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**PRISON AMENDMENT ACT 1994**

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**No. 4 of 1994**

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## PRISON AMENDMENT ACT 1994

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AN ACT to amend the *Prison Act 1977*

[Royal Assent 17 March 1994]

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

### Short title

1—This Act may be cited as the *Prison Amendment Act 1994*.

### Commencement

2—This Act commences on the day on which it receives the Royal Assent.

### Principal Act

3—In this Act, the *Prison Act 1977*\* is referred to as the Principal Act.

### Section 3 amended (Interpretation)

4—Section 3 of the Principal Act is amended by omitting the definition of “prison officer” and substituting the following definition:—

“**prison officer**” means a person appointed under section 6 at any rank, other than a person appointed under section 6 (6A) (b);

### Section 6 amended (Appointment of Director and other persons)

5—Section 6 of the Principal Act is amended as follows:—

(a) by omitting subsection (3A);

(b) by inserting after subsection (6) the following subsection:—

(6A) The Minister administering the *Tasmanian State Service Act 1984* may appoint a person—

(a) as a prison officer for the purposes of this Act; or

(b) in any other capacity necessary for the administration of this Act.

(c) by omitting subsection (7) and substituting the following subsection:—

(7) An employee appointed under this section, other than under subsection (6A) (b), while exercising his or her functions and duties, has the same powers, privileges and immunities as a police officer.

### Section 26 amended (Grant of leave permits)

6—Section 26 of the Principal Act is amended as follows:—

(a) by omitting from subsection (3) (a) “(being a period not exceeding 72 hours)”;

\* No. 19 of 1977. Amended by No. 29 of 1984, Nos. 4, 51 and 120 of 1985, No. 88 of 1987, No. 5 of 1990, Nos. 43 and 46 of 1991 and Nos. 3 and 25 of 1993.

(b) by inserting after subsection (4) the following subsections:—

(4A) A leave permit may authorize the absence of—

- (a) a prisoner or detainee on one occasion or a number of occasions; or
- (b) a prisoner or detainee for one purpose or a number of purposes; or
- (c) a number of prisoners or detainees for the same purpose on one occasion or a number of occasions.

(4B) A leave permit may authorize a number of absences within the period of 31 days from its granting but no one absence is to be for more than 72 hours.

### Section 39A inserted

7—After section 39 of the Principal Act, the following section is inserted:—

#### Random testing and searching of prisoners and detainees

39A—(1) If the appropriate prison officer as specified in the Standing Orders made under the *Prison Regulations 1985* considers it necessary to do so in the interests of the management and good order of a prison, the prison officer may order a prisoner or detainee at any time to undergo a test or search for the use or possession of any of the following:—

- (a) alcohol;
- (b) a drug which has not been prescribed by a medical practitioner for the use of the prisoner or detainee;
- (c) a prohibited substance within the meaning of section 3 (1) of the *Poisons Act 1971*;
- (d) a substance included in Schedule 2, 3, 4 or 8 of the Poisons List set out in Schedule 1 to the *Poisons List Order 1984*;
- (e) a substance included in the Australian Register of Therapeutic Goods established under the *Therapeutic Goods Act 1989* of the Commonwealth;
- (f) a metabolite of a substance mentioned in paragraph (b), (c), (d) or (e).

(2) A test may include the taking of a urine, blood or breath sample.

(3) A test—

(a) in the case of a blood sample, is to be carried out by a medical officer; and

(b) in the case of a urine or breath sample, may be carried out by a prison officer or a medical officer.

(4) A prison officer must order a prisoner or detainee to undergo a test or search under this section as and when required by the Standing Orders made under the *Prison Regulations 1985*.

#### Schedule II amended (Offences by a prisoner or detainee)

8—Schedule II to the Principal Act is amended by inserting after item 22 the following item:—

22A—Being in possession of, or consuming, alcohol or a drug that the Director has not authorized to be brought into the prison.

#### *Criminal Code* amended

9—Section 389 of the *Criminal Code*† is amended by omitting subsection (5).

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[Second reading presentation speech made in:—  
House of Assembly on 9 November 1993  
Legislative Council on 17 February 1994]

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† Schedule 1 to 14 Geo. V No. 69. For the *Criminal Code*, as amended to 1 March 1980, see the continuing Reprint of Statutes. Subsequently amended by No. 19 of 1980, No. 52 of 1981, Nos. 33 and 99 of 1982, No. 77 of 1983, No. 3 of 1984, No. 17 of 1985, Nos. 77, 86 and 93 of 1986, Nos. 26, 71, 81 and 83 of 1987, Nos. 14 and 29 of 1988, Nos. 7, 9 and 33 of 1989, No. 13 of 1990, Nos. 3, 43 and 46 of 1991, No. 21 of 1992 and Nos. 9, 72 and 89 of 1993.