

FIRST PRINT

PRISONS (AMENDMENT) BILL 1993

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Sentencing (Amendment) Bill 1993 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.

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.

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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 a number of 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
- 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 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 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

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- 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 serious offenders 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.

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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.

Item (a) of Schedule 3 substitutes section 25 (4B) to provide 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).

Item (b) of Schedule 3 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.

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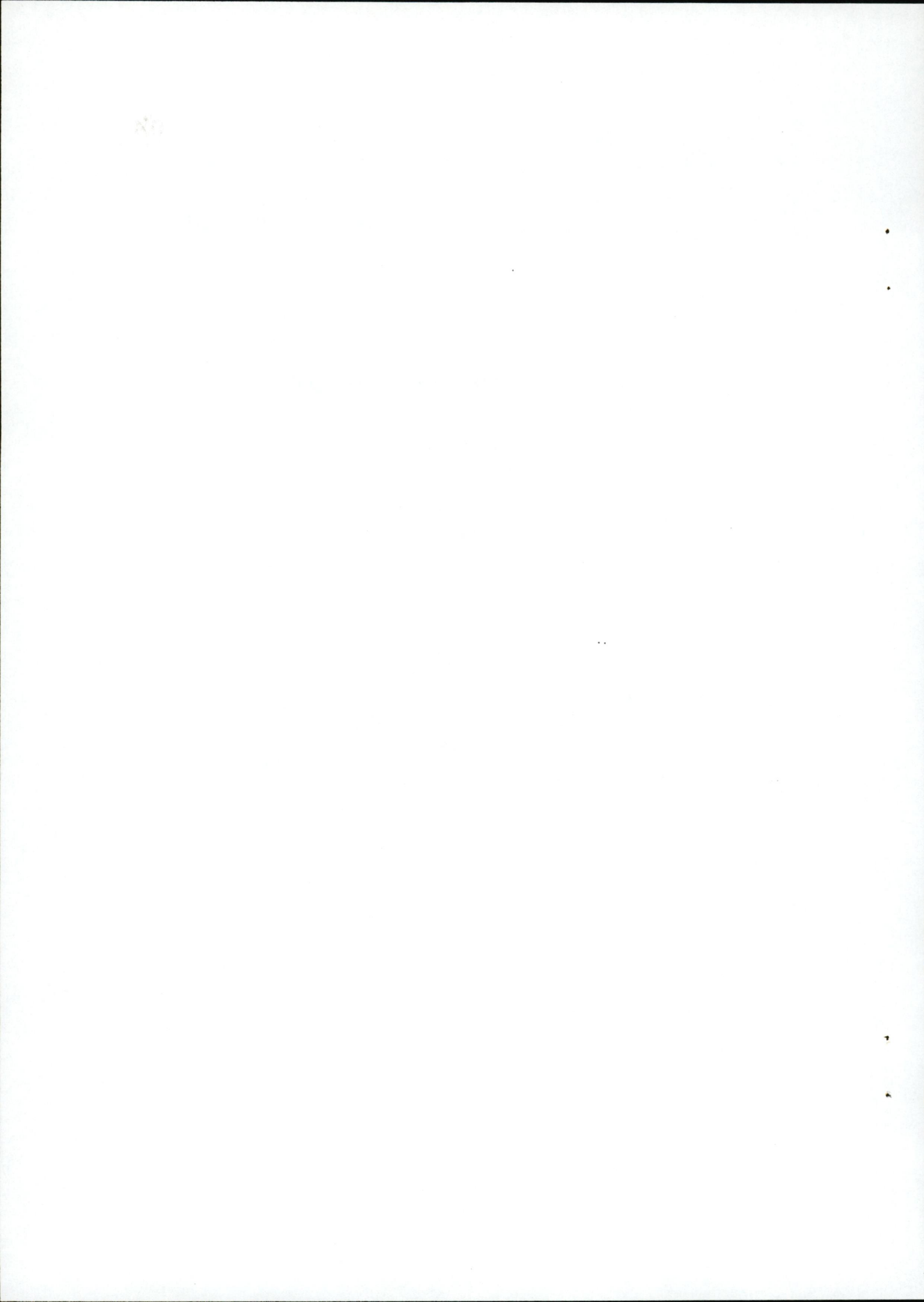
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SCHEDULE 2—AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
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SCHEDULE 3—AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
DRUGS FOUND DURING URINE TESTING



PRISONS (AMENDMENT) BILL 1993

NEW SOUTH WALES



No. , 1993

A BILL FOR

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.

See also Sentencing (Amendment) Bill 1993.

Prisons (Amendment) 1993

The Legislature of New South Wales enacts:

Short title

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

Commencement

- 5 **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 Schedules 1–3, commences on the day on which the provision commences.
- (3)** Schedule 1 (4) (a) and (b) commences on the date of assent.

10 **Amendment of Prisons Act 1952 No. 9**

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

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:

15 **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:

- 20 **(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:
- 25 • 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; and
- 30 **(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**): 5
- (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. 10
- (2) Part 10:
- Omit the Part, insert instead:
- PART 10—SERIOUS OFFENDERS REVIEW
COUNCIL** 15
- Definitions**
59. In this Part:
- “Offenders Review Board”** means the Offenders Review Board constituted by section 44 of the Sentencing Act 1989; 20
- “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 25
- (c) an offender who is serving a minimum term of imprisonment of 12 years; or
- (d) a person 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 30

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SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
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- 5 (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
- 10 (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

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

Membership of the Review Council

- 20 61. (1) The Review Council is to consist of:
- (a) 5 members appointed by the Governor; and
- (b) 2 official members, being members of the Department
 of Corrective Services nominated for the time being by
 the Commissioner.
- (2) Of the members appointed by the Governor:
- 25 (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
 30 the community.

