

## **CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT BILL 2013**

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**Bill introduced on motion by Mr Greg Smith, read a first time and printed.**

### **Second Reading**

**Mr GREG SMITH** (Epping—Attorney General, and Minister for Justice) [4.30 p.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Crimes (Administration of Sentences) Amendment Bill 2013. The object of the bill is to make miscellaneous amendments to the Crimes (Administration of Sentences) Act 1999 to improve the administration of sentences in New South Wales. I will give a brief overview of the main provisions of the bill before outlining each of the amendments in turn. The bill expressly authorises the Commissioner of Corrective Services to receive remuneration on behalf of inmates on the external works release program and to make deductions from that remuneration to contribute towards the cost of the program and the inmate's imprisonment. The bill also provides for the more equitable operation of parole by enabling the State Parole Authority to deal with offenders who have had their parole revoked in the same way as it deals with offenders who have had their parole refused where not to do so would amount to manifest injustice.

The bill also will improve the efficiency of the parole system by enabling the Secretary of the State Parole Authority to sign commitment warrants and act as a non-judicial member of the authority in urgent circumstances. The remaining provisions of the bill provide for the accommodation of certain classes of offenders in Corrective Services NSW [CSNSW] residential facilities and protection from civil liability claims for those offenders housed in residential facilities who perform community service work. Finally, the bill improves the capacity of Corrective Services NSW to ensure the good order and security of the correctional system by making amendments to the Act in relation to segregated custody directions and the recording of conversations over cell call alarm systems, and for directions to private operators of correctional centres to drug and alcohol test employees. The bill also amends the Crimes (Administration of Sentences) Regulation 2008 to enable biometric identification systems to be used in any correctional centre. I now turn to the specific provisions of the bill in turn.

In relation to remuneration earned from external works release programs, schedule 1 [1] of the bill makes provision with respect to remuneration earned by an inmate while he or she is a participant in the external works release program. The external works release program has been administered by Corrective Services NSW since the 1960s. The program gives inmates the opportunity to gain meaningful employment that may be ongoing after release and to participate in vocational training. The program assists inmates with their rehabilitation and reintegration into the community. Under clause 7A, remuneration that is paid by an employer

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to an inmate must be paid to the commissioner on behalf of the inmate.

From such remuneration the commissioner may deduct a contribution towards the cost of administering the external works release program, expenses related to the inmate's participation in the program, such as travel fares, and the costs of the inmate's imprisonment. These contributions are currently made with the consent of the inmate. The proposed amendments will ensure that the longstanding practice carried out by most jurisdictions in Australia of making deductions from money earned by inmates attending works release is supported by express statutory authority in New South Wales.

Schedule 1 [24] of the bill validates any deductions from remuneration earned by an inmate as a participant in an external work release program that were made before the commencement of proposed section 7A (2) if such deductions would have been validly made had they been made on or after the commencement of that provision. Schedule 2 [1] of the bill also extends the definition of prison earnings in the Fines Act 1996 to include remuneration earned by inmates as participants in external works release programs to allow for the enforcement of victims support levies that are payable by inmates. The payment of contributions will assist Corrective Services NSW to defray the costs of the program and the inmate's incarceration and ensure that the State is not exposed to compensation claims from former and current inmates for money deducted from their wages and salaries for purposes of the program. Victims will benefit from the amendments to the Fines Act 1996 because victims support levies may be taken directly from the remuneration earned by inmates on the program.

In relation to segregated custody directions, schedule 1 [2] of the bill modifies the basis on which the Commissioner of Corrective Services may direct that an inmate be held in segregated custody so that the commissioner may make a segregated custody direction if of the view that the direction is necessary to secure the safety of others, or the security of a correctional centre, or good order and discipline within a correctional centre. Under the current provisions of the Crimes (Administration of Sentences) Act 1999, the Commissioner may only direct that an inmate be held in segregated custody if of the opinion that the association of the inmate with other inmates constitutes, or is likely to constitute, a threat to the personal safety of any other person, or the security of a correctional centre, or good order and discipline within a correctional centre.

The purpose, however, of a segregated custody direction is to ensure personal safety, security, good order and discipline within a correctional centre by providing a "time-out" or "cooling-off period" during which an inmate who has exhibited threatening conduct can be segregated from other inmates until such time as the risk is no longer present. The bill amends the Act so that an inmate's association with other inmates is not the sole criterion upon which the commissioner is able to make a segregated custody direction. For example, an inmate may engage in conduct that constitutes a threat to the personal safety of another person, such as a staff member, or the security of, or good order and discipline within a

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correctional centre without the involvement of any other inmate and it is the conduct itself, or likelihood of the conduct, and not the association with other inmates, that gives rise to the risks which can be obviated by the imposition of a segregated custody direction.

In relation to the recording of conversations made over cell call alarm systems, schedule 1 [4] of the bill provides for an exemption from the Surveillance Devices Act 2007 to allow conversations made through cell call alarm systems in correctional centres to be recorded. This amendment implements a deputy State coroner's recommendation that recordings be retained in cases where inmates use the cell call alarm system for an emergency. Presently, the Surveillance Devices Act 2007 prohibits the recording of a private conversation by a listening device unless all the parties to the conversation consent, expressly or implied, to the listening device being so used. The Act also prohibits the possession of a record of a private conversation obtained in contravention of the Act.

