Legislative Council

25/09/2002

Crimes (Administration Of Sentences) Further Amendment Bill

Hansard - Extract

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [8.30 p.m.]: I move:

That this bill be now read a second time.

As the second reading speech is lengthy and has been delivered in the other place, I seek leave to have it incorporated in *Hansard*.

Leave granted.

The *Crimes (Administration of Sentences) Act 1999* is the principal Act that governs the administration of sentences by the Department of Corrective Services. A number of minor deficiencies in the Act have come to light. The *Crimes (Administration of Sentences) Further Amendment Bill 2002* will rectify those deficiencies and make other changes in order to facilitate the administration of justice and the effective and secure operation of the correctional system. I shall now outline the more important changes being made.

Section 7 of the *Crimes (Administration of Sentences) Act 1999* governs payments to inmates. Inmates perform work of various kinds. Some inmates work on grounds maintenance; a small number of minimum security inmates work on community projects, and some inmates work for Corrective Services Industries in correctional centre workshops. All of these inmates are paid small amounts of money - not in cash, but by way of credits - which the inmates use to pay their victims compensation levies, to save or to spend on authorised items such as personal toiletries.

The proposed amendment makes it clear that such inmates who engage in work for which they are paid by the Commissioner of Corrective Services are not workers or employees for the purposes of various Acts of Parliament, and thus are not entitled to annual leave, extended leave, sick leave, superannuation and other incidents of employment.

Division 2 of Part 2 of the *Crimes (Administration of Sentences) Act 1999* governs segregated and protective custody of inmates. This Division has been re-written to streamline procedures dealing with segregated and protective custody, and to provide for the transfer from one correctional centre to another of inmates held in segregated or protective custody. The proposed Division replaces complex procedures in the current Act with straight-forward procedures which ensure that, at all times, directions relating to such inmates are clear, valid, and subject to regular review. The proposed Division also ensures that an inmate the subject of a segregated or protective custody direction is informed of his or her right to seek an independent review of the direction.

An inmate may be placed in segregated custody if the inmate is likely to constitute a threat to the personal safety of another person, or to the security of a correctional centre, or to the good order and discipline of a correctional centre. An inmate may be placed in protective custody for the personal safety of that inmate, either at the inmate's own request or if the governor of a correctional centre believes the association of the inmate with other inmates constitutes a personal threat to the inmate's safety.

Currently, a segregated or protective custody direction can be given for an initial period of 14 days, and subsequently extended for periods of up to 3 months at a time. There is no limit to the number of extensions.

Under the proposed Division, a segregated or protective custody direction, once given, will continue in force until it is revoked. The governor of a correctional centre must, however, submit a report about the direction to the Commissioner within 14 days of the direction being given, and the Commissioner must review the direction and either revoke, confirm or amend it within 7 days after receiving the report. Subsequently, the governor of the correctional centre at which a segregated or protective custody inmate is held must submit a report to the Commissioner about the direction at intervals of 3 months after the direction was first given, and the Commissioner must again review the direction within 7 days of receiving each report.

Under the proposed Division, as soon as practicable after issuing a segregated or protective custody direction in respect of an inmate, the governor of a correctional centre must provide the inmate with information concerning the inmate's rights to a review of the direction. The inmate may apply to the Serious Offenders Review Council for a review of the direction after 14 days of segregated or protective

custody. The Review Council may confirm, amend or revoke the segregated or protective custody direction. The inmate may also apply to the Review Council for a review of a segregated or protective custody direction at 3-monthly intervals.

Currently, a direction made by a governor of a correctional centre does not apply to any other correctional centre, resulting in administrative complexity when an inmate held in segregated or protective custody is transferred from one correctional centre to another.

The proposed Division provides that a segregated or protective custody direction made by a governor of a correctional centre continues to apply to an inmate during the transfer of the inmate to another correctional centre, and at the correctional centre to which the inmate is transferred. The proposed Division requires the governor of the receiving correctional centre to review the segregated or protective custody direction applicable to the transferred inmate within 72 hours of the inmate's arrival, and to determine whether the direction should be confirmed, revoked or amended.

It needs to be emphasised that a segregated custody direction is not a punishment. It is a means by which correctional management is able to respond to a threat to the personal safety of another person, or to the security of a correctional centre, or to the good order and discipline of a correctional centre.

Under existing section 18, the Minister for Corrective Services may confirm, amend or revoke a direction by the Commissioner extending a period of segregated custody or protective custody. This power of the Minister is not included in the proposed Division. Instead, the Serious Offenders Review Council will be the only avenue for review of a segregated or protective custody direction, and the Review Council's review determination will be final - at least until a period of 3 months has expired and the inmate concerned may seek a further review by the Review Council.

The proposed amendment to section 76 brings that section into line with section 75, which relates to confiscated inmate property. The amendment will mean that unclaimed property found within a correctional centre may be sold or otherwise disposed of as the Commissioner may direct - for instance, by being thrown out, destroyed or given to charity. Such "unclaimed property" is generally property left behind by released inmates (who may have been bailed at court) or property belonging to a deceased inmate which is not claimed by the inmate's next of kin.

