

PRISONS (AMENDMENT) ACT 1993 No. 89

NEW SOUTH WALES



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PRISONS (AMENDMENT) ACT 1993 No. 89

NEW SOUTH WALES



Act No. 89, 1993

An Act to amend the Prisons Act 1952 to abolish the Serious Offenders Review Board and to constitute the Serious Offenders Review Council, to make further provision with respect to the segregation of prisoners and drug testing of prisoners; and for other purposes; and to amend the Defamation Act 1974 consequentially. [Assented to 29 November 1993]

See also Sentencing (Amendment) Act 1993.

The Legislature of New South Wales enacts:**Short title**

1. This Act may be cited as the Prisons (Amendment) Act 1993.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
(2) Section 3, in its application to a provision of Schedule 1, 2, 3 or 4, commences on the day on which the provision commences.
(3) Schedules 1 (4), 2 (3) and 4 (16) commence on the date of assent.

Amendment of Prisons Act 1952 No. 9

3. The Prisons Act 1952 is amended as set out in Schedules 1–4.

Amendment of Defamation Act 1974 No. 18, sec. 17CA

- 4 The Defamation Act 1974 is amended by omitting section 17CA and by inserting instead the following section:

Matters arising out of proceedings of the Offenders Review Board, the Serious Offenders Review Council and the Serious Offenders Management Committee

17CA. There is a defence of absolute privilege:

- (a) for a publication of a report or other document under Part 10 of the Prisons Act 1952 or Part 3 of, or Part 2 of Schedule 2 to, the Sentencing Act 1989; and
 - (b) for a publication in the course of any proceedings of the following bodies:
 - the Offenders Review Board or a Division or a committee of that Board
 - the Serious Offenders Review Council or a Division or a committee of that Council
 - the Serious Offenders Management Committee or a subcommittee of that Committee; and
 - (c) for a publication by a body referred to in paragraph (b) of a report of any proceedings referred to in that paragraph.
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**SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
RELATING TO THE SERIOUS OFFENDERS REVIEW
BOARD**

(Sec. 3)

(1) Section 4 (**Definitions**):

- (a) Omit the definition of “Board” from section 4 (1).
- (b) In section 4 (1), insert in alphabetical order:
 - “**Management Committee**” means the Serious Offenders Management Committee established under section 63;
 - “**Review Council**” means the Serious Offenders Review Council constituted by section 60.

(2) Part 10:

Omit the Part, insert instead:

**PART 10—SERIOUS OFFENDERS REVIEW
COUNCIL**

Definitions

59. In this Part:

- “**Offenders Review Board**” means the Offenders Review Board constituted by section 44 of the Sentencing Act 1989;
- “**serious offender**” means:
 - (a) a person serving a sentence of penal servitude for life; or
 - (b) a person serving any sentence for which a minimum term and an additional term have been set by the Supreme Court under section 13A of the Sentencing Act 1989; or
 - (c) an offender who is serving a minimum term of imprisonment of 12 years or more; or
 - (d) a person who is to be managed as a serious offender in accordance with a decision of the Commissioner until such time as the Commissioner revokes that decision; or

SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
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- (e) a person who is being managed as a serious offender in accordance with a decision made by a sentencing court or the Offenders Review Board; or
- (f) a person convicted of murder and who is subject to a minimum term and an additional term of imprisonment, or a fixed term of imprisonment, in respect of the conviction; or
- (g) an offender who belongs to a class of offenders prescribed by the regulations as serious offenders.

Constitution of the Review Council

60. There is constituted by this Act the Serious Offenders Review Council.

Membership of the Review Council

61. (1) The Review Council is to consist of:
- (a) 5 members appointed by the Governor; and
 - (b) 2 official members, being officers of the Department of Corrective Services nominated for the time being by the Commissioner.
- (2) Of the members appointed by the Governor:
- (a) 2 are each to be either a Judge of the District Court or a retired Judge of the Supreme Court or District Court; and
 - (b) 3 are to be community members (not being officers of the Department of Corrective Services) appointed to represent the community or any significant portion of the community.

