

Legislative Council—No 11A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 7 December 2004

South Australia

**Correctional Services (Miscellaneous) Amendment
Bill 2004**

A BILL FOR

An Act to amend the *Correctional Services Act 1982*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Correctional Services (Miscellaneous) Amendment Act 2004*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Correctional Services Act 1982*

4—Amendment of section 4—Interpretation

- (1) Section 4—after the definition of *the Advisory Council* insert:

5 *alcotest* means a test, by means of apparatus approved for the purpose of conducting alcotests under the *Road Traffic Act 1961*, by which the presence of alcohol in the blood of a person who exhales into the apparatus is indicated;

analyst has the same meaning as in the *Controlled Substances Act 1984*;

biological sample means a sample of urine, saliva or sweat;

- 10 (2) Section 4—delete the definition of *drug* and substitute:

drug means—

 (a) alcohol; or

 (b) a substance that is a prescription drug, a drug of dependence or a prohibited substance under the *Controlled Substances Act 1984*;

15 *drug test* means an alcotest or a prescribed procedure; and *drug testing* has a corresponding meaning;

- (3) Section 4—after the definition of *manager* insert:

20 *nearest police station*, in relation to a person who has been arrested without warrant under this Act, means the police station nearest to the place of arrest at which facilities are continuously available for the care and custody of the person arrested;

- (4) Section 4—after the definition of *police prison* insert:

25 *prescribed procedure* means a procedure, prescribed by regulation, consisting of the taking of a biological sample from a person for analysis for the purpose of ascertaining the presence of a drug in the body of the person from whom the sample was taken;

5—Amendment of section 27—Leave of absence from prison

- (1) Section 27—after subsection (1) insert:

30 (1a) However, a prisoner may not be granted leave to be absent from the place in which he or she is being detained in circumstances set out in the regulations.

- (2) Section 27(2)—after "one or more" insert:

 officers or

- (3) Section 27(3)—delete subsection (3) and substitute:

35 (3) The Chief Executive Officer may, by written order, revoke a leave of absence granted under this section, or vary or revoke any of the conditions to which it is subject or impose further conditions.

- (4) Section 27(4)—after "police force or any" insert:
officer or

6—Insertion of section 27A

After section 27 insert:

27A—Interstate leave of absence

- (1) The following provisions apply in relation to a request under section 27 for leave of absence to be taken outside of this State:

- (a) the leave may only be granted in respect of a participating State;
- (b) the period of leave cannot exceed 7 days, but successive grants of leave can be made;
- (c) the Chief Executive Officer must give written notice of the leave to—
- (i) the chief officer of police and the corresponding chief executive in the State in which the leave will be taken; and
- (ii) the chief officer of police in any other State through which the prisoner will have to travel by land;
- (d) the prisoner remains in the custody of the Chief Executive Officer despite being outside the State.

- (2) The following provisions apply in relation to an interstate prisoner who has been granted leave of absence under a corresponding law:

- (a) an order or permit under a corresponding law appointing an escort for the prisoner has effect, according to its terms, while the prisoner is in this State, except for any period during which the prisoner is detained in a correctional institution;
- (b) if the prisoner is in the custody of an escort and requires overnight accommodation while in this State, the prisoner may be detained in a correctional institution for that period, and the order or permit for the leave is sufficient authority for that detention (whether or not the leave is to be taken in this State);
- (c) if, while the prisoner is in this State, the prisoner escapes or attempts to escape from custody, breaches a condition to which the leave is subject or is otherwise unlawfully at large, the prisoner may be arrested, without warrant, by—
- (i) an officer or employee of the Department; or
- (ii) a member of the police force; or
- (iii) the prisoner's escort (if any),
and taken to the nearest police station;

