

Act 1993 No. 89

## PRISONS (AMENDMENT) BILL 1993 (No. 2)

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The Sentencing (Amendment) Bill 1993 (No. 2) is cognate with this Bill.

The object of this Bill is to amend the Prisons Act 1952:

- to abolish the Serious Offenders Review Board
- to constitute the Serious Offenders Review Council (“the Review Council”) and to provide for its membership and general procedure
- to transfer to the Review Council certain of the functions of the Serious Offenders Review Board relating to serious offenders
- to enable the Review Council to delegate some of its functions to a Serious Offenders Management Committee (“the Management Committee”)
- to provide additional procedures for the review of directions for the segregation of prisoners
- to extend the grounds on which a prisoner can rely on with respect to the governor of a prison being prevented from making an order depriving the prisoner of amenities or privileges following a drug test which detects the presence of a drug in the prisoner’s urine
- to extend the definition of “drug” in section 25 to cover drugs that are prescribed as drugs
- to make miscellaneous other amendments to the Act as described below.

The Bill also amends the Defamation Act 1974 to extend the defence of absolute privilege to defamation proceedings arising out of publications in connection with proceedings of the Review Council and the Management Committee.

---

**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act commences (with minor exceptions) on a day or days to be appointed by proclamation.

**Clause 3** gives effect to the Schedules amending the Prisons Act 1952.

*Prisons (Amendment) 1993 (No. 2) [Act 1993 No. 89]*

---

**Clause 4** is an amendment that is consequential on the proposed constitution of the Review Council and the establishment of the Management Committee. It replaces section 17CA of the Defamation Act 1974 with a new section to provide for a defence of absolute privilege against defamation proceedings arising out of publications in connection with proceedings of the Review Council and the Management Committee under the Prisons Act 1952. The proposed section retains the existing defence for proceedings of the Offenders Review Board under the Sentencing Act 1989.

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

**Schedule 1 (1)** omits the definition of “Board” and inserts new definitions of “Management Committee” and “Review Council\*\*.

**Schedule 1 (2)** replaces Part 10 of the Act (which currently deals with the Serious Offenders Review Board) with a new Part to make provision for the Review Council and the Management Committee. The new Part contains the following provisions:

Proposed section 59 contains definitions of terms used in the new Part, “Serious offender\*” is defined to include the following persons:

- a person serving a sentence of penal servitude for life
- a person serving any sentence for which a minimum term and an additional term has been set by the Supreme Court under section 13A of the Sentencing Act 1989
- an offender serving a minimum sentence of 12 years’ imprisonment or more
- a person who is to be managed as a serious offender in accordance with a decision of the Commissioner of Corrective Services (“the Commissioner”), a sentencing court or the Offenders Review Board
- 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
- an offender who belongs to a class of offenders prescribed by the regulations to be serious offenders.

Proposed section 60 constitutes the Serious Offenders Review Council.

Proposed section 61 provides that the Review Council is to consist of 7 members and specifies the qualifications necessary for a member.

Proposed section 62 sets out the functions of the Review Council which include the following:

- to provide advice and make recommendations to the Commissioner concerning the management of serious offenders and developmental programs within correctional institutions
- to provide reports and give advice to the Offenders Review Board concerning the parole of serious offenders
- to prepare and submit reports to the Supreme Court concerning offenders serving existing life sentences who are seeking to have the Court specify a minimum term and an additional term under section 13A of the Sentencing Act 1989
- to review directions for the segregation of prisoners

- to provide reports and advice to the Minister
- to provide reports and advice to such other persons and bodies concerning serious offenders as are prescribed by the regulations
- to perform such other functions involving the management of serious offenders and other prisoners as may be prescribed by the regulations.

Proposed section 63 enables the Review Council to establish a Serious Offenders Management Committee and to delegate to the Management Committee certain of its functions. The proposed section also specifies the membership requirements for the Management Committee.

Proposed section 64 ensures that the Review Council does not have to provide any person with documents if the provision of those documents would pose certain security problems.

Proposed section 65 requires the Review Council to furnish the Minister with an annual report of its activities which the Minister is to lay before Parliament.

Proposed section 66 is a formal provision giving effect to proposed Schedule 5.

**Schedule 1 (3)** replaces Schedule 5 which deals with the members and procedure of the former Serious Offenders Review Board with a new Schedule containing provisions concerning the members and the procedure of the Review Council. The new provisions are substantially the same as those contained in the Schedule to be replaced.

**Schedule 1 (4)** enacts savings and transitional provisions relating to the former Serious Offenders Review Board.

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

Section 22 of the Prisons Act 1952 presently provides for the segregation of prisoners for their personal safety, the safety of other prisoners or prison officers, or the security, good order or discipline of the prison where the prisoners are in detention. Segregation of a prisoner may also be granted at the written request of the prisoner.

**Schedule 2 (1)** amends section 22 to provide that the Commissioner may only extend a prisoner's segregation by up to 3 months at a time, and each time the extension must be for reasons of safety, security, order or discipline or based on a prisoner's written request. Both the original direction for segregation and any direction for extension are to be in writing and to include the grounds on which they are given. The amendments to section 22 also make it clear that a segregation direction can be given before or when a prisoner enters prison if it is likely that, on entry, there would be an immediate threat to safety, security, order or discipline.