Functions of the Review Council

62. The functions of the Review Council are as follows:
- (a) to provide advice and make recommendations to the Commissioner with respect to the following:
 - the security classification of serious offenders;
 - the placement of serious offenders;
 - developmental programs provided for serious offenders;

SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
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- (b) to provide reports and advice to the Offenders Review Board concerning the release on parole of serious offenders;
- (c) to prepare and submit reports to the Supreme Court with respect to applications under section 13A of the Sentencing Act 1989;
- (d) to exercise the functions conferred on it by sections 22C–22F in relation to the review of directions for the segregation of prisoners or for the extension of the segregation of prisoners;
- (e) to provide reports and advice to the Minister;
- (f) to provide reports and advice to such other persons or bodies as may be prescribed by the regulations;
- (g) to perform such other functions as may be prescribed by the regulations in relation to the management of serious offenders and other prisoners.

Establishment of a Serious Offenders Management Committee

63. (1) The Review Council may establish, and appoint the members of, a Serious Offenders Management Committee and, subject to this section, delegate to that Management Committee such of its functions as the Review Council determines.

(2) The Management Committee is to be constituted by a Chairperson and such number of officers of the Department of Corrective Services as may be determined by the Review Council. The Review Council is to determine the quorum for a meeting of the Management Committee.

(3) An official member of the Review Council is to be the Chairperson of the Management Committee.

(4) The Chairperson of the Management Committee may establish subcommittees of the Management Committee for the purpose of assisting it in the exercise of its functions.

(5) The Chairperson of the Management Committee is to determine the procedure for the calling of meetings of the Management Committee and for the conduct of business at those meetings.

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(6) The procedure for the calling of meetings of a subcommittee and for the conduct of business at those meetings is to be determined by the Chairperson of the Management Committee or (subject to any determination of the Chairperson) by the subcommittee.

(7) The functions of the Review Council that may be delegated to the Management Committee include (but are not limited to) the following:

- (a) the functions relating to the security classification and management of serious offenders;
- (b) the functions relating to the review of developmental programs provided for such offenders.

(8) The Review Council may not delegate to the Management Committee its functions relating to:

- (a) the submission of reports to the Supreme Court with respect to applications under section 13A of the Sentencing Act 1989; or
- (b) the submission of reports to, or representation before, the Offenders Review Board.

Security of certain information

64. Nothing in this Part requires a person to be provided with a copy of a report or another document (or any part of the report or document) if, in the opinion of a judicial member of the Review Council, its provision to the person might:

- (a) adversely affect the security, discipline or good order of a prison; or
- (b) endanger the person or any other person; or
- (c) jeopardise the conduct of any lawful investigation; or
- (d) be against the public interest.

Annual reports

65. The Review Council must, as soon as practicable after 31 December in each year, supply to the Minister for presentation to Parliament a report giving information as to the Review Council's activities during that year.

SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
RELATING TO THE SERIOUS OFFENDERS REVIEW BOARD—
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**Provisions relating to members and procedure of the
Review Council**

66. Schedule 5 has effect with respect to the members and procedure of the Review Council.

(3) Schedule 5:

Omit the Schedule, insert instead:

**SCHEDULE 5—PROVISIONS RELATING TO THE
MEMBERS AND PROCEDURE OF THE REVIEW
COUNCIL**

(Sec. 66)

Definitions

1. In this Schedule:

“**Deputy Chairperson**” means the Deputy Chairperson of the Review Council;

“**appointed member**” means a member appointed under section 61 (1) (a);

“**Chairperson**” means the Chairperson of the Review Council;

“**community member**” means a member, not being an officer of the Department of Corrective Services, appointed to represent the community or a significant portion of the community;

“**Judge**” means a Judge of the District Court;

“**judicial member**” means a Judge or retired Judge who is appointed as the Chairperson or Deputy Chairperson of the Review Council;

“**official member**” means an official member of the Review Council;

“**retired Judge**” means a person who has retired from the office of Judge of the Supreme Court or District court.

SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
RELATING TO THE SERIOUS OFFENDERS REVIEW BOARD—
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Chairperson and Deputy Chairperson of the Review Council

2. (1) The members referred to in section 61 (2) (a) are to be respectively appointed, in and by the instruments by which the members are appointed (or in and by another instrument executed by the Governor), as:

(a) Chairperson of the Review Council; and

(b) Deputy Chairperson of the Review Council.