The requirement for the consent of all parties to a private conversation to the recording of the conversation in order for the recording to be allowed by the Surveillance Devices Act 2007 requires inmates to consent to the recording of any conversation using the cell call alarm system. This is problematic given the emergency purpose for which the alarm system is installed. The proposed amendment will resolve this issue. It is noteworthy that cell call alarm conversations are recorded in correctional centres in Queensland and the Australian Capital Territory, as this is expressly permitted by legislation in those jurisdictions.

I turn now to the issue of civil liability protection in respect of certain community service work. Schedule 1 [5] and [6] of the bill extend the general provisions of the Act dealing with community service work to work performed by offenders housed in declared residential facilities under the Act. As a matter of practice, Corrective Services NSW requires residents, on admission, to sign an undertaking to abide by certain rules: for example, a requirement to abide by curfew requirements and participate in programs. One of the undertakings is to perform unpaid community work. Residents are encouraged and assisted to gain paid employment. However, for those without paid employment, voluntary community work is encouraged as a means of adaptation to a work ethic and a structured lifestyle. It is provided by community agencies that also provide work for the community service work scheme.

The Act currently protects a person involved in community service work from civil liability towards third parties for acts and omissions of the offender performing the work. The Act also protects a person involved in community service work from civil liability towards the offender performing work. However, community service work is currently defined as work performed by an offender who is in full-time detention, or under an intensive correction order, or under a home detention order, or under a community service order. The amendments extend the definition of community service work to capture offenders housed in residential facilities who perform voluntary community work at the direction or request of Corrective Services NSW.

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I turn to the topic of parole orders in exceptional extenuating circumstances. At present, there is no provision under the Act for Corrective Services NSW to monitor parolees who are released to parole in exceptional extenuating circumstances, or to revoke that parole, if the grounds that led to the making of an order to release an offender to parole no longer exist. Schedule 1 [8] of the bill amends the Act and imposes a statutory condition on parole orders made on the grounds that the offender is dying or because of exceptional extenuating circumstances that require the offender to be subject to supervision for the whole period the parole order is in force. Schedule 1 [12] of the bill also enables the State Parole Authority to revoke a parole order made on the grounds that the offender is dying or because of exceptional extenuating circumstances, if satisfied that those grounds or those circumstances no longer exist.

As to consideration of parole so as to avoid manifest injustice, the Crimes (Administration of Sentences) Act 1999 currently prevents the State Parole Authority from considering parole to avoid manifest injustice for offenders who have had their parole revoked, following release on parole, in the same way as it deals with offenders who have been refused parole prior to release. This anomaly arises from the definition of "parole eligibility date" in the Act. The current definition means that a parolee whose parole order is revoked and who is returned to custody effectively is prevented from reapplying for parole for 12 months after the date on which he or she was returned to custody, regardless of the circumstances. By contrast, if an offender is refused parole, the offender can be considered for parole at any time if manifest injustice grounds exist. Those grounds are set out in the Crimes (Administration of Sentences) Regulation 2008.

This issue previously has been raised by the New South Wales Sentencing Council and the State Parole Authority. Therefore, a parolee revoked for breaching supervision conditions—such as not reporting, changing address without permission, or failing to comply with the directions of a mental health team—would serve, on their return to custody, 12 months before being eligible for re-release or until the expiry of his or her sentence, whichever is the earliest. While the 12-month requirement for the reconsideration of parole following revocation is appropriate in some cases, in certain other circumstances it may be considered unjust. It is arguable that the 12-month requirement in some cases is punitive as it removes the opportunity for conditional liberty for at least 12 months, or for the remainder of the sentence, as the case may be.

Schedule 1 [9] of the bill amends the manifest injustice provisions of the Act to overcome the difficulty presented by the definition of "parole eligibility date" so that the State Parole Authority can consider the granting of parole to avoid manifest injustice in relation to an offender whose parole has been revoked at any time after revocation. The circumstances that will constitute manifest injustice whereby an offender's parole order has been revoked are to be prescribed by the regulation. Regarding the signing of warrants committing offenders to correctional centres, schedule 1 [13] and [14] of the bill make effective warrants issued by the State Parole Authority that commit offenders to correctional centres on their signing by the

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secretary of the State Parole Authority rather than by a judicial member of the State Parole Authority.

Occasionally, the current warrant check and verification process results in judicial officers being detained at the State Parole Authority for some hours while they await warrants to be returned for signing. The proposed amendment overcomes this issue and is intended to make the operations of the State Parole Authority more administratively effective. The proposed amendment is not intended to remove the judicial member as a signatory of the warrant, but to include the secretary of the State Parole Authority as an alternative signatory in place of the judicial member, when necessary.

