



New South Wales

Crimes (Administration of Sentences) Amendment Bill 2013

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Crimes (Administration of Sentences) Act 1999* (the *principal Act*) as follows:

- (a) to require remuneration earned by inmates as participants in external work release programs to be paid directly to the Commissioner of Corrective Services (the *Commissioner*) on behalf of the inmates,
- (b) to expressly authorise the Commissioner to deduct from such remuneration an amount to contribute towards the costs of such programs and of the inmates' imprisonment, and to validate past such deductions,
- (c) to reframe the basis on which the Commissioner may make segregated custody directions,
- (d) to provide for the recording of conversations made over inmate cell call alarm systems in correctional centres,
- (e) to protect persons involved in community service work from civil liability in relation to community service work performed by offenders while residing in premises declared to be residential facilities under the principal Act (*residential facilities*),
- (f) to impose a statutory condition as to supervision on parole orders made on the basis of exceptional extenuating circumstances,
- (g) to enable a parole order made on the basis of exceptional extenuating circumstances to be revoked if the circumstances cease to exist,

- (h) to make the time at which the State Parole Authority (the *Parole Authority*) may consider parole to avoid manifest injustice for an offender whose parole has been revoked the same as it is for an offender whose parole has been refused,
- (i) to make warrants issued by the Parole Authority that commit offenders to correctional centres effective on their signing by the Secretary of the Parole Authority,
- (j) to enable a judicial member of the Parole Authority or of the Serious Offenders Review Council to prohibit the disclosure of information about the content of a report or other document the disclosure of which has been prohibited under the principal Act,
- (k) to extend the classes of offenders who may be accommodated in residential facilities,
- (l) to provide for the testing of correctional centre staff employed at correctional centres managed by private contractors for alcohol and prohibited drugs,
- (m) to enable the Secretary of the Parole Authority to act as a non-judicial member for the purposes of constituting a quorum of the Authority in urgent circumstances,
- (n) to make other amendments of a consequential, ancillary or minor nature.

The Bill also amends:

- (a) the *Crimes (Administration of Sentences) Regulation 2008*, to enable the Commissioner to authorise the operation of a biometric identification system in any correctional centre, and
- (b) the *Fines Act 1996*, to authorise the Commissioner to deduct victims support levies payable by offenders, from remuneration earned by the offenders on external work release programs, and to validate past such deductions.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Crimes (Administration of Sentences) Act 1999 No 93

Remuneration earned from external work release programs

Corrective Services NSW administers external work release programs under which eligible inmates may work in paid employment in the community during their sentences, in accordance with a local leave permit issued under the principal Act.

Schedule 1 [1] makes provision with respect to remuneration earned by an inmate as a participant in such a program. Under proposed section 7A, such remuneration is to be paid by the employer to the Commissioner on behalf of the inmate. From such remuneration, the Commissioner may deduct an amount to contribute towards the costs of administering the external work release program, expenses related to the inmate's participation in the program (such as travel fares) and the costs of the inmate's imprisonment during the period in which such remuneration is earned. Any deducted amounts are to be calculated in accordance with the directions of the Minister for Justice. **Schedule 1 [3]** makes a consequential amendment.

Schedule 1 [24] inserts a provision to validate 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.

Segregated custody directions

Schedule 1 [2] modifies the basis on which the Commissioner may direct that an inmate be held in segregated custody, so that the Commissioner may make such a direction if of the opinion that the segregation is necessary to secure the safety of others or the security of or good order and

discipline within a correctional centre (rather than if of the opinion that the association of the inmate with other inmates constitutes or is likely to constitute a threat to such safety or security or good order and discipline).

Recording of conversations made over cell call alarm systems

Section 7 of the *Surveillance Devices Act 2007* makes it an offence (with specified exceptions) for a person to knowingly install, use or cause to be used, or to maintain, a listening device to overhear, record, monitor or listen to a private conversation to which the person is not a party or to record a private conversation to which the person is a party. **Schedule 1 [4]** provides for an exemption from that section to allow conversations made through cell call alarm systems in correctional centres to be recorded.

Civil liability protection in respect of certain community service work

Schedule 1 [5] and [6] extend (by extending relevant definitions) the general provisions of the principal Act dealing with the carrying out of community service work by offenders so that they apply also in relation to community service work performed by offenders residing in residential facilities, pursuant to a condition to which such residency is subject. In particular, the general provisions protect a person involved in community service work from civil liability towards third parties for acts and omissions of the offender performing the work, and towards the offender performing the work for acts and omissions of the person so involved (that liability being assumed instead by the Crown). The general provisions also impose restrictions on the community service work that may be performed and when it may be required to be performed, require offenders to disclose to the Commissioner any special medical, physical or mental condition, and authorise the Commissioner to settle claims against the Crown that arise under the provisions.