(2) The appointment of a person who is a Judge as the Chairperson or Deputy Chairperson does not, nor does the person's service as the Chairperson or Deputy Chairperson, affect the person's tenure of the office of a Judge or the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office.

(3) A person who is a Judge may, even though the person is the Chairperson or Deputy Chairperson, exercise the powers of a Judge.

(4) The service of a Judge as the Chairperson or Deputy Chairperson is taken, for all purposes, to be service as a Judge.

Acting appointed members

3. (1) The Deputy Chairperson, during the illness or absence of the Chairperson, is to act in the office of Chairperson and, while so acting, has all the functions of the Chairperson and is taken to be the Chairperson.

(2) The Governor may, from time to time, appoint a person, being a Judge or retired Judge, to act in the office of the Deputy Chairperson, and the person, while so acting, has all the functions of the Deputy Chairperson and is taken to be the Deputy Chairperson.

(3) If a community member has been granted leave of absence by the Minister for a period, the Governor may appoint a person to act in the office of the community member during that period, and the person, while so acting, has all the functions of the member and is taken to be a member.

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continued

(4) The Governor may, at any time, remove a person from an office to which the person was appointed under subclause (2) or (3).

(5) For the purposes of this clause:

- (a) a vacancy in the office of the Chairperson or Deputy Chairperson is taken to be an absence from the office of the Chairperson or Deputy Chairperson; and
- (b) the Deputy Chairperson is taken to be absent from the office of Deputy Chairperson while acting as Chairperson.

Deputies of official members

4. (1) An official member may, from time to time, appoint in writing an officer of the Department of Corrective Services to be the member's deputy, and the member or the Commissioner may revoke any such appointment.

(2) In the absence of an official member, the member's deputy may, if available, act in the place of the member and, while so acting, has all the functions of the member and is taken to be a member.

Terms of office of appointed members

5. Subject to this Schedule, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration of appointed members

6. An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Vacancy in office of appointed member

7. (1) The office of an appointed member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or

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- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Governor; or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (f) becomes a mentally incapacitated person; or
- (g) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be so punishable; or
- (h) being a judicial member who is a Judge, ceases to be a Judge (except because of retirement).

(2) The Governor may remove an appointed member from office at any time.

Filling of vacancy in office of appointed member

8. If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Effect of certain other Acts

9. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of an appointed member.

(2) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

Establishment of committees and appointment of other persons

10. (1) The Review Council may establish committees, or appoint any person or persons, to assist it in connection with the exercise of any of its functions.

SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
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- (2) If a committee is established:
- (a) the members of that committee may be members of the Review Council; and
 - (b) the procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be determined by the chairperson of the committee (subject to any determination of the Review Council); and
 - (c) the Review Council may delegate to that committee such of its functions as may be prescribed.

Divisions of the Review Council

11. (1) The Chairperson may constitute Divisions of the Review Council by nominating the members of each Division.

(2) The Chairperson may, at any time, dissolve a Division.

(3) A Division is to consist of a judicial member, a community member and an official member.

General procedure

12. (1) Except as otherwise provided by this Act or the regulations:

- (a) meetings of the Review Council are to be held at such times and places as are fixed by the Chairperson; and
- (b) the procedure for the convening of meetings of the Review Council and for the conduct of business at those meetings is to be determined by the Chairperson.

(2) The Review Council may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit.

(3) Proceedings before the Review Council:

- (a) are not to be open to the public unless the Chairperson determines that, in a particular case, it is in the interest of the community that the proceedings be conducted in public; and
- (b) are not to be conducted in an adversarial manner; and

SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
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continued

(c) are to be conducted with as little formality and technicality, and with as much expedition, as fairness to any affected person and the requirements of this Act permit.

(4) A decision of the Review Council is not vitiated merely because of any informality or want of form.

(5) The Review Council is not bound by the rules of evidence and may inform itself as it sees fit.

Quorum

13. The quorum for a meeting of the Review Council is 1 judicial member, 1 community member and 1 official member.

Presiding member

14. The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson is to preside at a meeting of the Review Council.

Attendance and voting by Deputy Chairperson at meetings

15. (1) If the Chairperson attends a meeting of the Review Council, the Deputy Chairperson is not entitled to attend the same meeting unless the Chairperson, in his or her discretion, authorises it.

