

The object of this Bill is to amend the Crimes (Administration of Sentences) Act 1999 so as to make provision with respect to the following matters:

- the transfer of juvenile inmates to prison hospitals,
- the attendance of inmates at court proceedings,
- home visits to offenders under periodic detention orders and home detention orders,
- the period for which community service orders remain in force,
- the supervision of parole in relation to offenders serving certain life sentences,
- the reinstatement of periodic detention orders that have been revoked,
- the release of offenders pending assessment for home detention,
- the circumstances in which the revocation of a periodic detention order or home detention order can be rescinded,
- the exclusion of the right of review in relation to the revocation of certain periodic detention orders, home detention orders and parole orders,
- the suspension of warrants of commitment,
- the documents to which an offender's victim may be given access,
- the supervision of community service work,
- the appointment and functions of Departmental compliance and monitoring officers,
- the testing of staff for alcohol and prohibited drugs,
- other minor, consequential and ancillary matters,
- savings and transitional provisions in relation to the proposed amendments.

The Bill also makes consequential amendments to the Crimes (Administration of Sentences) Regulation 2001 and to the Children (Detention Centres) Act 1987.

### **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.

Clause 3 is a formal provision that gives effect to the amendments to the Crimes (Administration of Sentences) Act 1999 set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Crimes (Administration of Sentences) Regulation 2001 set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendment to the Children (Detention Centres) Act 1987 set out in Schedule 3.

Clause 6 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

### **Schedule 1 Amendment of Crimes (Administration of Sentences) Act 1999**

#### *Transfer of juvenile inmates to prison hospitals*

Section 41C provides for the transfer of a juvenile inmate (that is, an inmate who is under the age of 21 years) between adult and juvenile correctional centres. Such transfers are subject to restrictions intended to benefit the welfare of the juvenile inmate, but impede emergency transfers to prison hospitals.

Schedule 1 [4] amends section 41C so as to disapply those subsections with respect to the transfer of a juvenile inmate to a prison hospital, and further amends that section so as to require prior consultation with the Chief Executive Officer, Justice Health, before such a transfer may be made.

#### *Attendance of inmates at court proceedings*

Schedule 1 [5] and [6] amend section 77 so as to provide that orders requiring the attendance of an inmate at court proceedings are to be sent to the Commissioner of Corrective Services instead of to the governor of the correctional centre in which the inmate is held.

#### *Home visits to offenders*

Schedule 1 [7] amends section 81 so as to make it an obligation under an offender's periodic detention

order that the offender will permit home visits by members of staff of the Department of Corrective Services. Schedule 1 [9] makes a similar amendment to section 104 in relation to offenders under home detention orders.

*Expiry of community service orders*

Schedule 1 [12] amends section 110 so as to omit a provision that provides for the termination of a community service order (and therefore the termination of an offender's obligation to perform community service work) at the expiry of the relevant maximum period for that order. The effect of this amendment is to require an offender to continue performing community service work after the expiry of that period. Schedule 1 [14] and [15] make consequential amendments to sections 114 and 115.

*Lifetime supervision of lifetime parolees*

Schedule 1 [19] inserts a new section 128B so as to provide that any parole granted to an offender serving an existing life sentence within the meaning of Schedule 1 to the Crimes (Sentencing Procedure) Act 1999 (that is, a life sentence imposed in accordance with the law prevailing before the "truth in sentencing" legislation of 1990 commenced) is to be subject to a condition requiring lifetime supervision during which the offender must comply with obligations imposed by the Commissioner of Corrective Services. Those obligations must not be inconsistent with the standard conditions imposed by the Act or the regulations or any condition imposed by the sentencing court or the Parole Authority. Schedule 1 [17] and [18] make consequential amendments to section 128.

*Reinstatement of periodic detention orders*

Schedule 1 [25] amends section 164A so as to ensure that an offender's application for the reinstatement of a periodic detention order that has been revoked may not be made until the offender has spent at least 3 months in custody since the order was revoked and must indicate what the offender has done, or is doing, to ensure his or her compliance with the order in the event that it is reinstated.

*Release of offenders pending assessment for home detention*

Section 165AA currently permits the State Parole Authority, when considering whether to replace an offender's periodic detention order with a home detention order, to make an order releasing an offender from custody pending its decision. Schedule 1 [26] amends section 165AA so that a similar order may be made to allow an offender who is not in custody to remain at large.

*Rescission of revocation of periodic detention orders and home detention orders*

Schedule 1 [27] amends section 175 so as to restrict the State Parole Authority's power to rescind the revocation of a periodic detention order or a home detention order, under all circumstances, to those situations in which it would be manifestly unjust not to do so.

