

# PRISONERS' ENTITLEMENT TO PERSONAL WORK

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# Executive Summary

The entitlement of prisoners to have private time, which they can use as they want, dates back to the establishment of the penal colony in Australia. They could use that time to tend a garden and sell the vegetables. They could profit from their personal work. The digital revolution has expanded the opportunities available to prisoners for personal work. Greater access to communication and education in cells, enables prisoners to use their time in a productive and profitable way. It provides a range of benefits not only to the prisoner, but also to victims and the community at large.

While slavery and imprisonment have some shared characteristics, the status of prisoners in Australia is very distinct from that of a slave. Prisoners have enforceable rights as a citizen, have the right to free time outside of the work schedule, and will be released back into society. Slaves however are the permanent property of their master to treat as they wish.

Since the beginning of the penal colony prisoners have been entitled to use their personal time outside that of daily prison schedules for their own benefit. Modern day prisoners retain the universal right to develop through education, and to work as set out by the Universal Declaration of Human Rights. All prison systems support those ideas, to lessen recidivism rather than passively wait for release. Technological advances opening up communication into the cells allow new opportunities for education and engagement.

Most Australian prison systems have regulations directly accepting the principle that prisoners can do personal work, such as by creating art they can sell or running a legal business. The benefits are clear. Prisoners can carry responsibilities to support their families and pay restitution to victims, as well as prepare for their release with new skills, work networks and money to assist in housing. They can build a new future and contribute to broader society rather than return to old habits, be dependent on welfare payments and return to prison. The more integrated the prisoner is before their release the less daunting is the gap between the prisoner and the outside community, and the less likely it is that they will reoffend.

# 1 Prisoners' civil status

Slavery and imprisonment are very different, although prisoners themselves often don't realise the rights they retain. The lack of information and isolation from normal communication has allowed that misunderstanding to exist - it also makes prison management easier. However the effect of imposing passivity on individuals means they lose their sense of responsibility and personal control, making their eventual resettlement much harder.

## 1.1 Historical view of right to personal work

Australia's establishment as a penal colony relied primarily on convicts to complete mandatory task-work. However, unlike prisoners now, they were able to exercise their right to use their free time to undertake personal work for their own benefit. This was highlighted by Robert Hughes, who wrote:<sup>1</sup>

“Convict[s] worked the same hours as the government exacted: 10 hours Monday to Friday, and 6 hours on Saturday, given a 53 hour week—not a brutal schedule by any means but every prisoner, whether he worked for the government or settler had to do his task of work ...”

“Convicts had been let off work at 3 in the afternoon so they could raise their own produce. This dispensation became the custom, and survived for both private and government workers after the shortages had passed. Convicts soon came to be paid wages for out of hours labour. They could sell this overtime anywhere if the master did not want to pay for it ...”

The convict's right to personal work after completion of their set tasks, encouraged them to establish their own businesses, deliver a range of services and trades, and to be independently compensated for it. This arrangement enabled convicts to afford their food, clothing and accommodation, bolstering social and economic participation.<sup>2</sup> Convicts' ability to control

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<sup>1</sup> Robert Hughes, *The Fatal Shore* (Random House UK, January 2003) 288.

<sup>2</sup> Gary Crockett, 'The Convicts' Colony', *Sydney Living Museums* (Web Page, 31 October 2022) <<https://sydneylivingmuseums.com.au/convict-sydney/convicts-colony>>.

their own work and wages outside of their daily schedules is a distinguishing factor from the status of slaves.

## 1.2 Defining slavery

The distinction between prisoner and slave is misunderstood by both prisoners themselves and authorities that work alongside them. Whilst the deprivation of liberty is central to both the conditions of slavery and prisoners, there are significant differences in the degree of rights bestowed to each group.

Historically, a slave was considered property under the law, and deprived of most of the rights ordinarily attributed to free people.<sup>3</sup> People became slaves in various ways, including through capture in war, being born to existing slaves, or being sold by their relatives.

According to Robert Hughes:<sup>4</sup>

“In theory, the social contract of slavery is simple, rigid and one sided, is pure power in action and will. The master owns the slave: his work, his time, his person. Slaves are bought and sold. They are property. Their rights to begin and end with their status as chattels. They do not have the right to negotiate or set the tempo or length of their work to organise collectively or to protest. ... Slavery is permanent. It perpetuates itself from generation to generation. Slave parents to slave children. ...

None of these conditions applied to the convicts Britain exiled to Australia. Each served a fixed term of punishment and then became free. ... All of them, within limits, had the right to sell some portion of their labor on the free market. Harsh and rigorous as their social world often was, it was enlaced by concepts of right and law, not of simple ownership. .... They could appear as witnesses in court, bring suits in civil law, and write petitions to the governor, which were given full and usually prompt consideration. Their masters did not have the right to flog them; such punishments could only be inflicted by the sentence of a magistrate, or, in later years, two magistrates. A convict could bring a master to court for ill-treatment.”

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<sup>3</sup> Richard Hellie, ‘slavery’, *Britannica* (Web page, 6 September 2022) <<https://www.britannica.com/topic/slavery-sociology>>.

<sup>4</sup> Robert Hughes, *The Fatal Shore* (Random House UK, January 2003) 283.

Additionally, the fact that prisoners are to be released and reintegrate into society, rather than remain the permanent property of their master, distinguishes the two groups. Importantly, Hughes again distinguishes between convicts and slaves - with convicts retaining some rights such as being able to sell some portion of their free labour, whereas slavery was characterised by a permanent and one-sided lack of power. This distinction reinforces that prisoners historically possessed a right to personal work and a far greater degree of autonomy.

### **1.2.1 History of slavery and the anti-slavery movement**

Ancient Greece and Rome had slaves and in the 16th century millions of African persons were captured and transported across the Atlantic to become slaves to private owners in the Americas.. This drove capitalistic economies built on material goods, particularly cash crops such as sugar, tobacco and rice.<sup>5</sup> This endured for approximately three hundred years, until the late 1800s, and is known as the Atlantic Slave Trade.<sup>6</sup>

In 1865, the 13th amendment to the Constitution of the United States sought to abolish slavery in the US. This amendment was passed under the Presidency of Abraham Lincoln, who, on 16 October 1854 during his speech at Peoria Illinois, said ‘I hate it [slavery] because of the monstrous injustice of slavery itself.’

However, the abolition of the slave trade was not limited to the United States as the late 17th century also saw British Parliament taking gradual steps to abolish slavery. In *Somerset v Stewart* (1772) 98 ER 499 (*‘Somerset’*),<sup>7</sup> Lord Mansfield, in deciding that no man was a slave in England, declared that slavery was “the worst and most abject state” and “incompatible with the natural rights of mankind”.<sup>8</sup> These views from this landmark case was supported by Granville Sharp, a campaigner against the slave trade, who wrote

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<sup>5</sup> Fiona Paisley and Jane Lydon, ‘Australia and Anti-Slavery’ (2014) 50(3) *The Journal of Imperial and Commonwealth History*.