(2) If the Chairperson and Deputy Chairperson are both present at a meeting of the Review Council, the Deputy Chairperson is not entitled to vote at that meeting with respect to any decision.

Decisions

16. A decision supported by a majority of the votes cast at a meeting of the Review Council at which a quorum is present, including the vote cast by a judicial member entitled to vote at the meeting, is the decision of the Review Council. In the case of a tied vote, the judicial member has the casting vote.

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continued

Authentication of documents

17. Each document requiring authentication by the Review Council may be sufficiently authenticated if signed by a person purporting to be the member who presided at the meeting of the Review Council when the proceedings with respect to which the document was prepared took place.

Proof of certain matters not required

18. In any legal proceedings, proof is not required, until evidence is given to the contrary, of

- (a) the constitution of the Review Council; or
- (b) any determination, recommendation or decision of the Review Council; or
- (c) the appointment of, or holding of office by, any member of the Review Council; or
- (d) the presence or nature of a quorum at any meeting of the Review Council.

Power to summon witnesses and take evidence

19. (1) A judicial member may, by instrument in writing, require any person on whom the instrument is served personally or by post:

- (a) to appear before the Review Council for the purpose of giving evidence at a meeting of the Review Council; or
- (b) to produce to the Review Council any document (including a document in the custody or under the control of the person and in the possession of or the property of the Crown) that is relevant to the meeting,

at a time, date and place specified in the instrument.

(2) A judicial member may require a person who appears before the Review Council at a meeting to be sworn for the purpose of giving evidence on oath and may administer an oath accordingly.

(3) If a document is produced to the Review Council at a meeting, the Review Council may take possession of the document for such period as it considers necessary for the purposes of the meeting.

SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
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continued

(4) This clause does not require a person to produce to the Review Council at a meeting any document the production of which the Minister certifies in writing may:

- (a) endanger any person; or
- (b) be otherwise contrary to the public interest.

Examination by judicial member

20. (1) A judicial member may require a person (including an officer or employee of the Crown) who appears before the Review Council at a meeting to answer a question that is reasonably related to the proceedings.

(2) A person is not excused from answering a question put by a judicial member on the ground that the answer tends to incriminate the person.

(3) If a person claims, before answering such a question, that the answer might tend to incriminate the person, neither the question nor the answer is admissible in evidence against the person in criminal proceedings (other than proceedings for an offence against clause 21 (c) or in relation to a charge of perjury in respect of that answer).

Offences

21. A person must not:

- (a) refuse, fail or neglect to comply with a requirement under clause 19 or 20 except to the extent to which the person is lawfully excused from complying with the requirement; or
- (b) in purported compliance with a requirement under clause 19, produce any document knowing it to be false or misleading in a material particular; or
- (c) not having been sworn, make a statement knowing it to be false or misleading in a material particular when appearing before the Review Council at a meeting.

Maximum penalty: 5 penalty units.

Representation etc.

22. At a meeting of the Review Council at which a person is entitled or allowed to make submissions to the Review Council, the person may:

SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
RELATING TO THE SERIOUS OFFENDERS REVIEW BOARD—
continued

- (a) be represented by a barrister or solicitor or, with the consent of the Review Council, by any other person; and
- (b) call and examine any witness who attends the meeting, including any witness called by the Review Council; and
- (c) give evidence on oath; and
- (d) produce documents and exhibits to the Review Council; and
- (e) otherwise adduce, orally or in writing, to the Review Council such matters, and address the Review Council on such matters, as are relevant to the proceedings.

Witnesses' expenses

23. A person who is required to appear or to give evidence before the Review Council at a meeting is entitled to be paid such allowances and expenses (if any) as the Minister may determine in respect of the person.

Record of proceedings

24. (1) The person presiding at a meeting of the Review Council is to cause a record (whether in writing or in electronic form) of the proceedings to be made.

(2) Any such records may be destroyed after the expiration of the period of 5 years after they were made.