Parole orders in exceptional extenuating circumstances

Schedule 1 [8] imposes a statutory condition on parole orders made on the grounds that the offender is dying or because of exceptional extenuating circumstances, that requires the offender to be subject to supervision for the whole period the parole order is in force. **Schedule 1 [7]** makes a consequential amendment.

Schedule 1 [12] enables the Parole Authority to revoke a parole order made on the grounds that the offender is dying or because of exceptional extenuating circumstances if satisfied those grounds or circumstances no longer exist.

Consideration of parole so as to avoid manifest injustice

Schedule 1 [9] makes the time at which the Parole Authority may consider parole to avoid manifest injustice for an offender whose parole has been revoked the same as it is for an offender whose parole has been refused, being at any time after the date on which the offender first becomes eligible for release on parole. (Currently, because an offender's parole eligibility date (as defined in the principal Act) determines the time for consideration, an offender whose parole has been revoked cannot be considered for parole to avoid manifest injustice until 12 months after revocation whereas an offender whose parole has been refused may be considered at any time after the date on which the offender first becomes eligible for release on parole.) **Schedule 1 [10] and [11]** make consequential amendments.

Signing of warrants committing offenders to correctional centres

Schedule 1 [13] and [14] make warrants issued by the Parole Authority that commit offenders to correctional centres effective on their signing by the Secretary of the Parole Authority rather than by a judicial member of the Parole Authority. However, as soon as practicable after the signing of a warrant by the Secretary, it is to be countersigned by a judicial member of the Parole Authority.

Security of certain information

The principal Act enables a judicial member of the Parole Authority or of the Serious Offenders Review Council to prohibit the disclosure under the principal Act of a report or document if the

judicial member considers that the disclosure may adversely affect the security, discipline or good order of a correctional centre, endanger a person, jeopardise the conduct of any lawful investigation, prejudice the public interest, adversely affect the supervision of any offender who has been released on parole or disclose the contents of any offender's medical, psychiatric or psychological report.

Schedule 1 [15] and [16] enable a judicial member of the Parole Authority or of the Serious Offenders Review Council to prohibit the disclosure under the principal Act of any information relating to the content of a report or document the disclosure of which is so prohibited, but 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.

Accommodation of offenders in residential facilities

Schedule 1 [20] extends the classes of offenders who may be accommodated in residential facilities so as 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 (Stage 3) who are subject to a community supervision order. **Schedule 1 [18] and [19]** make consequential amendments.

Alcohol and drug testing of staff at privately managed correctional centres

Schedule 1 [21] requires operators of privately managed correctional centres (whether management companies or submanagement 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 item also enables the Commissioner to direct an operator to require its correctional centre staff to undergo testing for alcohol and prohibited drugs in accordance with the operator's approved testing program or in accordance with the testing regime provided for in the principal Act for correctional officers and other persons employed by Corrective Services NSW.

Constitution of quorum of Parole Authority

Schedule 1 [22] allows the Secretary of the Parole Authority to act as a non-judicial member of the Authority for the purposes of constituting a quorum for a meeting of the Authority and for the purposes of the meeting if the judicial member who is to preside considers it necessary because of the urgency of the business to be considered, and the lack of ready availability of any other non-judicial member to constitute a quorum. The Secretary has all the functions of, and is taken to be, a non-judicial member while so acting.

Other amendments

Schedule 1 [17] makes an amendment in the nature of statute law revision.

Schedule 1 [23] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act or any other Act that amends the principal Act.

Schedule 1 [24] inserts (in addition to the validating provision referred to above) provisions of a savings or transitional nature consequent on the amendments made by Schedule 1 [2], [5], [6], [8], [9], [12]–[16] and [20].

Schedule 2 Amendment of Fines Act 1996 No 99

The *Fines Act 1996* provides for the enforcement of victims support levies that are payable by inmates, by means of attachment of the inmates' prison earnings (being payments made to inmates by the Commissioner under the *Crimes (Administration of Sentences) Act 1999* for work done and other purposes). **Schedule 2 [1]** extends the definition of *prison earnings* to include remuneration earned by inmates as participants in external work release programs.

Schedule 2 [2] inserts provisions to validate any deductions from such remuneration for the purposes of enforcing a victims support levy (or its predecessor, a compensation levy) that were made before the commencement of the amendments made to the *Fines Act 1996* by the proposed Act, if such deductions would have been validly made had the *Fines Act 1996* as so amended then been in force. The item also validates the enforcement of the levies concerned by means of those deductions.

Schedule 3 Amendment of Crimes (Administration of Sentences) Regulation 2008

The *Crimes (Administration of Sentences) Regulation 2008* enables the Commissioner to authorise the operation of a biometric identification system only in correctional centres in which high security, extreme high security or extreme high risk restricted inmates are accommodated or in which inmates are received before they are classified. **Schedule 3 [4]** removes these restrictions to enable the Commissioner to authorise the operation of a biometric identification system in any correctional centre.

Schedule 3 [1]–[3] make amendments consequential on the amendment made by Schedule 1 [8].