<sup>6</sup> National Museums Liverpool, ‘The transatlantic slave trade’, *National Museums Liverpool* (Web page) <<https://www.liverpoolmuseums.org.uk/history-of-slavery/transatlantic-slave-trade>>.

<sup>7</sup> *Somerset v Stewart* (1772) 98 ER 49 (*‘Somerset’*).

<sup>8</sup> *Ibid* 500.

a toleration of slavery is a toleration of inhumanity... for there are wretches in the world, who make no scruple to gain, by wearing out their slaves with continual labour and a scanty allowance.<sup>9</sup>

During the Enlightenment period, many campaigners were against slavery due to Christian principles. In the mid-1780s, MP William Wilberforce established a formal campaign to abolish slavery due to his desire to serve God and use his Christian principles practically.<sup>10</sup> Wilberforce's views of slavery in the United Kingdom were clear:

So enormous, so dreadful, so irremediable did the [slave] trade's wickedness appear that my own mind was completely made up for abolition. Let the consequences be what they would: I from this time determined that I would never rest until I had affected its abolition

One of the main petitions was to design a Bill that prohibited the import of slaves into territories claimed by foreign powers.<sup>11</sup> This Bill was met with contention, failing in Parliament more than 10 times over 15 years. However, on 10 February 1807, Lord Howick in the Commons Sitting regarded this bill "important in the highest degree ... to the cause of humanity and justice". On 1 May 1807, this Bill was passed into law as the *Slave Trade Act* 1807.<sup>12</sup> It came into effect on 1 May 1807.

The *Slavery Abolition Act* 1833 (UK) formally freed 800,000 Africans who were then the legal property of Britain's slave owners.<sup>13</sup>

Furthermore, many colonised countries, such as Australia, subjected Indigenous communities to 'unfreeness' through forced indenture, trafficking, sexual slavery and child slavery, othering them as culturally inferior. Queensland government files and personal reports reveal that there were no provisions for humane working conditions, including limits on working

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<sup>9</sup> Granville Sharp, *A Representation of the Injustice and Dangerous Tendency of Tolerating Slavery* (Cambridge University Press, 2014) 79.

<sup>10</sup> Christopher Leslie Brown, *Moral Capital: Foundations of British Abolitionism* (University of North Carolina Press, 2006).

<sup>11</sup> Rosamaria Alibrandi, 'Early nineteenth-century parliamentary debates for the abolition of slavery in the British Empire and the contribution of the colonial judge Sir John Jeremie in the period 1824-41' (2015) 35(1) *Parliaments, Estates and Representation* 21, 24.

<sup>12</sup> United Kingdom, *Parliamentary Debates*, House of Commons, 10 February 1807 (Lord Howick).

<sup>13</sup> David Olusoga, 'The history of British slave ownership has been buried: now its scale can be revealed', *The Guardian* (online, 12 July 2015) <<https://www.theguardian.com/world/2015/jul/12/british-history-slavery-buried-scale-revealed>>.



hours and the severity of the labour and basic food and living arrangements. Legislation such as the *Aboriginals Ordinance* 1918 (Cth), the *Aborigines Act* 1905 (WA), and the *Aborigines Act* 1911 (SA), facilitated the enslavement of Indigenous people across Australia.<sup>14</sup>

## 1.3 Distinction between slavery and imprisonment

Examining the conditions of slavery provides a background against which to compare the rights of prisoners, demonstrating their greater degree of autonomy, particularly surrounding labour practices. Whilst both deprived of liberty to varying degrees, the context of slavery differs to that of the penal colony and the state's control of prisoners as individuals. Convicts' right to personal work is an entitlement that was historically recognised and still exists today.

Although the situation of prisoners differs from the traditional employer-employee relationship under Australian employment law, prisoners are clearly distinguished from slaves.<sup>15</sup> This is evident through differences in:

- their retention of residual rights; and
- other financial, social and political characteristics.

### 1.3.1 Prisoners' residual rights

The relationship between prison authorities and prisoners can be distinguished from that of slaves and their masters. Whilst slaves are the property of their owners, prisoners are only under the care of the state, rather than under ownership. Additionally, where prisoners are deprived of their liberty, they are not deprived of their rights. There are several charters which state and protect prisoners rights, such as The United Nations Standard Minimum Rules for the Treatment of Prisoners, also known as the Nelson Mandela rules<sup>16</sup>. These rules outline that prisoners should be 'treated with respect due to their inherent dignity and value as human beings.' and that '...[n]o prisoner shall be subjected to, and all prisoners shall be

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<sup>14</sup> Jens Korff, 'Australia has a history of Aboriginal slavery', *Creative spirits* (Web page, 26 February 2022) <<https://www.creativespirits.info/aboriginalculture/history/australia-has-a-history-of-aboriginal-slavery>>.

<sup>15</sup> Justice Action, 'Australian Prisoners Union: Process of Legitimation', *Justice Action* (Web page, 20 July 2021) 10 <<https://australianprisonersunion.org.au/wp-content/uploads/Background-on-APU-2021.pdf>>.

<sup>16</sup> United Nations Office on Drugs and Crime, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (United Nations Office on Drugs and Crime, 2015). See also [Guiding Principles for Corrections in Australia \(2018\)](#), published by the Australian Government with involvement of State and Territory Governments.

protected from, torture and other cruel, inhuman or degrading treatment or punishment'. Prisoners have rights to safety, education and work, and health services, as a few examples. Conversely, slavery strips a human of their inherent rights<sup>17</sup>.

This provides prisoners with a higher degree of autonomy and rights, including the right to undertake personal work. Prisoners are able to legally challenge their relationship with relevant authorities (through court proceedings) and their labour is subject to numerous legislative safeguards. For example, the ability of correctional services to prescribe work for prisoners is subject to a suitability limitation contained in section 6 of the *Crimes (Administration of Sentences) Act 1999* (NSW). This provides that '[t]he governor of a correctional centre may make an order directing any convicted inmate in the correctional centre to carry out such work as the governor considers suitable.'<sup>18</sup> However, the right to personal work outside of scheduled prison work time is outside the scope of authorities' control.

As several key United Nations charters and treaties demonstrate, the deprivation of liberty does not equate to, nor justify, the removal of rights. Prisoners have a right to communication and education whilst detained, both of which play a crucial role in the undertaking of personal work.

### **1.3.2 Financial, social & political distinctions**

Slaves can also be distinguished from prisoners on a financial, social and political level:

- *Financial characteristics:*
  - Slavery involves the commercialisation of human beings as property which can be bought and sold
  - This is distinct from prisoners, whose basic rights are not so degraded as to label them as property of the state
- *Social characteristics:*

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<sup>17</sup> End Slavery Now, *Human Rights and Slavery* (Web Page)  
<<http://www.endslaverynow.org/act/educate/human-rights-and-slavery>>.

<sup>18</sup> *Crimes (Administration of Sentences) Act 1999* (NSW) s 6.