(4) Schedule 8 (**Savings and transitional provisions**):

- (a) At the end of clause 1 (1), insert:
Prisons (Amendment) Act 1993.
- (b) After Part 6, insert:

**PART 7—PROVISIONS CONSEQUENT ON
ENACTMENT OF PRISONS (AMENDMENT)
ACT 1993**

- (c) Insert in Part 7:
Serious Offenders Review Board
20. (1) In this Part:

SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
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continued

“abolished Board” means the Serious Offenders Review Board as constituted by this Act immediately before the commencement of Schedule 1 (2) to the Prisons (Amendment) Act 1993;

“existing licence” means a licence to be at large:

- (a) granted under section 463 of the Crimes Act 1900 before 12 January 1990 (being the day on which that section was repealed); and
- (b) which was still in force immediately before the commencement of Schedule 1 (2) to the Prisons (Amendment) Act 1993;

“licensee” means a person holding an existing licence;

“Offenders Review Board” means the Offenders Review Board constituted by section 44 of the Sentencing Act 1989.

(2) The members of the abolished Board who held office immediately before the commencement of this clause cease to hold office on that commencement, but are eligible to be appointed to the Review Council.

(3) A member of the abolished Board who ceases to hold office under subclause (2) is not entitled to any remuneration or compensation because of that loss of office.

(4) Anything done by or in relation to the abolished Board is taken to have been done by or in relation to:

- (a) the Offenders Review Board—in respect of revocations or variations of existing licences of licensees; or
- (b) the Review Council—in all other cases.

(5) A reference in any other Act, in an instrument made under any Act or in any document of any kind, to the abolished Board or a member of the abolished Board is, to the extent the reference relates to a function of the abolished Board or of a member transferred to the Offenders Review Board by the Prisons (Amendment) Act 1993, to be read as a reference to the Offenders Review Board or a member of the Offenders Review Board.

**SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
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(6) A reference in any other Act, in an instrument made under any Act or in any document of any kind, to the abolished Board or a member of the abolished Board is, to the extent the reference relates to a function of the abolished Board or of a member transferred to the Review Council by the Prisons (Amendment) Act 1993, to be read as a reference to the Review Council or a member of the Review Council.

**SCHEDULE 2—AMENDMENTS TO THE PRISONS ACT 1952
RELATING TO THE SEGREGATION OF PRISONERS**

(Sec. 3)

(1) Section 22 (**Segregation of prisoners**):

(a) From section 22 (1), omit “the continued association of a prisoner with other prisoners constitutes a threat to the personal safety of that or any other prisoner or of a prison officer”, insert instead “the association of a prisoner with other prisoners constitutes or is likely to constitute a threat to the personal safety of that or any other prisoner or of any prison officer or other officer of the Department of Corrective Services”.

(b) Omit section 22 (4), insert instead:

(4) The Commissioner must not direct that a prisoner be segregated for a continuous period exceeding 3 months, except as provided by this section.

(5) The Commissioner may direct, on one or more occasions, that the period of segregation of a prisoner be extended, but only if on each occasion the Commissioner has formed an opinion, or received a written request, as required under subsection (6). Extensions must not exceed 3 months at a time.

(6) Subsections (1) and (1A) apply to a direction for the extension of a period of segregation in the same way as they apply to a direction for segregation. However, a direction for the extension of a period of segregation of a prisoner may differ in its terms from any earlier direction for the

**SCHEDULE 2—AMENDMENTS TO THE PRISONS ACT 1952
RELATING TO THE SEGREGATION OF PRISONERS—*continued***

segregation of the same prisoner or for the extension of that segregation.

(7) A direction under this section must be in writing and must include the grounds on which it is given.

(8) A direction under this section given at the request of a prisoner must be revoked by the Commissioner if the prisoner makes a request in writing to the Commissioner for its revocation. Any other direction may be revoked by the Commissioner at any time.

(2) Sections 22A–22F:

After section 22, insert:

Report to Minister on extension of segregation

22A. (1) The Commissioner is to forward a written report to the Minister if the Commissioner directs an extension of a prisoner's period of segregation and:

- (a) the extension will result in the total continuous period of segregation of the prisoner exceeding 6 months; or
- (b) the total continuous period of segregation of the prisoner has already exceeded 6 months.

(2) The report is to be forwarded as soon as reasonably practicable after the direction is given.

(3) The report must give the reasons for the direction.

(4) Subsection (1) does not require a report in relation to any direction for an extension of a period of segregation if the direction is at the request of the prisoner.