The proposed amendment to section 107 clarifies the definition of "relevant maximum period" which refers to the time available for an offender to perform his or her obligations under a community service order. The amendment makes it clear that, if a court imposes two or more community service orders on an offender, the maximum period of time for the offender to complete each community service order commences when the order is made.

Section 107 currently stipulates the relevant maximum period as being "12 months if the required number of hours under the order is less than 300", or "18 months if the required number of hours under the order is 300 or more." For instance, an offender sentenced to 200 hours of community service has 12 months in which to perform his or her obligations under the order, whereas an offender sentenced to 360 hours community service has 18 months to do so.

Existing section 107 is, however, silent on the situation where a court imposes consecutive community service orders on an offender for separate offences, or where a second court imposes a community service order while an existing community service order is uncompleted or partially completed. If a court imposed, say, two consecutive community service orders of 200 hours each, (or two different courts impose separate orders of 200 hours each, but several months elapse between the date of the imposition of the first order and the date of the imposition of the second order), it is currently unclear how long the offender has in which to complete the orders: 12 months in respect of each order, or 18 months from the date of either the first order or the second order.

The proposed amendment makes it clear that, in such a situation, the offender must complete each community service order within 12 months from the date the order was made, and the Probation and Parole Service may take revocation action if the offender fails to do so in respect of any one order.

The proposed amendment reinforces the government's policy that offenders who break the law cannot ignore or flout court orders. The amendment will enable the Probation and Parole Service to more rigorously supervise offenders subject to community service orders, and will ensure that offenders who ignore their obligations under community service orders will be subject to revocation action sooner rather than later.

Section 197 of the Act sets out the functions of the Serious Offenders Review Council. Existing section 197(3) enables the Review Council to delegate any function that it has relating to segregated and protective custody directions to the Chairperson or to a judicial member of the Review Council. The proposed amendment to section 197 provides that the judicial member to whom a function is delegated is to be nominated by the Chairperson.

The proposed amendment to section 228 will enable an Official Visitor to a correctional centre, periodic detention centre or correctional complex to interview non-custodial members of staff as well as correctional officers and inmates. This amendment implements a recommendation made by the Inspector-General of Corrective Services.

New section 235C enables the Commissioner to confer such of the functions of a correctional officer on a transitional centre officer as the Commissioner may determine. A transitional centre officer is a person who is employed at a transitional centre for the purpose of supervising inmates residing at the transitional centre. In a minor amendment, "transitional centre" has also been defined in section 3(1) of the Act as premises managed or approved by the Commissioner for the purpose of accommodating certain inmates prior to their release from custody.

New section 235D is a parallel section to new section 235C. New section 235D enables the Commissioner to confer such of the functions of a correctional officer on a periodic detention field officer as the Commissioner may determine. A periodic detention field officer is a person employed for the purpose of supervising offenders subject to periodic detention orders whilst the offenders are outside a periodic detention centre - for instance, on a site where periodic detainees perform community service work.

New sections 235C and 235D will allow, for example, for a transitional centre officer or a periodic detention field officer to carry out a breath test or a urinalysis test on an offender subject to the officer's supervision.

The Chief Executive Officer of the Corrections Health Service has various functions under the *Crimes (Administration of Sentences) Act 1999*. An amendment which inserts new section 236D(1) into the Act will give to the Chief Executive Officer of the Corrections Health Service the same power of delegation, and the impose the same restrictions on that power of delegation, as currently apply to the Commissioner of Corrective Services.

New section 236D(2) makes it clear that the Chief Executive Officer cannot delegate the Chief Executive Officer's right of free and unfettered access to correctional centres, to medical records and to offenders held in custody in any correctional centre.

The Bill inserts new Division 5 into Part 11 of the Act. This is an important amendment which deals with the mandatory testing of members of correctional staff on a random or targeted basis for alcohol and prohibited drugs. The proposed Division is derived from section 211A of the *Police Act 1990*, which provides for the testing of police officers for alcohol and prohibited drugs.

Under the proposed new Division, a member of correctional staff may be required to undergo a breath test, or to provide a sample of urine or hair. A member of correctional staff may also be required to undergo such a test, or give such a sample, if the member of staff is involved in an incident in which a person dies or is injured while in the custody of the member of staff, or as a result of the discharge of a firearm by a member of staff.

If a member of correctional staff attends or is admitted to hospital for examination or treatment because of such an incident, the member of staff may be required to provide a sample of his or her blood, urine or hair. Regulations in connection with testing for alcohol or prohibited drugs may be made with respect to the matters specified in proposed section 236I.