- The relation between an owner and their slave is based upon extreme control and inequality
- Slaves are often excluded from the society their owner belongs to, an issue further exacerbated by ethnic and linguistic difference
- Prisoners maintain some degree of connection to society, and are reintegrated upon sentence expiration
- *Political characteristics:*
  - A country will remove its responsibilities to the slaves, who are not citizens, and abdicates them to private individuals
  - Sovereign states still owe allegiance to prisoners as non-alien

# 2 Prisoners' rights

## 2.1 Prisoners' allocation of time

All prison systems have schedules for releasing from cells and returning. According to the NSW Government Communities and Justice, inmates are 'let go' at 8:00am and return to their cells for 'lock up' at 3:00pm, giving them seven hours outside of their cells per day doing allocated work if available.<sup>19</sup> The other 17 hours of the day are spent in their cells, which can be spent watching television, listening to the radio or reading.<sup>20</sup> In Queensland, at Townsville Correctional Centre, the schedule is similar, with inmates spending around 10 hours per day out of their cells, mostly at work or study programs, leaving 14 hours of 'personal time' per day.<sup>21</sup> Similarly, at Silverwater Women's Correctional Centre, inmates spend 17 hours per day in their cell, until 8:15am, when they are released from their cells for the day.<sup>22</sup>

Sentenced prisoners are 'expected to work',<sup>23</sup> often in self-sustaining areas for the prison (e.g. facilities maintenance, grounds maintenance and landscaping, building projects, laundering and community projects) or the wider community (e.g. laundry for hospitals).<sup>24</sup>

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<sup>19</sup> Communities and Justice, 'NSW prisons - a day in the life' *Communities and Justice* (Media Release, 22 July 2020) <<https://dcj.nsw.gov.au/news-and-media/media-releases/nsw-prisons-a-day-in-the-life.html>>.

<sup>20</sup> Communities and Justice, 'NSW prisons - a day in the life' *Communities and Justice* (Media Release, 22 July 2020) <<https://dcj.nsw.gov.au/news-and-media/media-releases/nsw-prisons-a-day-in-the-life.html>>.

<sup>21</sup> Lucy Smith, 'Inside a Townsville jail: A day in the life behind bars' *Townsville Bulletin* (online, June 3 2017) <<https://www.townsvillebulletin.com.au/news/inside-a-townsville-jail-a-day-in-the-life-behind-bars/news-story/28e9f6d6dccb237a34d99649c48ee150>>.

<sup>22</sup> Madeleine King, 'Daily life inside a women's maximum security prison' *SBS News* (online, 7 November 2016) <<https://www.sbs.com.au/news/insight/article/daily-life-inside-a-womens-maximum-security-prison/b000hksev>>.

<sup>23</sup> NSW Department of Justice, 'Chapter 2 Going to Prison' *NSW Department of Justice* (Web Page) <[https://www.justice.nsw.gov.au/Documents/Corrective%20Services/families-handbook\\_chapter%202.pdf](https://www.justice.nsw.gov.au/Documents/Corrective%20Services/families-handbook_chapter%202.pdf)>.

<sup>24</sup> Justice Action, 'Prisoner Entitlements to Personal Work - Notes' *Justice Action* (Web Page) <[https://docs.google.com/document/d/1oCB2uDSWZ5RbC7\\_B8flfm4aSvndkfPdkuKu5R0l9KZ8/edit#heading=h.1b9404jgsr3s](https://docs.google.com/document/d/1oCB2uDSWZ5RbC7_B8flfm4aSvndkfPdkuKu5R0l9KZ8/edit#heading=h.1b9404jgsr3s)>.

## 2.2 Legislation supporting prisoners' right to personal work

Prisoners are entitled to conduct, control or manage business affairs while they are incarcerated, as long as these affairs adhere to the *Corporations Act 2001* (Cth).<sup>25</sup> Various international conventions and declarations further guarantee the right to work and earn wages. Article 23 of the Universal Declaration of Human Rights (UDHR) states that everyone;

1. has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment;
2. without any discrimination, has the right to equal pay for equal work, and;
3. who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.<sup>26</sup>

The use of the term 'everyone' indicates that the UDHR does not exclude some categories of people from being protected under the laws. Accordingly, prisoners have the right to work under international law.<sup>27</sup>

## 2.3 Entitlements for people on Remand

People on Remand are held separately from prisoners who have been sentenced, and typically possess more autonomy in that they are able to wear their own clothes that align with security requirements, as well as having access to phone calls and visitors where practical. Remanded individuals are kept in custody when they have not applied or have been refused for bail, and if they are unable or unwilling to fulfil conditions of a bail.<sup>28</sup> While the intention of custody is to ensure an alleged offender appears during their trial, this indicates that these individuals have the potential to be kept away from their family and work for months or even years.<sup>29</sup>

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<sup>25</sup> Justice Action, 'Australian Prisoners Union: Process of Legitimation', *Justice Action* (Web page, 20 July 2021) 12 <<https://australianprisonersunion.org.au/wp-content/uploads/Background-on-APU-2021.pdf>>.

<sup>26</sup> Ibrahim Danjuma et al, 'Rights of Prisoners under International Law: Rights against Forced Labour; Ill Treatments or Punishments; and Right to Work and Receive Wages' (2017) *The Law Review*, 272, 278.

<sup>27</sup> *Ibid*, 279.

<sup>28</sup> State of Victoria, 'Remand', *Corrections, Prisons and Parole* (Web page, 1 April 2022) <<https://www.corrections.vic.gov.au/prisons/remand>>.

<sup>29</sup> Fitzroy Legal Service, 'Unsentenced and sentenced prisoners: The differences in prison', *Imprisonment, supervision and prisoner rights* (Web page, 1 July 2021) <<https://fls.org.au/law-handbook/fines-infringements->

Rule 111(2) of the ‘Nelson Mandela Rules’ states that “unconvicted prisoners are presumed to be innocent and shall be treated as such.”<sup>30</sup> When rights to personal work are removed from people who are not considered guilty from a legal standpoint, long-term detrimental damages can be inflicted. Factors such as the inability to return to one’s family, or provide financial and emotional support over an extended period of time has the potential to cause a family to separate. Individuals who are kept in custody over a course of time also have no possible methods of maintaining their full time job or day to day obligations such as paying mortgages. These factors leave them vulnerable to issues, including but not limited to unemployment, homelessness and lack of social support, which can escalate into an innocent civilian becoming disengaged with the society.

Unlike convicted prisoners, individuals on remand are not expected to attend compulsory work set out by the correctional services,<sup>31</sup> suggesting that they should have the opportunity to access laptops to maintain personal or professional work. Under the UN standards, a basic entitlement to personal work through a self-owned or provided device should be crucial to allowing remanded individuals to sustain engagement with their family and the broader society.