Review of segregation by Minister

22B. (1) The Minister may review a direction for the extension of a prisoner's segregation at any time.

(2) After reviewing such a direction, the Minister may confirm, amend or revoke it, or give a new direction instead.

(3) This section applies in relation to a direction:

- (a) whether or not a report has been forwarded under section 22A to the Minister in relation to the direction; and

**SCHEDULE 2—AMENDMENTS TO THE PRISONS ACT 1952
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- (b) whether or not the direction was at the request of the prisoner; and
- (c) whether the direction was given by the Commissioner under section 22, the Minister under this section or the Review Council under section 22F.

Review of segregation by Review Council

22C. (1) A prisoner whose total continuous period of segregation exceeds 2 weeks may apply to the Review Council for a review of the direction for that segregation or of any direction for an extension of it.

(2) The application is to be in writing and to include the prisoner's reasons for making the application.

(3) The Review Council must review the direction unless subsection (4) applies.

(4) The Review Council may reject the application:

- (a) if the application does not, in the opinion of the Review Council, disclose substantial grounds for a review; or
- (b) if the Review Council has previously determined a review of the same direction under this Part and there has been no substantial change in the reasons given in the application for a review since the application was made for the previous review; or
- (c) if the direction was made at the request of the prisoner.

(5) This section applies in relation to a direction whether the direction was given by the Commissioner (or the governor of the prison) under section 22, the Minister under section 22B or the Review Council under section 22F.

Interim directions by Review Council

22D. (1) The Chairperson of the Review Council may give a direction for the suspension of the segregation of a prisoner, or for the removal of a prisoner to a different prison.

(2) Such a direction may be given at any time after application is made for a review and before the review is determined.

**SCHEDULE 2—AMENDMENTS TO THE PRISONS ACT 1952
RELATING TO THE SEGREGATION OF PRISONERS—*continued***

(3) While a direction for such a suspension is in force, the prisoner is not to be segregated unless a fresh direction for segregation is given under this Act.

(4) The Chairperson may vary or revoke a direction for such a suspension.

(5) A direction for such a suspension is not to be taken as a revocation of a direction for segregation or extension of segregation.

(6) A direction for the removal of a prisoner to a different prison may be given in any case where the Chairperson thinks fit, including a case where such removal would facilitate the review of a direction for segregation or extension of segregation.

Procedure for review of segregation

22E. (1) In determining any matter relating to the segregation of a prisoner, the Review Council is not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate and as the proper consideration of the matter before the Review Council permits.

(2) The Review Council may obtain information in writing or by electronic means from any person in relation to a review of a direction.

(3) The Review Council must give notice of any hearing in relation to a review to the prisoner who applied for the review. The Review Council must allow the prisoner to attend the hearing if the prisoner so wishes and an opportunity to be heard at the hearing.

(4) The prisoner may be represented by a legal representative of the prisoner's choice or, if the Review Council so approves, by another person chosen by the prisoner.

(5) Schedule 5 applies to the conduct of a review by the Review Council for the purposes of this Part, subject to this Part.

SCHEDULE 2—AMENDMENTS TO THE PRISONS ACT 1952
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Determination of review by the Review Council

22F. (1) In determining a review of a direction for segregation or for the extension of segregation, the Review Council must take into account the following:

- (a) whether the relevant direction was made in accordance with this Part;
- (b) whether the direction was reasonable in the circumstances;
- (c) whether the direction was necessary to secure the personal safety of any prison officer or other officer of the Department of Corrective Services or any prisoner (including the prisoner whose application is being determined) at the relevant prison;
- (d) the security of, and preservation of good order and discipline within, the relevant prison;
- (e) the interests of the public.

(2) The Review Council may confirm, amend or revoke the direction or give a new direction instead.

(3) Schedule 8 (**Savings and transitional provisions**):

Insert in Part 7 in appropriate numerical order:

Application of amendment to present prisoners

21. Section 22 (as amended by Schedule 2 (1) to the Prisons (Amendment) Act 1993) and sections 22A–22F extend to:

- (a) persons who are prisoners; and
- (b) prisoners who are segregated,

immediately before the commencement of Schedule 2 (1) and (2), respectively, to the Prisons (Amendment) Act 1993.