The Bill inserts new Division 6 into Part 11 of the Act. This proposed Division provides for the appointment of recognised interstate correctional officers, who will have all the functions of a correctional officer under the *Crimes (Administration of Sentences) Act 1999* or any other Act, subject to the conditions of appointment under proposed section 236K. Persons who may be appointed as recognised interstate correctional officers are: any person who is employed as a correctional officer in the public service of another state or territory other than a probationary correctional officer; any member of the police force of another state or territory other than a probationary constable; and any member of the Australian Federal Police.

Currently, if an inmate needs to be transported interstate for medical treatment which involves a stay in hospital lasting several days, correctional officers escort the inmate interstate but do not stay interstate to guard that inmate: they return to their correctional centre and the inmate is guarded in hospital by interstate correctional officers or interstate police officers, who are sworn in as special constables under New South Wales legislation for that purpose. New South Wales correctional officers return to collect the inmate when he or she is discharged from hospital, and return him to a correctional centre in New South Wales. In due course, recognised interstate correctional officers will perform the functions currently exercised by these special constables.

It is not intended that recognised interstate correctional officers be appointed until reciprocal arrangements are enacted in other states and territories allowing correctional officers and police officers employed in those states to be appointed as recognised interstate correctional officers in New South Wales. The Department of Corrective Services will commence liaison with other states and territories for this purpose.

Section 260 of the Act enables the Commissioner of Corrective Services or other prescribed person to issue certificates about certain matters. Such a certificate is admissible in any legal proceedings and is evidence of the facts stated in the certificate. The proposed amendment to section 260 will enable an evidentiary certificate to be issued stating that on a date or during a period specified in the certificate, a specified person was in the custody of the designated officer within the meaning of section 38 or section 249.

Such a certificate might be used in court proceedings where the fact that an inmate was in lawful custody was a fact in issue, such as proceedings for escaping or attempting to escape from lawful custody. The proposed amendment will clarify whose custody an inmate was in, in cases where an escape or attempted

escape occurs other than from a correctional centre, such as from an escort vehicle or from a hospital to which the inmate has been escorted.

Section 267 of the Act has been re-written. This section currently enables the Commissioner to supply records and information to persons undertaking research in connection with the administration of correctional centres or other specified matters. The proposed new section clarifies that such a person must obtain the Commissioner's approval before obtaining access to certain information or facilities, to persons held in custody by the Department of Corrective Services, to persons supervised by the Department and to persons employed by the Department or a management company that manages a correctional centre. The proposed section also expressly enables the Commissioner to have regard to any recommendations of an ethics committee about the proposed research, and revises the list of specified research matters. The Department of Corrective Services' Ethics Committee is established under clauses 170 and 171 of the *Crimes (Administration of Sentences) Regulation 2001*.

Several proposed amendments deal with the Parole Board and the Serious Offenders Review Council. Procedures of the Parole Board are governed by Schedule 1 to the Act, and procedures of the Review Council are governed by Schedule 2 to the Act.

Proposed new clause 11(5) of Schedule 1 will enable the Parole Board to hold a meeting at which some members participate by telephone, closed-circuit television or other means, but only if all the members can be heard by all other members and by the public (if the meeting is open to the public).

Currently, clause 16 of Schedule 1 provides that if the Chairperson of the Parole Board and the Alternate Chairperson or Deputy Chairperson, or both, are present at a meeting of the Parole Board, only the Chairperson is entitled to vote with respect to any decision. New clause 16(2) will enable the Chairperson, Alternate Chairperson and the Deputy Chairperson to each vote at a meeting, but only if it is a meeting that all the community members of the Parole Board are entitled to attend. (Usually, no more than 4 community members of the Parole Board may attend a meeting of the Parole Board for the purpose of constituting the Parole Board; however, the Chairperson may convene up to 6 meetings per year of the Parole Board at which all community members may attend.).

Clause 17 of Schedule 1 has been replaced, in order to provide that a decision of the Parole Board is made by a majority of members of the Parole Board, whether or not a judicial member forms part of the majority, and to provide that a decision of a Division of the Parole Board is made by a majority of members of the Division, rather than by the judicial member and at least one non-judicial member of the Division. This amendment has been prompted by a recent decision of the Court of Criminal Appeal, *Sides v Parole Board of New South Wales*, in which existing clause 17 was criticised.

New clause 22A of Schedule 1 provides that, at a meeting of the Parole Board, a question of law, or a question as to whether a question is a question of law or a question of mixed law and fact, is to be decided solely by the judicial member presiding at the meeting.

The amendments to Schedule 2 to the Act relating to the voting procedures of the Serious Offenders Review Council are parallel to the amendments to Schedule 1 relating to the voting procedures of the Parole Board, and will have the same effect on the Review Council.

Additionally, the Bill proposes amendments to clause 11A of Schedule 2, which deals with the conduct of proceedings before the Review Council by the use of audio-visual links. The proposed amendments make minor changes to references to the term "party" in the clause, to accommodate the fact that some persons involved in proceedings before the Review Council may not strictly speaking be parties to the proceedings.

I commend the Bill to the House.