- (d) a prisoner who is arrested under paragraph (c) must be brought before a magistrate within 2 working days of the day of arrest and may be detained in a correctional institution until that occurs;
- 5 (e) the magistrate may, if he or she thinks it appropriate in such a case, order that the prisoner—
- (i) be returned by the prisoner's escort to the State in which the leave was granted; or
- 10 (ii) be delivered into the custody of an escort for the purposes of being returned to that State,
- as the case may require (and no right of appeal lies against such an order);
- (f) if an order is made under paragraph (e)(ii)—
- 15 (i) the prisoner may be detained in a correctional institution until—
- (A) the order is executed; or
- (B) the expiration of 7 days from the making of the order,
- whichever occurs first; and
- 20 (ii) the order, if not executed, expires at the end of that 7 day period;
- (g) the prisoner will, while detained in a correctional institution under this section, be taken to be a prisoner for the purposes of this Act.
- 25 (3) In this section—
- corresponding chief executive***, in relation to a participating State, means the officer responsible for the administration of prisons in that State;
- corresponding law*** means a law prescribed by regulation to be a corresponding law for the purposes of this section;
- 30 ***escort***, in relation to a prisoner or an interstate prisoner, means a person authorised or appointed under this Act or the law of the participating State to have custody of the prisoner for the purposes of leave of absence, or return from leave of absence, as the case may be;
- 35 ***interstate prisoner*** means a person subject to detention in a participating State who has been granted leave of absence under a corresponding law;
- participating State*** means a State in which a corresponding law is in force;
- 40 ***State*** means a State or Territory of the Commonwealth.

7—Amendment of section 29—Work by prisoners

Section 29—after subsection (4) insert:

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

8—Amendment of section 31—Prisoner allowances and other money

Section 31(2)—delete "pursuant to this Division" and substitute:

under this Division (not being work performed under section 29(5))

10 **9—Amendment of section 33—Prisoners' mail**

Section 33(3)—after paragraph (i) insert:

- (j) material relating to, or that constitutes, work by the prisoner that the prisoner is not authorised to perform.

10—Amendment of section 37—Search of prisoners

- 15 (1) Section 37(1)(c)—delete "specimen of his or her urine" and substitute:

biological sample

- (2) Section 37—after subsection (1) insert:

- 20 (1a) The manager of a correctional institution may also cause a prisoner's belongings to be searched if, for the purpose of detecting items prohibited by the regulations, the manager—

- (a) proposes that the belongings of all prisoners within the institution, or a part of the institution, be searched; or
(b) causes the random selection of prisoners from the whole, or a part, of the institution for the purposes of such a search and the prisoner falls within the selection.

- 25 (3) Section 37—after subsection (5) insert:

- 30 (6) The annual report submitted under this Act by the Chief Executive Officer in respect of a financial year must include particulars of—
(a) the number of searches conducted under subsection (1a) in respect of each correctional institution during the year; and
(b) the number and general description of items prohibited by the regulations detected in the institution during those searches.

11—Substitution of section 37AA

Section 37AA—delete the section and substitute:

37AA—Drug testing of prisoners

- 5
- (1) The manager of a correctional institution may require a prisoner to undergo a drug test in any of the following circumstances:
- (a) on the initial admission of the prisoner to the institution;
- (b) on the prisoner returning to the institution after being absent;
- (c) if the manager reasonably suspects that the prisoner has unlawfully used a drug;
- 10
- (d) if, for the purpose of ascertaining the incidence of unlawful drug use in the correctional institution, the manager—
- (i) proposes that all prisoners within the institution, or a part of the institution, undergo a drug test; or
- (ii) causes the random selection of prisoners from the whole, or a part, of the institution to undergo a drug test and the prisoner falls within the selection;
- 15
- (e) in any other circumstance that the Chief Executive Officer thinks fit.
- (2) For the purposes of this Act, a prisoner *uses a drug* if the prisoner—
- 20
- (a) consumes or smokes, or administers to himself or herself, the drug; or
- (b) permits another person to administer the drug to him or her.
- (3) In proceedings for an offence against this Act or any other Act—
- 25
- (a) if the proceedings relate to the unlawful use of alcohol—a certificate apparently signed by an authorised officer and certifying—
- (i) that the prisoner named in the certificate submitted to an alcotest on a day and at a time stated in the certificate; and
- 30
- (ii) that the alcotest was carried out in conformity with the requirements of this Act using apparatus of a kind approved by the Governor under the *Road Traffic Act 1961* for the purposes of carrying out alcotests; and
- 35
- (iii) that the alcotest produced a reading of a specified level of alcohol in the prisoner's blood,
- is, in the absence of proof to the contrary, proof of the matters so certified;
- 40
- (b) if the proceedings relate to the unlawful use of any other drug—

- (i) a certificate apparently signed by an authorised officer and certifying—
- (A) that the prisoner named in the certificate submitted to a specified prescribed procedure on a day and at a time stated in the certificate; and
 - (B) that the procedure was carried out in conformity with the requirements of this Act; and
 - (C) that the biological sample obtained as a result of the procedure was assigned a specified identifying number; and
- (ii) a certificate apparently signed by an analyst and certifying that the drug specified in the certificate was found to be present in the biological sample assigned that number,

is, in the absence of proof to the contrary, proof of the matters so certified.