Decision to be made on existing segregations

22. As soon as practicable after the commencement of Schedule 2 (1) to the Prisons (Amendment) Act 1993, the Commissioner must decide whether to extend, in accordance with section 22 (as amended by that item), the period of segregation of each prisoner whose total continuous period of segregation, as at that commencement, exceeds 3 months.

**SCHEDULE 3—AMENDMENTS TO THE PRISONS ACT 1952
RELATING TO DRUGS FOUND DURING URINE TESTING**

(Sec. 3)

Section 25 (Governor of prison may impose penalties for certain prison offences):

(a) Omit section 25 (4B), insert instead:

(4B) The governor of a prison is not to make an order under subsection (4A) if the prisoner proves that the drug, the presence of which has been shown to be in the prisoner's urine:

- (a) was administered on and in accordance with the prescription of a registered medical practitioner or registered dentist; or
- (b) was lawfully supplied by, and taken in accordance with any instructions given by, a registered medical practitioner, registered dentist or registered nurse; or
- (c) was taken or administered in such form or preparation as may be exempted by the regulations in relation to the drug under this section; or
- (d) was present in a quantity that does not exceed the quantity (if any) prescribed in relation to the drug under this section; or
- (e) was not a drug within the meaning of this section at the time it was taken by the prisoner or administered to the prisoner.

(b) Omit section 25 (7), insert instead:

(7) In this section:

“drug” means:

- (a) a prohibited drug or prohibited plant within the meaning of the Drug Misuse and Trafficking Act 1985; or
- (b) any other drug (including a substance prescribed for the purposes of section 16 of the Poisons Act 1966) prescribed by the regulations under this Act as a drug for the purposes of this definition.

SCHEDULE 4—OTHER AMENDMENTS TO THE PRISONS ACT 1952

(Sec. 3)

- (1) Section 8A (**Official Visitors**):
- (a) Omit section 8A (1), insert instead:
- (1) For each prison, the Minister is to appoint at least one Official Visitor.
- (b) In section 8A (4) (a), after “prisoners”, insert “and, unless prevented by illness or other sufficient cause, for the purpose of examining the prison”.
- (2) Section 10 (**Visiting Justices**):
- Omit section 10 (2), insert instead:
- (2) A Visiting Justice may visit the prison at any time he or she thinks fit.
- (3) Section 28 (**Removal of prisoners to hospital**):
- In section 28 (3), after “from which the prisoner was removed”, insert “or such other prison as the Commissioner may direct”.
- (4) Section 29 (**Absence from prison in certain circumstances permitted**):
- (a) In section 29 (1), after “prison” where secondly occurring, insert “, on such conditions as may be prescribed and such conditions as may be specified in the order,”.
- (b) In section 29 (3) (a), after “permit”, insert “or order under subsection (1) (being a condition which is prescribed or specified in the permit or order)”.
- (c) In section 29 (3) (b), after “permit”, insert “or order under subsection (1)”.
- (d) In section 29 (4), after “permit” wherever occurring, insert “or order under subsection (1)”.
- (5) Section 31B (**Management of prison under agreement**):
- (a) Omit section 31B (1), insert instead:
- (1) The Commissioner may enter into an agreement (“**the management agreement**”) with a corporation (“**the management company**”) providing for the management of one or more prisons.

SCHEDULE 4—OTHER AMENDMENTS TO THE PRISONS ACT
1952—*continued*

- (b) From section 31B (2), omit “agreement” where firstly occurring, insert instead “management agreement”.
- (c) Omit section 31B (2) (f), insert instead:
- (f) prohibition of subcontracting by the management company, except as provided by subsections (3A) and (3B) or to the extent otherwise approved by the Commissioner; and
- (d) From section 31B (3), omit “agreement”, insert instead “management agreement”.
- (e) After section 31B (3), insert:
- (3A) The management company may, with the approval of the Commissioner, enter an agreement (“**the submanagement agreement**”) with respect to the management of the prison on its behalf and in accordance with the management agreement by another corporation (“**the submanagement company**”).
- (3B) The submanagement agreement may make such other provision, not inconsistent with this Act or the regulations, as may be agreed for or with respect to the management of the prison by the submanagement company.
- (f) From section 31B (4), omit “subsection (3)”, insert instead “subsections (3) and (3B)”.
- (6) Section 31D (**Status of staff at prison managed under an agreement**):
- In section 31D (1) and (4), after “management company” wherever occurring, insert “or submanagement company”.
- (7) Section 31E (**Monitoring**):
- In section 31E (3), after “management company”, insert “or submanagement company”.
- (8) Section 31F (**Prison Medical Service**):
- Omit section 31F (2) (b), insert instead:
- (b) affects any duty of the management company, the submanagement company or of a prison medical officer under this Act or the regulations or any agreement.