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and-criminal-law/imprisonment-supervision-and-prisoner-rights/unsentenced-and-sentenced-prisoners-the-difference-in-prison/#:~:text=of%20the%20prison.,The%20United%20Nations%20International%20Covenant%20on%20Civil%20and%20Political%20Rights,(s%2022(1))>.

<sup>30</sup> United Nations Office on Drugs and Crime, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (Final Report).

<sup>31</sup> State of Victoria, ‘Going to Prison’, *Corrections, Prisons and Parole* (Web page, 8 June 2022) <<https://www.corrections.vic.gov.au/prisons/going-to-prison>>.

## 3 Benefits of prisoners' personal work

There are many benefits to people pursuing personal work whilst in prison. These benefits include prisoners being able to provide for their families, compensate victims, save for the future as well as pay back their debt to their community. Where a prisoner has a legitimate business with employees, to maintain that business whilst serving their sentences ensures that disruption is minimised.

Having an additional income in prison reduces recidivism as it helps maintain and sustain relationships outside of prison, can facilitate restorative justice, encourages rehabilitation and reduces the social and workforce challenges prisoners face upon release. Non-financial benefits include learning and maintaining valuable skills, finding a sense of purpose, and responsibility - all of which help prisoners overcome the challenges of reintegration following their release.

In NSW prisoners earn on average around \$20 a week. This payment is meant to assist them to support dependents outside of prison, contribute to victims compensation, and save money to assist them once they leave prison<sup>32</sup>.

### 3.1 Victims compensation

Financial contributions toward victim compensation on behalf of the offender is a way to combine accountability for the perpetrator and attempt to repair the damaged relationship between victim and perpetrator.<sup>33</sup> Restorative justice led to a 14% reduction in the rate of reoffending.<sup>34</sup> This can be facilitated through allowing prisoners the right to personal work. Profits from a prisoner's personal work can be paid to victims to help with the intended and unintended suffering as a result of a crime. For example, compensation could go towards the payment of medical and psychological treatment, repair and replacement of stolen or damaged property, or reimburse lost income. This also enables prisoners to take responsibility for their behaviour, which is an important step in rehabilitation.

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<sup>32</sup> Corrective Services Industries, *CSI Policy Manual* (8.2, January 2020).

<sup>33</sup> *Victims Compensation Act 1996* (NSW) Div 3.

<sup>34</sup> Restorative Justice Council, 'MoJ evaluation of restorative justice', *Restorative Justice Council* (Web page) <<https://restorativejustice.org.uk/resources/moj-evaluation-restorative-justice>>.

## 3.2 Family support

Enabling a prisoner to undertake personal work provides them with the opportunity to continue to support their family, even on remand. A Senate inquiry investigated the costs of imprisonment, highlighting the cost to families for the loss of a parent, loss of employment opportunities, and loss of engagement with the community as immeasurable social costs<sup>35</sup>. If a prisoner has the capacity to earn money while on remand and throughout their sentence, and so continue to support their dependents, then personal work should be encouraged and facilitated. The economic hardship that families face when a parent is imprisoned, particularly dependent children, causes significant distress and further disadvantage<sup>36</sup>. The lack of a stable and predictable homelife as a result of an incarcerated parent, particularly the breadwinner, leads to a higher chance the child will offend in the future<sup>37</sup>. Therefore, if the imprisoned parent can continue to earn at least part of their income, the effects of imprisonment on entire families will be reduced.

There is strong evidence that maintaining family contact whilst in prison can significantly reduce reoffending<sup>38,39</sup>, and that in fact not maintaining family contact whilst in prison is a demonstrated risk factor for recidivism<sup>40</sup>. However, the financial costs of phone calls and visits are substantial, which often makes it impossible for families to maintain contact<sup>41</sup>. Financial support is available, under certain circumstances, for families visiting an inmate, however, this financial support can only be claimed once in 12 weeks<sup>42</sup>. Prisoners with families face significant financial distress, such as decisions to call loved ones or put that money towards rent. If inmates are able to secure income whilst imprisoned, this may make it

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<sup>35</sup> Legal and Constitutional Affairs Committee (Cth), *Value of a justice reinvestment approach to criminal justice in Australia* (2013) 21.

<sup>36</sup> Eric Martin, 'Hidden Consequences: The Impact of Incarceration on Dependent Children' (2017) 278 *National Institute of Justice Journal* 1, 3.

<sup>37</sup> Legal and Constitutional Affairs Committee (Cth), *Value of a justice reinvestment approach to criminal justice in Australia* (2013) 21.

<sup>38</sup> Karen de Claire and Louise Dixon, 'The Effects of Prison Visits From Family Members on Prisoners' Well-Being, Prison Rule Breaking, and Recidivism: A Review of Research Since 1991' (2015) 18(2) *Trauma Violence and Abuse*.

<sup>39</sup> Johanna B. Folk et al. 'Behind Bars but Connected to Family: Evidence for the Benefits of Family Contact During Incarceration' (2019) 33 (4) *Journal of Family Psychology* 453.

<sup>40</sup> Kelle Barrick, Pamela K. Lattimore, and Christy A. Visher (2014) 'Reentering Women: The Impact of Social Ties on Long-Term Recidivism' (2014) 94 (3) *The Prison Journal* 1.

<sup>41</sup> Megan Comfort et al. 'The costs of incarceration for families of prisoners' (2016) 98 (3) *International Review of the Red Cross*.

<sup>42</sup> Corrective Services NSW, *Custodial Operations Policy and Procedures* (2022) 9.2.



easier for them to maintain contact with their families and support systems outside of prison, which would help to prevent reoffending.

### 3.3 Rehabilitation

The Australian Parliament acknowledges the loss of employment and deterioration of skills as indirect economic costs of imprisonment, however, both can be overcome through the facilitation of personal work<sup>43</sup>. Unemployment as a criminogenic aspect for re-offending is an issue that Corrective Services have been attempting to address through vocational training and work programs in prisons.<sup>44</sup> Of the prisoners that completed their custodial sentence during 2018-2019 in Australia, 53.1% returned to corrective services.<sup>45</sup> Unemployment is a large contributor to this substantial recidivism rate.<sup>46</sup> The significant struggle to find employment post-release can increase the pressure on ex-prisoners to earn income through illegitimate means which can then lead to re-offending<sup>47</sup>.

The work and vocational training programs available to Australian prisoners are a great initial step forward in aiding rehabilitation, however are limited in their approach. Existing prison work programs focus explicitly on finding employment post-release, whereas enabling prisoners to work in their allocated free time will allow inmates with their own businesses or freelance services to have already obtained a form of employment prior to release. This avenue for income helps to alleviate crimes of necessity, as prisoners have a means to support themselves upon release.

It is also critical to highlight the non-financial benefits of enabling prisoners to undertake personal work. Allowing prisoners to engage in work of their choice, rather than under the direction of Corrective Services, will empower them with a sense of agency and purpose. Simultaneously, a sense of responsibility to their work will help prisoners to become a functioning and law-abiding member of society after release. Undertaking personal work,

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<sup>43</sup> References Committee, Parliament of Australia, *Value of a justice reinvestment approach to criminal justice in Australia* (June 2013) ch 3.