- (4) In this section—

authorised officer means an officer or employee of the Department authorised by the Chief Executive Officer for the purposes of this section.

12—Amendment of section 37A—Release on home detention

Section 37A(1a) and (2)—delete subsections (1a) and (2) and substitute:

- (2) The exercise by the Chief Executive Officer of the discretion under subsection (1) is subject to the following limitations:
- (a) a prisoner who is serving or is liable to serve a sentence of indeterminate duration and has not had a non-parole period fixed cannot be released on home detention;
 - (b) a prisoner cannot be released on home detention unless—
 - (i) in the case of a prisoner in respect of whom a non-parole period has been fixed—the prisoner has served at least one-half of the non-parole period;
 - (ii) in any other case—the prisoner has served at least one-half of the prisoner's total term of imprisonment;
 - (c) the release of a prisoner on home detention cannot occur earlier than 1 year before—
 - (i) in the case of a prisoner in respect of whom a non-parole period has been fixed—the end of the non-parole period;

(ii) in the case of a prisoner in respect of whom a non-parole period has not been fixed but whose total term of imprisonment is more than 1 year—the day on which the prisoner would otherwise be released from prison under this Act;

(d) any limitations determined from time to time by the Minister, which may include, without limitation, the exclusion of prisoners sentenced for a specified class of offence or any other class of prisoners from release on home detention.

13—Amendment of section 52—Power of arrest

(1) Section 52(1)—After "An" insert:

officer or

(2) Section 52(1)(a)—after "the officer" insert:

or employee

(3) Section 52(1)(b)—after "any person who the" insert:

officer or

(4) Section 52(2)—after "An" insert:

officer or

14—Amendment of section 85—Execution of warrants

Section 85—after "An" insert:

officer or

15—Substitution of sections 85A and 85B

Sections 85A and 85B—delete the sections and substitute:

85A—Exclusion of persons from correctional institution

(1) Despite any other provision of this Act—

(a) if the manager of a correctional institution believes on reasonable grounds that a person lawfully attending the institution in any capacity (other than a member of the staff of the institution) is interfering with or is likely to interfere with the good order or security of the institution, the manager—

(i) may cause the person to be refused entry to or removed from the institution, using only such force as is reasonably necessary for the purpose; and

(ii) may, in the case of a person who visits or proposes to visit a prisoner under section 34, by written order, exclude the person from the institution until further order or for a specified period; and

5 (b) if the Chief Executive Officer believes on reasonable grounds that a person who visits or proposes to visit a prisoner in a correctional institution under section 34 is interfering with or is likely to interfere with the good order or security of that or any other correctional institution, the Chief Executive Officer may, by written order, direct that the person be excluded from a specified correctional institution, all correctional institutions of a specified class, or all correctional institutions, until further order or for a specified period.

10 (2) An order under subsection (1)(a) may be varied or revoked by the manager of the correctional institution and an order under subsection (1)(b) may be varied or revoked by the Chief Executive Officer.

15 (3) The manager of a correctional institution may cause any person who is attempting to enter or is in the institution in contravention of an order under this section to be refused entry to or removed from the institution, using only such force as is reasonably necessary for the purpose.

20 **85B—Power of search and arrest of non-prisoners**

(1) The manager of a correctional institution may—

25 (a) cause any person who enters the institution to submit, subject to the person's consent, to a *limited contact search*, and to having his or her possessions searched, for the presence of prohibited items; or

(b) if there are reasonable grounds for suspecting that a person entering or in the institution is in possession of a prohibited item, cause the person and his or her possessions to be detained and searched; or

30 (c) if there are reasonable grounds for suspecting that a vehicle entering or in the institution is carrying a prohibited item, cause the vehicle to be detained and searched.