SCHEDULE 4—OTHER AMENDMENTS TO THE PRISONS ACT
1952—*continued*

- (9) Sections 31G (**Investigation of corruption**); 31H (**Administrative complaints**); 31I (**Freedom of information**) and 31J (**Minimum standards**):

After “management company”, wherever occurring, insert “or submanagement company”.

- (10) Section 38B:

After section 38A, insert:

Impersonating a prison officer

38B. A person who impersonates a prison officer is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

- (11) Section 40A (**Gaol delivery**):

In section 40A (1), after “sentence,”, insert “for more than 3 months (or such lesser period as may be prescribed),”.

- (12) Section 40C:

After section 40B, insert:

Delegations by governors of prisons

40C. The governor of a prison may (with the approval of the Commissioner) delegate to a person any of the governor’s functions, other than this power of delegation or functions delegated to the governor by the Commissioner.

- (13) Section 41:

Omit the section, insert:

Expiration of sentence

41. (1) A prisoner may be discharged from prison at any time during the 24 hours before the time at which the prisoner would otherwise be due to be discharged from prison.

(2) The discharge of any prisoner from prison may, with the prisoner’s consent, be delayed during any Saturday, Sunday or public holiday to the first day following that is not a Saturday, Sunday or public holiday.

SCHEDULE 4—OTHER AMENDMENTS TO THE PRISON ACT
1952—*continued*

(3) A reference in this section (except in subsection (2)) to a prisoner does not include a person referred to in paragraph (c) of the definition of “**convicted prisoner**” in section 4 (1).

(14) Section 44 (**Attendance of prisoner before court etc.**):

- (a) From section 44 (1), omit “coroner”, insert instead “any coroner or appropriate officer”.
- (b) From section 44 (1), omit “then pending”.
- (c) After section 44 (2), insert:

(3) In this section, “**appropriate officer**” means a Clerk of a Local Court, a Registrar or Deputy Registrar of the District Court or a Registrar of the Supreme Court.

(15) Section 50 (**Regulations**):

- (a) Omit section 50 (1) (a1), insert instead:
 - (a1) the visits and examinations of prisons by Official Visitors and the holding of inquiries and the making of reports by Visiting Justices and persons appointed under section 11A (1);
- (b) After section 50 (1) (m2), insert:
 - (m3) the eligibility of prisoners to apply for orders pursuant to section 29 (1), applications for orders, the frequency of the making of orders, the conditions of orders and the giving of notices to prisoners to whom an order relates;
- (c) From section 50 (1) (p), omit “prison officers”, insert instead “officers of the Department of Corrective Services”.

(16) Schedule 8 (**Savings and transitional provisions**):

Insert in Part 7 in appropriate numerical order:

Application of amendments to Official Visitors

23. A person holding office as an Official Visitor immediately before the amendment made to section 8A (1) by Schedule 4 (1) to the Prisons (Amendment) Act 1993 is taken to have been appointed under that subsection as amended subject to the same terms and conditions as applied to the appointment immediately before the amendment.

SCHEDULE 4—OTHER AMENDMENTS TO THE PRISONS ACT
1952—*continued***Application of amendments to Part 6A**

24. A management agreement in force immediately before the amendment of Part 6A by the Prisons (Amendment) Act 1993 is taken to be an agreement made under that Part, as amended.

Part 6A—validation

25. Any act, matter or thing done or purporting to be done on or after 7 August 1991 in relation to the Junee Correctional Centre that would have been validly done if Part 6A, as amended by Schedule 4 to the Prisons (Amendment) Act 1993, had been in force is validated.

*[Minister's second reading speech made in—
Legislative Council on 28 October 1993
Legislative Assembly on 11 November 1993 a.m.]*