<sup>44</sup> Kym Lindeman, Mark Howard & Abilio de Almeida Neto, *Evaluation of vocational training in custody* (Research Publication No. 57 August 2017).

<sup>45</sup> Australian Productivity Commission, Steering Committee for the Review of Government Service Provision, *Report on Government Services 2022*, Part C, Table CA.4 (2022).

<sup>46</sup> References Committee (n 43).

<sup>47</sup> *Ibid.*

through the provision of a good or service, restores a prisoner's relationship with the general community and instills a positive sense of self.

Prisoners are restricted to selected industries, primarily metal fabrication, timber manufacturing, agriculture, kitchen, laundry and maintenance.<sup>48</sup> Allowing inmates to use their free time to work in their own field of interest that may not be offered by Corrective Services, will provide them with a sense of autonomy and personal drive that prison work fails to give them. For example, allowing prisoners to engage in creative pursuits, including visual arts, music and creative writing, as personal work will have significant transformative and rehabilitative effects which are enhanced by the economic benefits.

### 3.4 Post-release

Both the financial profits and skills gained through personal work can reduce some of the challenges prisoners face when re-integrating with the community. Following release from prison, many people experience difficulty with housing and homelessness. More than 50% of people leaving prison are homeless.<sup>49</sup> Furthermore, the likelihood of re-offending increases significantly with the absence of housing.<sup>50</sup>

Upon release, NSW inmates receive only minimal financial support: this includes a \$10 opal card, a bank card with funds from their prison account, and can receive up to \$50 in cash for their immediate needs,<sup>51</sup> and a one-off crisis payment of \$280.<sup>52</sup> Fewer than 1 in 4 (22%) prison discharges reported they had paid employment organised to start within 2 weeks of release from prison.<sup>53</sup> Prisoners who are able to use their personal time as time for personal

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<sup>48</sup> Corrections, Prisons & Parole, *Work, education and training* (Web Page)

<<https://www.corrections.vic.gov.au/prisons/going-to-prison/work-education-and-training>>.

<sup>49</sup> Tom Burton, 'Repeat offenders account for half of prison costs', *Financial Review* (online, 28 January 2022) <<https://www.afr.com/politics/federal/repeat-offenders-account-for-half-of-prison-costs-20220127-p59rnj>>.

<sup>50</sup> Mindy Sotiri and Alex Faraguna, *Homelessness in Ex-Prisoner Populations: A CRC Submission for FACS* (Final report).

<sup>51</sup> Megan Palin, 'Life on the outside: What happens when prisoners are released from jail?', *News.com.au* (online, 27 August 2017) <<https://www.news.com.au/lifestyle/real-life/news-life/life-on-the-outside-what-happens-when-prisoners-are-released-from-jail/news-story/91dc35e4f12b8a59bb4a21cbff63e522>>.

<sup>52</sup> Services Australia, 'How much you can get', *Services Australia* (Web page)

<<https://www.servicesaustralia.gov.au/how-much-crisis-payment-for-release-from-prison-or-psychiatric-confinement-you-can-get?context=52757>>.

<sup>53</sup> Australian Institute of Health and Welfare, 'Adult prisoners', *Australian Institute of Health and Welfare* (Web page, 16 September 2021) <<https://www.aihw.gov.au/reports/australias-welfare/adult-prisoners>>.

work can create another stream of income and potentially face less housing difficulties post-release.

## 4 Types of personal work

With the introduction of computers in cells, the types of work available to prisoners is innumerable. Through access to education and communication, certain types of work are possible such as art, music, accounting services, freelance writing and coding. It will provide them with valuable opportunities that will allow them to pay their debt back to society, compensate victims and help provide for their families. The success of prison art galleries is a testament to the benefits of allowing personal work within prisons.

### 4.1 Art

Prisoners, particularly Indigenous prisoners, have a long history of creating art with deep-rooted cultural representations. The expression of one's creativity itself is a human right, and one of which provides prisoners with the ability to generate financial profits. In providing prisoners with the entitlement to personal work, they are able to artistically express themselves whilst also precipitating benefits by marketing their art. The benefits that are resulted from this engagement extends to not only the prisoners, but also their families who are able to form connections with their loved ones through perceiving a culturally driven art piece, as well as receiving stabilized financial support.

Under article 19.2 of the Universal Declaration of Human Rights:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”[1]

Marketing of art could provide funding for an art program and/or prize, thus making materials more readily available for prisoners to use. A shop front somewhere could take on serving prisoners on work release and further stimulate discussions around prisons and diminishing stigma and connotations associated with the term ‘prisoner’.

A website can be created allowing prisoner art to be marketed via photographs, as was the case with the Queensland Government Prisoner art and craft online gallery.<sup>54</sup>

The proceeds from the sale and exhibition of prisoner art in Queensland has now been prohibited, along with the transfer or gifting of art to other persons, which is contrary to international tendencies toward the embracing of art as a unique rehabilitative tool with benefits extending to the broader community.<sup>55</sup> This has raised the issue of human rights surrounding art and creative expression, and the limitation of exhibiting prisoners' works as a violation of these rights.

With the exception of Queensland, where legislation prohibiting prisoner artworks to be sold, all other Australian States and Territories show that "there are no specific provisions that allow for or prohibit the sale of prisoner artwork."<sup>56</sup> In contrast to the QLD legislative changes of 2009, Victoria has been running exhibitions of Indigenous artists in custody for the past five years, and it has been suggested that the feedback from the exhibitions supports the creative development of prisoners.<sup>57</sup> Other successes include 'Whilst Inside Art' exhibiting art in the Wollombi Valley region for its ninth year this year,<sup>58</sup> and the second exhibition of 'Art Within and Beyond Prisons' in SA and the first prison art gallery in WA opening at Eastern Goldfields Regional Prison<sup>59</sup> this year.

One example of the distribution of funds is that of Koestler trust, where 25% is donated to victims' support, 50% to the prisoners' 'private cash,' and the remaining to the trust fund. As

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<sup>54</sup> Queensland Corrective Services, *Prisoner art and craft online gallery* (Web Page, 19 August 2015) <[https://web.archive.org/web/20170820210326/http://www.correctiveservices.qld.gov.au:80/About\\_Us/The\\_Department/Prisoner\\_Art/index.shtml](https://web.archive.org/web/20170820210326/http://www.correctiveservices.qld.gov.au:80/About_Us/The_Department/Prisoner_Art/index.shtml)>.

<sup>55</sup> Fitzgerald, Ross 2011, 'Draconian ban on prisoner art marks a return to the penal dark ages,' *The Australian*, at 29 January 2011 <<http://www.theaustralian.com.au/national-affairs/state-politics/draconian-ban-on-prisoner-art-marks-a-return-to-the-penal-dark-ages/story-e6frgczx-1225996141916>>.

