

JM301\*

Prisons Act 1981

## Prisons Amendment Regulations (No. 2) 1999

### 1. Citation

These regulations may be cited as the *Prisons Amendment Regulations (No. 2) 1999*.

### 2. The regulations amended

The amendments in these regulations are to the *Prisons Regulations 1982\**.

[\* Reprinted as at 31 January 1997.

*For amendments to 1 December 1999 see 1998 Index to Legislation of Western Australia, Table 4, p. 245 and Gazette 2 November 1999, pp. 5474-5.]*

### 3. Regulation 2 amended

Regulation 2 is amended by deleting the definition of “approved analysis agent” and inserting instead the following definition —

“

“**approved analysis agent**” in respect of a body sample of a particular type, means an organization approved from time to time under regulation 28A in respect of that type of sample;

”.

4. **Regulation 26 amended**

Regulation 26 is repealed and the following provisions are inserted instead —

“

**Part IIIA — Alcohol and drug related aggravated prison offences**

**26. Interpretation of Part**

In this Part —

“**aggravated alcohol offence**” means an aggravated prison offence under section 70(f) of the Act;

“**aggravated drug offence**” means an aggravated prison offence under section 70(d) or (e) of the Act;

“**approved**” means approved in writing by the chief executive officer;

“**sweat patch**” means an adhesive patch attached to the body of a prisoner for the taking of a sample of sweat from the prisoner.

**26A. Prison officer who suspects aggravated drug or alcohol offence to inform superintendent**

A prison officer who has reasonable grounds for suspecting that a prisoner has committed an aggravated drug offence or an aggravated alcohol offence shall inform the superintendent.

**26B. Superintendent may direct that samples are to be taken**

- (1) The superintendent may direct a prison officer to take a sample at random of —
  - (a) the blood, saliva, sweat or urine of prisoners to determine whether an aggravated drug offence or an aggravated alcohol offence has been committed by any prisoner; or
  - (b) the breath of prisoners to determine whether an aggravated alcohol offence has been committed by any prisoner.
- (2) The superintendent may direct a prison officer to take a sample of the blood, saliva, sweat, breath or urine of a prisoner if the superintendent has reasonable grounds for suspecting (from the superintendent’s own observations or otherwise) that the prisoner has committed an aggravated drug offence or an aggravated alcohol offence.
- (3) This regulation is subject to regulation 26C.

**26C. How samples of blood, breath and sweat are to be taken**

- (1) A sample of the blood of a prisoner shall be taken —
  - (a) with a sterile syringe and discharged into a sterile container; and
  - (b) by a prison medical officer, a medical officer or an officer who is a nurse, as defined in the *Nurses Act 1992*.
- (2) A sample of the breath of a prisoner shall be taken —
  - (a) by means of apparatus of a type approved for that purpose; and
  - (b) by an officer who has been approved to use that apparatus.
- (3) A sample of the sweat of a prisoner shall be taken —
  - (a) by means of a sweat patch, of a type approved for that purpose, attached to the prisoner for not more than 7 days; and
  - (b) by a prison officer or other person approved by the chief executive officer who has successfully completed approved training as to the application and removal of sweat patches.

**26D. Prisoner may be required to provide body sample**

Subject to regulation 26C, a prison officer —

- (a) may require a prisoner to provide a sample of the prisoner's breath, in accordance with the directions of the prison officer, if that officer has reasonable grounds for suspecting that the prisoner has committed an aggravated alcohol offence; and
- (b) shall require a prisoner to provide a sample of the prisoner's blood, saliva, sweat, breath or urine if directed to do so by the superintendent under regulation 26B.

**26E. Prisoner to submit to having sample taken when requested to do so**

- (1) A prisoner who is required to provide a sample under regulation 26D shall —
  - (a) submit himself for the purpose of having the body sample taken; and
  - (b) cooperate fully in providing the sample.
- (2) A prisoner required to provide a body sample of sweat under regulation 26D(b) shall be taken not to have complied with subregulation (1) if the sweat patch

being used to take the sample has been removed or interfered with, unless —

- (a) the removal or interference was carried out by a person referred to in regulation 26C(3)(b); or
- (b) the prisoner proves that —
  - (i) the removal or interference was carried out against the prisoners wishes; and
  - (ii) the prisoner promptly reported the removal or interference to a prison officer.

**26F. Medical attention may be required**

On receiving information under regulation 26A regarding a prisoner, the superintendent may request the prison medical officer or a medical officer to assess the prisoner to determine whether the prisoner requires medical attention.

**26G. Other samples may be taken for analysis**

A prison officer may take for the purpose of analysis, a sample of any drug, alcohol, glue containing toluene, or other intoxicating substances found in the possession of a prisoner and not lawfully issued to him.

**26H. Samples to be sealed, labelled and delivered to approved analysis agent**

- (1) A prison officer who required a sample to be taken from a prisoner under regulation 26D shall ensure that the sample is sealed in a container marked or labelled in the presence of the prisoner and the prison officer with —
  - (a) the name of the prisoner;
  - (b) the type of the sample;
  - (c) the name of the prison officer, or other person authorized under regulation 26C(1)(b), (2)(b) or (3)(b) who took the sample; and
  - (d) the time and date that the sample was taken.
- (2) The superintendent shall authorize the delivery of a sample taken under this Part to the approved analysis agent.

”.

**5. Regulation 27 amended**

- (1) Regulation 27(1) is amended by deleting “the approved” and inserting instead —
  - “ the relevant approved ”.

- (2) Regulation 27(3) is amended by deleting “the approved” and inserting instead —
- “ an approved ”.

**6. Regulation 28A amended**

- (1) Regulation 28A(1) is repealed and the following subregulation is inserted instead —

“

- (1) The chief executive officer shall, in respect of each type of body sample authorized to be taken under this Part, approve an organization as the organization whose employees are to carry out analysis of samples of that type.

”.

- (2) Regulation 28A(3) is amended as follows:

- (a) by inserting after “(1)” —
- “ in respect of a type of body sample ”;
- (b) by deleting “the approved” and inserting instead —
- “ the relevant approved ”.

- (3) Regulation 28A(4) is amended as follows:

- (a) by deleting “regulation 26(5)” and inserting instead —
- “ this Part ”;
- (b) by deleting “the approved” in both places where it occurs and inserting instead —
- “ the relevant approved ”.

**7. Regulation 29 amended**

Regulation 29 is amended by deleting “regulation 26” and inserting instead —

“ this Part ”.

By Command of the Governor,