. 10

(3) Commencement date for sections 73 and 73A must be fixed after the regulations contemplated in section 134(1)(kkI) have been made, approved by the relevant Parliamentary Committees on Correctional Services and published in the *Gazette*.”.

MEMORANDUM ON THE OBJECTS OF THE CORRECTIONAL SERVICES AMENDMENT BILL, 2007

1. OBJECTS OF BILL

The Bill seeks to amend the Correctional Services Act, 1988 (Act No. 111 of 1998), in order to align it with the White Paper on Correctional Services by addressing the following principles contained in the White Paper:

- **Correction:** Aiming at addressing the offending behaviour of sentenced persons;
- **Security:** Aiming at addressing the safety of inmates, officials and members of the public;
- **Facilities:** Ensuring that the Department has a long-term facilities strategy to ensure conditions consistent with human dignity for offenders;
- **Care:** Intending to address the well-being needs of inmates including access to social and psychological services;
- **Development:** Providing for skills development in line with departmental and national human resource needs;
- **After Care:** Intending to ensure successful re-integration through appropriate interventions directed at both the inmate and relevant societal institutions.

2. PERSONS/BODIES CONSULTED

- National Council for Correctional Services
- Justice, Crime Prevention and Security Cluster

3. FINANCIAL IMPLICATIONS FOR STATE

The implementation of the Bill will be covered by the implementation plan of the White Paper within the normal Medium Term Expenditure Framework.

4. PARLIAMENTARY PROCEDURE

4.1 The State Law Advisers and the Department of Correctional Services are of the view that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

4.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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