<sup>56</sup> Black, Alison & Clare, Elizabeth, *The Regulation of Prisoner's Art: An Overview of the Legislature and Policy Position Within Australia*, University of Queensland, ProBono Centre, at 13 June 2013, 20.

<sup>57</sup> St Kilda Festival, 'Confined IV 2012,' at 13th June 2013 <[https://www.liveguide.com.au/Events/724489/St\\_Kilda\\_Festival\\_2012\\_Luanch\\_Confined\\_IV/St\\_Kilda\\_Festival\\_Luanch\\_Confined\\_IV\\_2012](https://www.liveguide.com.au/Events/724489/St_Kilda_Festival_2012_Luanch_Confined_IV/St_Kilda_Festival_Luanch_Confined_IV_2012)>.

<sup>58</sup> *Inside Art 2013*, 2013 <[http://www.wollombi.org/2013\\_inside\\_art.html](http://www.wollombi.org/2013_inside_art.html)>.

<sup>59</sup> *First art gallery in a WA custodial facility opens at Eastern Goldfields Regional Prison*, 2022 <<https://www.wa.gov.au/government/announcements/first-art-gallery-wa-custodial-facility-opens-eastern-goldfields-regional-prison>>.

another example, The Boom Gate Gallery returns 83.5% to the artist, with the remaining 16.5% used to cover project costs.<sup>60</sup>

It is important to include those whose lives have been affected by crime. It could be proposed that a predetermined percentage of the sale amount be allocated to charitable organisation(s) decided upon by the prisoner.<sup>61</sup> Here, a sliding scale could be used, depending on the amount an artwork fetches as to the percentage donated.

Art consignment, with a minimum of 20 pieces of art required to participate, is an option if there is a more constant flow of prisoner art to be marketed. 50% of the sale to be retained by the establishment that displays the art, while the remaining 50% is to be redistributed equally in the predetermined percentages. This can be a viable option if the volume of art increases dramatically.

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<sup>60</sup> Department of Communities and Justice, *Boom Gate Gallery* (Web Page, 10 April 2021) <<https://www.boomgategallery.dcj.nsw.gov.au/>>.

<sup>61</sup> *Inside Art 2013*, 2013 <[http://www.wollombi.org/2013\\_inside\\_art.html](http://www.wollombi.org/2013_inside_art.html)> 18.

# 5 Australian Jurisdictional Policy

## 5.1 NSW

The policy for personal work in NSW is clear. NSW prisoners are prima facie allowed to conduct a business. The Corrective Services Custodial Operations Policy and Procedures ('COPP') states in section 8.9:

*“Generally, and subject to the conditions set out below, an inmate can reasonably expect to have approval to conduct, control or manage their business affairs while they are imprisoned”*

Prison work is compulsory and ordered by:

### 5.1.1 [Crimes \(Administration of Sentences\) Act 1999 \(NSW\)](#)

- **Part 2 Imprisonment by way of full-time detention**
  - s 6 – Work performed by inmates
    - s 6(1) ‘The governor of a correctional centre may make an order directing any convicted inmate in the correctional centre to carry out such work as the governor considers suitable.’
    - s 7(1) ‘The Commissioner may, out of money provided by Parliament or otherwise legally available, make payments to inmates for any reason (including for work done).’

### 5.1.2 [COPP 8.9](#)

NSW prisoners are allowed to conduct a business, but subject to the commissioner’s operating policies and procedures. However, there are multiple bases for refusal to conduct a business.

### 5.1.2.1 Policy summary

*“CSNSW acknowledges that from time to time people who conduct, control or manage a business are imprisoned may have employees whose income and livelihood is dependent on the continuation of that business.*

*Generally, and subject to the conditions set out below, an inmate can reasonably expect to have approval to conduct, control or manage their business affairs while they are imprisoned unless it would be contrary to the Corporations Act 2001 (Commonwealth) or any other law.”*

### 5.1.2.2 Policy

An inmate may be allowed to conduct, control, or manage a business while they are in custody provided it can be established:

- the business is lawful
- there is no conflict of interest with CSNSW operations
- the nature of the business will not cause embarrassment to CSNSW
- the inmate can conduct their business affairs within the privileges granted to them (including making telephone calls, receiving visitors, and the right of access to legal advisors). No additional privileges will be granted to the inmate for the purpose of conducting a business.

Hence if their business adheres to these requirements, there is little basis to refuse permission to prisoners to conduct a business, however permission can be rescinded at any time thereafter.

### 5.1.2.3 Application by the inmate

An inmate must apply to the governor for permission to conduct, control, or manage a business while they are in custody. For the application to be considered, it must be in writing and include the following details:

- the nature of the business they are seeking to conduct, control or manage.
- business name and address
- Australian Business Number (ABN)
- ASIC Business Name Registration number and expiry date



- Office holder(s) / Interested parties names, date of birth and addresses

#### 5.1.2.4 Minimum conditions for approved applications

Governor must also have approval of an application by an inmate to conduct, control or manage a business while imprisoned. These are the grounds for refusal, listed under 1.4, which may apply in this case:

- The business is or may be a threat to the security, good order and discipline of the correctional centre
- There is a conflict of interest between the inmate's business and CSNSW operations. For example, if the inmate's business was in the security industry; or if the business supplied goods or services to CSNSW or to an agent of CSNSW
- The nature of the inmate's business was likely to embarrass CSNSW or damage CSNSW reputation.

## 5.2 ACT

The *Human Rights Act 2004* (ACT) clearly sets out that everyone has the right to work, including choosing their occupation or profession freely, and that everyone is entitled to enjoy these rights without discrimination.

There does not appear to be any provisions directly addressing the entitlement to personal work or the ability to conduct a business in the *ACT Standards for Adult Correctional Services, Corrections Management Act 2007* (ACT) or *Corrections Management (Detainee Work) Policy 2019* (ACT).

However, the policies endorsed by ACT Corrective Services generally support the normalisation of employment for detainees, and the provision of employment opportunities, as well as the fair remuneration of detainees. There is hence no reason why detainees should not be allowed to conduct personal work.

### 5.2.1 [Human Rights Act 2004 \(ACT\)](#)

#### **27B Right to work and other work-related rights**

- (1) Everyone has the right to work, including the right to choose their occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.
- (2) Everyone has the right to the enjoyment of just and favourable conditions of work.
- (3) Everyone has the right to form or join a work-related organisation, including a trade union, with the objective of promoting or protecting their economic or other social interests.
- (4) Everyone has the right to protection against acts of anti-union discrimination in relation to their employment.
- (5) Everyone is entitled to enjoy these rights without discrimination.

### 5.2.2 [ACT Standards for Adult Correctional Services](#)

### 5.2.2.1 Policy summary

*“The Australian Capital Territory was the first jurisdiction in Australia to enact human rights legislation with the passage of the Human Rights Act 2004 (ACT).”*

*“Section 19, HR Act states: ‘anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person’.”*

The ACT Standards for Adult Correctional Services provide a benchmarking tool to examine the standards of human rights in prisons. They clearly set out that detainees should have the opportunity to access work which is fairly remunerated.