35 (2) If a person does not consent to a limited contact search, the manager of the correctional institution may cause the person to be refused entry to or removed from the institution, using only such force as is reasonably necessary for the purpose.

(3) Failure of a person to consent to a limited contact search does not of itself constitute grounds for suspecting that the person is in possession of a prohibited item.

40 (4) The following provisions apply to a limited contact search:

(a) the person cannot be required to remove any clothing or to open his or her mouth, and nothing may be introduced into an orifice of the person's body;

- 5
- (b) any direct contact with the person's flesh that is necessary for the purpose of the search must be minimal and within the bounds of propriety;
- (c) the person may be required to adopt certain postures or to do anything else reasonably necessary for the purposes of the search and, if the person does not comply with such a requirement, the manager may cause the person to be removed from the institution, using only such force as is reasonably necessary for the purpose;
- 10 (d) the search must be carried out expeditiously and undue humiliation of the person must be avoided.
- (5) The following provisions apply to a search under subsection (1)(b):
- (a) the person may be required—
- 15 (i) to remove his or her outer clothing (including footwear and headwear) but no other clothing; or
- (ii) to open his or her mouth (but force cannot be applied to open the person's mouth); or
- (iii) to adopt certain postures; or
- (iv) to submit to being frisked; or
- 20 (v) to do anything else reasonably necessary for the purposes of the search,
- and, if the person does not comply with such a requirement, the manager may cause the person to be removed from the institution, using only such force as is reasonably necessary for the purpose;
- 25 (b) nothing may be introduced into an orifice (including the mouth) of the person's body;
- (c) at least 2 persons, apart from the person being searched, must be present at all times during the search;
- 30 (d) the search must be carried out expeditiously and undue humiliation of the person must be avoided.
- (6) The following provisions apply to a search under subsection (1)(c):
- (a) the driver of the vehicle may be required to do anything reasonably necessary for the purposes of the search;
- 35 (b) if the driver does not comply with a requirement made under paragraph (a), the manager may cause the driver and the vehicle to be refused entry to or removed from the institution, using only such force as is reasonably necessary for the purpose.

(7) If a prohibited item is found as a result of a search under this section, or a person fails to comply with a requirement lawfully made for the purposes of a search under this section—

5 (a) the manager may cause the person or the driver of the vehicle, as the case may be, to be handed over into the custody of a police officer as soon as reasonably practicable and to be kept in detention until that happens; and

10 (b) the item may be kept as evidence of an offence or otherwise dealt with in the same manner as a prohibited item under section 33A may be dealt with.

(8) If the officer or employee who carries out a search of a person under this section suspects on reasonable grounds that a prohibited item may be concealed on or in the person's body, the manager may cause the person to be handed over into the custody of a police officer as soon as reasonably practicable and to be kept in detention until that happens.

(9) On a person being detained under subsection (7) or (8), the manager must immediately cause a police officer to be notified.

20 (10) Despite the preceding provisions of this section, if a person or vehicle may be detained under this section for the purposes of being searched, the manager may, instead, cause the person or vehicle to be refused entry to or removed from the institution, using only such force as is reasonably necessary for the purpose.

25 (11) The annual report submitted under this Act by the Chief Executive Officer in respect of a financial year must include the following particulars:

(a) the number of persons detained under subsection (7) during the year and the duration of each such detention; and

30 (b) the number of persons detained under subsection (8) during the year and the duration of each such detention.

(12) This section does not apply to a person who is a prisoner in the correctional institution.

(13) In this section—

prohibited item means an item—

35 (a) that is a prohibited item for the purposes of section 51; and

(b) permission for the introduction of which into the correctional institution has not been given by the manager.

16—Amendment of section 89—Regulations

Section 89(2)(ea)—delete paragraph (ea) and substitute:

40 (ea) for the purposes of section 37AA, including regulations—

(i) prescribing procedures for drug testing; and

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- (ii) regulating the collection of biological samples from prisoners for the purposes of drug testing; and
 - (iii) prescribing the directions that can be given to a prisoner for the purpose of conducting an alcotest or collecting and authenticating a biological sample; and
 - (iv) prescribing higher maxima for the penalties prescribed by sections 43 and 44 if a prisoner breaches regulations made under this subsection, provided that those higher maxima do not exceed by more than 3 times the maxima prescribed in those sections; and
- 10