With the introduction of what is, in effect, a review requirement in relation to continued segregation, the existing requirement (in section 22 (4)) that the Minister approve any period of segregation exceeding 6 months is omitted. The existing requirement entails a degree of review at the outset of any period of continued segregation, but does not provide for any subsequent or periodic review.

**Schedule 2 (2)** inserts new sections 22A–22F containing specific procedures for the independent review of segregation directions. Proposed section 22A requires the Commissioner to report to the Minister any cases where a prisoner continues to be segregated for more than 6 months (unless at the request of the prisoner). Proposed

section 22B provides that the Minister may review any case of an extension of segregation at any time (even when the extension is at the request of the prisoner). In addition, a prisoner may apply to the Review Council for a review of any segregation period exceeding 2 weeks (proposed sections 22C–22F).

**Schedule 2 (3)** provides that the new system of segregation review and extension applies in relation to all prisoners, whenever they entered prison.

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

At present, section 25 (4A) enables the governor of a prison to make an order depriving a prisoner of specified amenities or privileges for up to 6 months if a drug test detects the presence of a drug in the prisoner's urine. Section 25 (4B) currently provides that the governor is not to make such an order if the prisoner proves that the drug was administered on the prescription of a medical practitioner.

**Schedule 3 (a)** replaces section 25 (4B) with a new subsection providing that, in addition to the above ground, the governor of a prison is not to make an order under section 25 (4A) if the prisoner proves that the drug detected in the prisoner's urine:

- was administered on the prescription of a registered dentist; or
- was lawfully supplied and taken in accordance with any instructions given by a registered nurse, dentist or medical practitioner; or
- was taken or administered in certain other circumstances (e.g. if the prisoner proves that it was taken or administered in a form exempted by the regulations or that it was present in a quantity that does not exceed the prescribed amount, if any).

**Schedule 3 (b)** widens the definition of “drug” in section 25 (the expression is presently defined as a prohibited drug or prohibited plant within the meaning of the Drug Misuse and Trafficking Act 1985) to cover any other drug (including those that can be supplied only on prescription) prescribed by the regulations as a drug for the purposes of the definition.

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

**Schedules 4 (1)–(2)** amend sections 8A and 10 to provide for the prison examination functions previously undertaken by Visiting Justices under section 10 (2) to be undertaken by Official Visitors. A new section 10 (2) is inserted to confirm that a Visiting Justice may visit a prison at any time he or she thinks fit. Schedule 4 (15) (a) makes a consequential amendment to section 50 (Regulations).

**Schedule 4 (3)** amends section 28 to enable a prisoner who is discharged from hospital to be placed in whichever prison the Commissioner may direct. At present, such prisoners must be returned to the prison from which they were removed when hospitalised.

**Schedule 4 (4)** amends section 29 so that conditions may be prescribed by the regulations or specified by the Commissioner in relation to certain forms of temporary absence from prison (for example, day leave or work release) which may be permitted by order of the Commissioner under section 29 (1). Provision is made to enable the Commissioner to vary or omit (and to substitute or add new) conditions specified by the

Commissioner and for return to prison of a prisoner who has breached a condition. **Schedule 4 (15) (b)** makes a consequential amendment to section 50 to enable regulations to be made in relation to orders made by the Commissioner under section 29 (1).

**Schedule 4 (5)–(9)** amends Part 6A to enable the management company of a prison to enter a submanagement agreement to subcontract its functions (including those relating to employment of the governor and staff of a prison) to a submanagement company approved by the Commissioner.

**Schedule 4 (10)** inserts section 38B into the Act to make it an offence to impersonate a prison officer.

**Schedule 4 (11)** amends section 40A to ensure that persons detained in prison while awaiting committal, trial or sentence for more than 3 months (or such lesser period as may be prescribed by the regulations) are included in the written return that the Commissioner must furnish to the Minister of all the in prison.

**Schedule 4 (12)** inserts section 40C into the Act to enable governors of prisons to delegate their functions to others, subject to the Commissioner's approval.

**Schedule 4 (13)** replaces section 41 with a new section that enables prisoners to be released at any time within the 24 hours before they are due to be released.

**Schedule 4 (14)** amends section 44:

- to confirm that a court, judge or person constituting the court, a coroner or appropriate officer has the power to order the governor of a prison to produce before the court a prisoner in the governor's custody for the purpose of executing a warrant against the prisoner; and
- to ensure that an order may be made under the section by a Clerk of a Local Court, a Registrar or Deputy Registrar of the District Court or a Registrar of the Supreme Court.

**Schedule 4 (15) (c)** amends section 50 (1) to enable provision to be made by regulation for the striking, awarding and wearing of medallions and the conferring of awards for bravery, good conduct and long service of all officers of the Department of Corrective Services.

**Schedule 4 (16)** inserts certain provisions of a savings and transitional nature. In particular, provision is made in proposed clause 25 to confirm the validity (as from 7 August 1991) of the employment of the governor and the staff of the Junee Correctional Centre by Australasian Correctional Management Pty. Ltd. under a submanagement agreement with Australasian Correctional Services Pty. Ltd.

---