### 5.2.2.2 Standard for Purposeful Activity

#### **14. Purposeful activity**

Programs and activities must be provided that meet the diverse needs and interest of the detainee population:<sup>62</sup>

14.1 Detainees should be afforded as much time out of their cell as possible, and be able to access and engage in purposeful activity, including recreation with others.

14.2 Detainees should have access to a library stocked with a wide range of resources and technology including education materials to enable detainees to educate themselves.

**14.3 Detainees should be encouraged and have the opportunity to access work of a useful nature (preferably developing skills that can be used upon release) that is fairly remunerated.**

14.4 Detainees should have access to educational programs, which as far as possible meet individual needs, take into account reasonable aspirations, are varied, and are culturally appropriate. Detainees should be supported and encouraged to undertake educational programs.

14.5 Programs and services provided to detainees, especially women, Aboriginal and Torres Strait Islander detainees, and detainees from non-English speaking backgrounds, should be established in consultation with the appropriate community groups and experts.

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<sup>62</sup> Justice and Community Safety Directorate, HUMAN RIGHTS PRINCIPLES FOR ACT CORRECTIONAL CENTRES (January 2019) 13.

### **5.2.3 Corrections Management Act 2007 (ACT)**

#### **Ch 9, s 83 Work by Detainees**

A regulation may make provision in relation to work by detainees, including provision in relation to any of the following:

- a) the kind of work that may be done by detainees;
- b) the places where detainees may work, including places outside a correctional centre;
- c) any payment or other return to which detainees are entitled for work done;
- d) accounting for any payment or other return credited to detainees for work done

### **5.2.4 Corrections Management (Detainee Work) Policy 2019 (ACT)**

#### **5.2.4.1 Policy summary**

Corrective Services in ACT states that detainees may be provided with work activities and may receive payment for their participation.<sup>63</sup>

*“ACTCS is committed to providing work to detainees to encourage the normalisation of employment and opportunities for professional development that enhance reintegrative outcomes on release.”<sup>64</sup>*

#### **5.2.4.2 Access to work**

Detainees are provided information on work activities upon induction,<sup>65</sup> must submit an application to work,<sup>66</sup> and must be determined to be suitable for the work placement.<sup>67</sup> They may only be approved if a vacancy exists.<sup>68</sup>

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<sup>63</sup> Corrective Services, *Education, Work and Programs* (Web Page)

<<https://www.correctiveservices.act.gov.au/reintegration-and-release/education,-work-and-programs>>.

<sup>64</sup> Corrections Management (Detainee Work) Policy 2019 (ACT) s 4.1.

<sup>65</sup> Ibid s 6.1.

<sup>66</sup> Ibid s 6.3.

<sup>67</sup> Ibid s 6.5.

<sup>68</sup> Ibid s 6.2.

Detainees may be remunerated for work at the eligible rate of the Detainee Work Profile,<sup>69</sup> however not for greater than 42 hours each week.<sup>70</sup>

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<sup>69</sup> Ibid s 9.1.

<sup>70</sup> Ibid s 9.2.

## 5.3 VICTORIA

### 5.3.1 [Corrections Regulations 2019 \(Vic\)](#)

#### **REG 50- Agreement between prisoner and Secretary in relation to art and other things made or produced by the prisoner**

(1) The Secretary may enter into an agreement in writing with a prisoner that enables the prisoner to sell art and other things that have been made or produced by the prisoner at a prison in exchange for payment.

#### **Reg 51 -Agreement to undertake paid employment outside prison**

(1) Subject to [regulation 53](#), the Secretary may enter into an agreement in writing with a prisoner that enables the prisoner to undertake paid employment outside a prison

#### **REG 52 - Terms and conditions of agreement to undertake paid employment outside a prison**

## 5.4 QUEENSLAND

### 5.4.1 Corrective Services Act 2006 (Qld)

#### Div 1A Carrying on business or dealing in artwork

- (1) A prisoner who has been sentenced to a period of imprisonment must not carry on or participate in the carrying on of a business while the prisoner is in a corrective services facility. For example the selling of an artwork made by a prisoner of a corporation whose management of the prisoner is a violation of this subsection, with a maximum of 100 penalty units. This is also subject to subsections (2) to (4).
- (2) subsections (3) and (4) apply to a person who is carrying on or participating in the carrying on of a business when the person is sentenced to a period of imprisonment (the **presentence business**)
- (3) the person within 21 days after being sentenced must:
  - a) stop carrying on the presentence business; or
  - b) stop participating in the carrying on of the presentence businessThe maximum penalty is 100 penalty units.
- (4) subsection (1) does not apply to the person in relation to the presentence business until the end of the 21 days aforementioned in subsection (3)

#### 28A Restriction on prisoner dealing with prisoner's artwork

- (1) While a prisoner is in a corrective services facility, the prisoner must not sell, give, give possession of, or otherwise dispose of the prisoner's artwork, unless allowed to do so under [section 28B](#) , [28C](#) or [28D](#) .

#### 371 Carrying on a business

[Section 28\(1\)](#) does not apply, until the end of 21 days after the [commencement](#), to a prisoner in a corrective services facility who was carrying on a business immediately before the [commencement](#).

## 5.5 SOUTH AUSTRALIA

### 5.5.1 *Correctional Services Act 1982 (SA)*

#### **DIVISION 6- Management of prisoners**

##### **29- Work by Prisoners**

(1) A prisoner within a correctional institution is required to perform work within or outside the precincts of the correctional institution, as the CE directs.

(3) Tasks selected for prison work must, as far as reasonably practicable, be selected on the basis that prisoners will be provided with experience in a recognised profession, trade or other field of employment.

(4) The CE when directing a prisoner to perform any work they must consider age, physical and mental health of the prisoner and any skills or work experience of the prisoner.

(5) A prisoner in a correctional institution is not entitled to perform any other remunerated or unremunerated work of any kind, whether for the benefit of the prisoner or any other person unless the prisoner has permission from the CE to do so.

### 5.5.2 Government of South Australia<sup>71</sup>

#### Prison industries

Prisoners are able to get work in prison, as it is an environment that recreates an industry workplace (farming for example) and provides actual goods and products. Prison industries provide training and genuine work experience for prisoners, where qualifications are possible to gain. The skills gained through work experience in prison provide prisoners with greater opportunities for employment upon release.

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<sup>71</sup> <<https://www.corrections.sa.gov.au/prison/prison-life/prisoner-management/work-and-training>>.



## Work crews

Low security prisoners have the opportunity to work with both local and regional groups outside of prison. This can include graffiti removal, litter clean ups or wildlife park maintenance.

## Release to work program

Minimum security prisoners may be able to join this program. This can include attending work, completing a TAFE SA course or volunteering. This opportunity is only provided to prisons with a pre-release facility.