As to security of certain information, schedule 1 [15] and [16] of the bill will now enable a judicial member of the State Parole Authority or of the Serious Offenders Review Council to prohibit the disclosure of any information relating to the content of a report or document, only if the judicial member considers that non-disclosure of the information is necessary in the public interest and that the public interest outweighs any right to procedural fairness that may be denied by non-disclosure of the information. The State Parole Authority and Serious Offenders Review Council often receive sensitive criminal intelligence information from the NSW Police Force and Corrective Services NSW about the activities of offenders and their associates, some of whom are violent, dangerous and at a high risk of reoffending. This information is relevant and necessary for the functions of those bodies to be exercised in the public interest.

However, it will often be the case that disclosure of the information is contrary to the public interest. The NSW Police Force and the Ministry for Police and Emergency Services support these amendments. The public interest in preventing the disclosure of sensitive criminal intelligence information, including information summarising or indicating the nature of such information, has been long recognised by the courts. As such, there is a need to ensure that the State Parole Authority and the Serious Offenders Review Council may rule that no information whatsoever that relates to sensitive material before them be disclosed. The proposed amendments strike an appropriate balance between the protection of sensitive information and the need for procedural fairness by retaining the discretionary power of the State Parole Authority and Serious Offenders Review Council to weigh up those two considerations when considering the disclosure of information.

As to the constitution of a quorum of the State Parole Authority, under the Act a quorum is required for a State Parole Authority meeting to convene. In an emergency situation, such as an urgent parole revocation hearing that has been scheduled on a weekend when the State Parole Authority does not normally sit, a quorum may be difficult to gather. In addition, the New Year holiday period, during which the State Parole Authority does not normally sit, has traditionally proven to be a particularly problematic period to bring together a quorum in emergency situations.

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To ensure the efficiency and consistency of the operations of the State Parole Authority, schedule 1 [22] of the bill amends the Act so that the secretary of the State Parole Authority may act in the capacity of a non-judicial member at the discretion of the judicial member. The secretary of the State Parole Authority, as an employee of Corrective Services NSW, is generally available at all times, as opposed to official and community members, and has a very wide breadth of knowledge and experience that is of great value to the State Parole Authority.

As to the accommodation of offenders in residential facilities, schedule 1 [20] of the bill extends the classes of offenders who may be accommodated in premises declared to be residential facilities under the Act to include offenders who are subject to an extended or interim supervision order, a home detention order or an intensive correction order, or offenders in community custody who are subject to a community supervision order. This amendment will give effect to the current practice of Corrective Services NSW of providing offenders serving extended supervision and other community based orders with temporary accommodation in a residential facility. I point out that it is not unknown for persons subject to such orders to experience accommodation disruption during the period of the order, and to be accommodated in a residential facility on a short-term basis as an alternative to revocation of their order and subsequent imprisonment. In all such cases, temporary accommodation in a residential facility may assist with the rehabilitation of the offender.

Regarding alcohol and drug testing of staff at privately managed correctional centres, schedule 1 [21] of the bill now requires operators of privately managed correctional centres, whether management companies or sub-management companies, to prepare and implement a program approved by the commissioner for the testing of their correctional centre staff for alcohol and prohibited drugs, and to ensure that staff are not under the influence of alcohol or prohibited drugs when on duty or when present at their place of work and about to go on duty. The bill also enables the commissioner to direct a private operator to require staff to undergo such testing in accordance with the operator's approved testing program or in accordance with the testing regime provided for in the Act for correctional officers and other persons employed by Corrective Services NSW.

Corrective Services NSW currently does not have the legislative capacity to give a direction to a private management company to conduct drug and alcohol testing. In addition, there may be circumstances or staff performance-related issues which necessitate Corrective Services NSW staff conducting the testing. The proposed amendments therefore give the commissioner the statutory power to be able to direct management companies at correctional centres to conduct drug and alcohol testing of staff, and also for Corrective Services NSW to be able to conduct drug and alcohol testing at privately managed correctional centres if the commissioner considers it appropriate to do so.

As to biometric testing, the Crimes (Administration of Sentences) Regulation 2008 enables the commissioner to authorise the operation of a biometric identification system only in

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correctional centres in which high-security, extreme high-security or extreme high-risk restricted inmates are accommodated, or in which inmates are received into custody before they are classified. Schedule 3 [4] of the bill broadens the commissioner's authority under the regulation to use a biometric identification system in any correctional centre. This amendment is made in recognition of the fact that biometrics have now been in use successfully for approximately 15 years. At least one mobile telephone manufacturer, for example, is using biometric technology to enable the user to unlock his or her phone.

For Corrective Services NSW, the biometric identification system ensures that each person who enters a correctional centre for the purposes of conducting a visit or carrying out duties or activities requiring access to the centre is the same person who leaves the correctional centre after conducting that visit or carrying out those duties or activities. There are existing safeguards in the regulation, including penalties for breaches of privacy, to ensure that appropriate privacy practices are adhered to. Finally, the bill makes a number of other amendments of a consequential nature, and enables regulations of a savings or transitional nature to be made. I commend the bill to the House.

**Debate adjourned on motion by Mr Paul Lynch and set down as an order of the day for a future day.**