Functions of the Review Council

- 35 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;
 - the review of developmental programs provided
 for serious offenders;

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SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
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REVIEW BOARD—*continued*

- (b) to provide reports and advice to the Offenders Review Board concerning the release on parole of serious offenders; 5
- (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; 10
- (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; 15
- (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** 20
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. 25
- (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. 30
- (3) An official member of the Review Council is to be the Chairperson of the Management Committee.
- (4) 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. 35
- (5) The functions of the Review Council that may be delegated to the Management Committee include (but are not limited to) the following: 40

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SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
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REVIEW BOARD—*continued*

- 5 (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.

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

- 10 (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.

15 **Security of certain information**

64. Nothing in this Part requires a serious offender 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 serious offender might:

- 20 (a) adversely affect the security, discipline or good order of a prison; or
- (b) endanger the serious offender or any other person; or
- (c) jeopardise the conduct of any lawful investigation; or
- 25 (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.

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.

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

(3) Schedule 5:

Omit the Schedule, insert instead: 5

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

(Sec. 66)

Definitions 10

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); 15

“**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; 20

“**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; 25

“**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. 30

**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: 35

(a) Chairperson of the Review Council; and

(b) Deputy Chairperson of the Review Council.

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SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
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5 (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.

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

15 (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

20 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.

25 (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.

30 (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.

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

35 (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

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

- (b) the Deputy Chairperson is taken to be absent from the office of Deputy Chairperson while acting as Chairperson. 5
- 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. 10
- (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. 15
- 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. 20
- 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. 25
- 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 30
 - (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 35

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SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
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- 5 (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
10 (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

- 15 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

- 20 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

- 25 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.
30 (2) If a committee is established:
(a) the members of that committee may be members of the Review Council; and
35 (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

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SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
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REVIEW BOARD—*continued*

- (c) the Review Council may delegate to that committee such of its functions as may be prescribed. 5
- 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. 10
- (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: 15
- (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. 20
- (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 25
- (b) are not to be conducted in an adversarial manner; and
- (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. 30
- (4) A decision of the Review Council is not vitiated merely because of any informality or want of form. 35
- (5) The Review Council is not bound by the rules of evidence and may inform itself as it sees fit.

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SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
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Quorum

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

Presiding member

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

Attendance by Deputy Chairperson at meetings

15 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.

20 (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

25 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.

Authentication of documents

30 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

35 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

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SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
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- (b) any determination, recommendation or decision of the Review Council; or 5
- (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** 10
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 15
- (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. 20
- (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. 25
- (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: 30
- (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. 35

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

5 (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.

10 (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

- 15 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
- 20 (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.

25 Maximum penalty: 5 penalty units.

Representation etc.

- 30 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:
- (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
- 35 (c) give evidence on oath; and
- (d) produce documents and exhibits to the Review Council; and

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SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952
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- (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. 5
- 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. 10
- 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. 15
- (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. 20
- (b) After Part 6, insert:
**PART 7—PROVISIONS CONSEQUENTIAL ON
ENACTMENT OF PRISONS (AMENDMENT)
ACT 1993**
- (c) Insert in Part 7 (renumbering the clause if appropriate): 25
Serious Offenders Review Board
20. (1) In this Part:
- “**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; 30
- “**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 35
- (b) which was still in force immediately before the commencement of Schedule 1 (2) to the Prisons (Amendment) Act 1993;

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

“licensee” means a person holding an existing licence;

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

10 (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.

15 (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.

20 (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.

25 (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.

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**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”. 5
10

(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. 15

(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. 20

(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 segregation of the same prisoner or for the extension of that segregation. 25

(7) A direction under this section must be in writing and must include the grounds on which it is given. 30

(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. 35

Prisons (Amendment) 1993

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

(2) Sections 22A–22F:

After section 22, insert:

5 **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:

- 10 (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.

15 (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.

20 **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.

25 (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
- (b) whether or not the direction was at the request of the prisoner; and
- 30 (c) whether the direction was given by the Commissioner under section 22, the Minister under this section or the Review Council under section 22F.

35 **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.

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

(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. 5

(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 10

(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 15

(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. 20

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. 25

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

(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. 30

(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. 35

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

5 (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

10 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.

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

20 (3) In conducting a review of a direction, the Review Council must allow the prisoner who applied for the review a hearing. That hearing must be in person if the prisoner so requests.

25 (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.

Determination of review by the Review Council

30 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:

- 35 (a) whether the relevant direction was made in accordance with this Part;
- (b) whether the direction was reasonable in the circumstances;
- 40 (c) whether the direction was necessary to secure the personal safety of any prison officer or other officer or any prisoner (including the prisoner whose application is being determined) at the relevant prison;

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

(d) the security of, and preservation of good order and discipline within, the relevant prison;

(e) the interests of the public. 5

(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 (renumbering the clauses if appropriate):

Application of amendment to present prisoners 10

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, 15

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. 20

**SCHEDULE 3—AMENDMENTS TO THE PRISONS ACT 1952
RELATING TO DRUGS FOUND DURING URINE TESTING 25**

(Sec. 3)

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

(a) Omit section 25 (4B), insert instead: 30

(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:

Prisons (Amendment) 1993

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

- 5 (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
- 10 (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
- 15 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:
- 20 (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
- 25 (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.
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