## Training and qualifications

Each prison will offer different courses and training programs for prisoners to participate in. Some prisons also offer qualifications and TAFE courses. Prisons also offer literacy and numeracy as well as home skill courses to help assist prisoners improve their life skills.

An assessment will be done to identify eligible prisoners.

## 5.6 TASMANIA

### 5.6.1 DSO – 2.24 Prisoners Conducting a Business

#### **Statement of Purpose:**

The purpose of this Director's Standing Order is to ensure that prisoners who wish to conduct a business during their period of custody with the Tasmania Prison Service do so in accordance with the Corrections Act 1997.

This Director's Standing Order outlines the protocols for managing a prisoner who wishes to conduct a lawful business in or from prison during their period of custody with the Tasmania Prison Service. This includes prisoners who were conducting a business prior to their incarceration, as well as prisoners who wish to commence a new business.

The Tasmania Prison Service acknowledges that prisoners who were conducting a business prior to their incarceration (a pre-sentence business) may have employees whose income and livelihood is dependent upon the continuation of that business.

In determining whether to provide consent for a prisoner to conduct a business, the Director of Prisons (as delegated powers under the Corrections Act 1997) may consider any matter he / she thinks fits in the circumstances.

### ***CORRECTIONS ACT 1997 (Tas)- SECT 33***

#### **Work**

- (1) Subject to this section, the Director may direct a prisoner to set work that is considered suitable to the prisoner's physical and intellectual capacity.
- (2) A prisoner must comply with the direction of the Director under subsection (1).
- (3) With the approval of the Director, a prisoner may be set to work outside the precincts of the prison where the prisoner is detained.
- (4) A detainee may volunteer to perform work.

### **CORRECTIONS ACT 1997 - SECT 34**

#### **Payment for prisoners' work, &c.**

- (1) A Prisoner who performs work pursuant to section 33 are entitled to be paid for that work as determined by the Director from time-to-time.

- (1A) A prisoner or detainee who performs work for which they volunteered for is entitled to be paid for that work.
- (2) The Director is to hold on behalf of the prisoner the money that the prisoner is entitled to for work performed and is to pay that money to the prison upon their release, or otherwise provided by the regulations.
- (3) Notwithstanding subsection (2), a court of competent jurisdiction may order, before a prisoner is released from prison, that the whole or part of their money be paid towards the maintenance of the prisoners dependents or in settlement of a judgment debt of that court.
- (4) The Director is not liable for any costs associated with the performance by a prisoner of work for which the prisoner volunteered outside the precincts of the prison other than the state.

### **34AB Business Activities**

- (1) Under this section- *Conduct a business* includes making preparations to conduct a business
- (2) A prisoner must not conduct a business in or from prison without the consent of the Director, given specifically for that business.
- (3) In determining whether consent should be given to the prison to conduct a business in or from prison the Director may have to regard the following matters as the Director thinks fit in the circumstances, including-
- (a) Whether conduct of business could reasonably be expected to excite adverse community reaction, particularly from victims of crime; and unlawful ends
  - (b) Whether there is any risk that any person could use the business for unlawful ends
  - (c) Whether the conduct of the business could disrupt prison routine, compromise management, good order or security
  - (d) Whether the business is one that would be reasonably practicable and manageable to conduct in a prison environment
  - (e) The regulatory requirements of conducting the business, associated compliance and legal capacity issues.
  - (f) Whether conducting a business was the basis for or a relevant factor in previous unlawful conduct of the prisoner
  - (g) Whether there could be rehabilitative benefits for the prisoner.

- (4) The Director in their discretion if considered appropriate may withdraw consent given under this section at any time.
- (5) No liability attaches to the Director or the Crown in respect to any consent given by the Director in good faith to a prisoner under this section or the withdrawal by the Director of any consent.

## 5.7 NORTHERN TERRITORY

### 5.7.1 [Correctional Services Act 2014 \(NT\)](#)

The Department of Attorney-General and Justice, Correctional Services runs a paid prisoner employment program that allows large and small local businesses to employ prisoners outside of correctional facilities.<sup>72</sup> This program is also called Sentenced to a Job.<sup>73</sup> Some money paid to prisoners goes towards board and lodging for their cell.<sup>74</sup> Victims of Crime Northern Territory are paid 5% and any fines the prisoner owes is taken from their wage.<sup>75</sup> The rest of the money is held in trust for them after they are released, or can be paid to their family.<sup>76</sup>

#### **Division 2      General leave permits**

##### **Section 118      Commissioner may issue general leave permit**

The Commissioner may issue a permit (a general leave permit) to a prisoner that authorises the prisoner to be temporarily absent from a custodial correctional facility for a purpose the Commissioner considers appropriate.

Examples for section 118

Examples of purposes for which a permit may be issued include the following:

- (a) education and training;
- (b) employment;
- (c) compassionate grounds;
- (d) recreation;
- (e) participation in community projects;
- (f) reintegration into the community.

#### **Section 56      Commercial activity**

A prisoner must not engage in any commercial activity without the Commissioner's written consent.

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<sup>72</sup> Northern Territory Government, 'Employing prisoners in your business', NT.GOV.AU (Web Page) <<https://nt.gov.au/law/prisons/employing-prisoners-in-your-business>>.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.



## 5.8 WESTERN AUSTRALIA

### 5.8.1 Prisons Act 1981 (WA)

#### **Part IX - Prisoner Wellbeing and rehabilitation**

##### 95. Preparation and implementation of activity programs

- (1) The Chief Executive Officer may arrange for the provision of services and programmes for the wellbeing and rehabilitation of prisoners
- (2) Services and programmes may be designed and instituted with the intention of-
  - (a) Promoting health and wellbeing of prisoners
  - (b) Enable prisoners to acquire knowledge and skills that will assist them in the adoption of law abiding lifestyles upon release
  - (c) Assisting prisoners to integrate into the community upon release
  - (d) Maintaining and strengthening supportive family, community and cultural relationships for prisoners
  - (e) Providing counselling services and other assistance to prisoners and their families in relation to personal and social matters and problems
  - (f) Providing opportunities for prisoners to utilise their time in prison in a constructive and beneficial manner by means of educational and occupational training programmes and other means of self-improvement
  - (g) Providing opportunities for work, leisure activities and recreation
  - (h) assisting prisoners to make reparation for the offences they have committed.
- (3) Subject to subsection (4) a prisoner cannot be compelled to use or participate in services or programmes provided under this section

#### Prisoners regulations 1982(WA)

#### **PRISONS REGULATIONS 1982 - REG 43 - AMENDED**

#### **43 . Work**

(1) Subject to subregulation (2), a prisoner who is able to work may be employed as the superintendent directs.

(2) A prisoner on remand shall not be required to work.

(3) A prisoner on remand may apply in writing to the superintendent to work and, if such application is granted, the prisoner may be employed in the prison in which he is confined, and be credited with gratuities accordingly.

*[Regulation 43 amended: Gazette 11 May 1990 p. 2266.]*