*Exclusion of rights of review in relation to revocation of periodic detention orders, home detention orders and parole orders*

Schedule 1 [28] inserts a new section 175A so as to provide that revocation of an offender's periodic detention order, home detention order or parole order is not reviewable if the revocation occurs within the last 30 days of the offender's sentence.

*Suspension of warrants of commitment*

Schedule 1 [29] amends section 181 so as to enable the State Parole Authority to recall or suspend any warrant that it has issued under that section. Schedule 1 [30]–[32] make consequential amendments to section 181.

*Documents to which an offender's victim may be given access*

Schedule 1 [35] amends section 193A so as to restrict the class of documents to which a serious offender's victim is entitled to be given access to those documents that indicate the measures that the offender has taken, or is taking, to address his or her offending behaviour.

#### *Supervision of community service work*

Schedule 1 [36] inserts a new section 235F so as to provide that, at any place at which community service work is being performed both by offenders under periodic detention orders and offenders under community service orders, the work may be supervised either by periodic detention field officers (whose functions are defined in existing section 235D) or by community service field officers (whose functions are defined in proposed section 235E).

Schedule 1 [10], [11], [13] and [16] make consequential amendments to sections 107, 112 and 117.

#### *Departmental compliance and monitoring officers*

Schedule 1 [36] inserts a new section 235G so as to enable the Commissioner to appoint members of staff of the Department of Corrective Services as compliance and monitoring officers. Such officers will be able to exercise, in relation to offenders outside a correctional centre, certain powers of arrest, powers of drug and alcohol testing and powers of search and detention, being powers that are currently exercisable only by correctional officers. Any qualifications on the exercise of those powers by correctional officers will apply equally to their exercise by compliance and monitoring officers, except that they will be able to be exercised wherever the offender happens to be. The proposed section is not to be construed as conferring a power of entry to premises.

#### *Testing of staff for alcohol and prohibited drugs*

Schedule 1 [37] amends section 236F so as to make it clear that testing of staff for alcohol and prohibited drugs can be conducted not only on a random basis but also on the basis of the results of previous testing.

#### *Minor, consequential and ancillary amendments*

Schedule 1 [2] and [3] amend section 3 (1) so as to insert a new definition of general manager and omit the definition of governor. Schedule 1 [1] amends the whole Act so as to substitute references to "governor" with references to "general manager".

Schedule 1 [8] amends section 87 so as to ensure that any leave of absence granted under that section may be granted subject to conditions.

Schedule 1 [20] amends section 138 so as to remove certain words by way of minor law revision.

Schedule 1 [21]–[23] amend section 139 so as to refer to the decisions, rather than the initial intentions, of the State Parole Authority in relation to its dealings with certain applications for parole.

Schedule 1 [24] amends section 141A so that regulations with respect to submissions made to the State Parole Authority by the Commissioner of Corrective Services in connection with the granting of parole to an offender who is not a serious offender may be made in the same way as regulations may be made with respect to submissions made by the State under section 153 in connection with the granting of parole to a serious offender.

Schedule 1 [33] amends section 185 so that regulations may be made with respect to submissions made to the State Parole Authority by the Commissioner of Corrective Services in connection with any advice to the Authority that is given by the Serious Offenders Review Council in relation to the exercise of the Authority's functions.

Schedule 1 [34] amends section 190 so as to correct an incorrect cross-reference.

#### *Savings and transitional provisions*

Schedule 1 [38] amends clause 1 of Schedule 5 so as to enable savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [39] enacts specific savings and transitional provisions in this regard.

Schedule 2 Amendment of Crimes (Administration of Sentences) Regulation 2001

Schedule 2 [2] amends clause 216 so as to prescribe supervision by a Departmental officer as supervision for an offender to whom section 128B of the Crimes

(Administration of Sentences) Act 1999 (to be inserted by Schedule 1 [19]) applies, in addition to supervision by a probation and parole officer that applies to all other offenders on parole.

Schedule 2 [5] inserts a new clause 218A, to apply to an offender to whom section 128B of the Crimes (Administration of Sentences) Act 1999 applies, so as to

require that an offender's obligations under that section to be reviewed at intervals of not more than 12 months, and that any new obligations imposed on the offender be notified to the State Parole Authority. Schedule 2 [1], [3] and [4] make consequential amendments to clauses 216, 217 and 218.

Schedule 3 Amendment of Children (Detention Centres) Act 1987

Schedule 3 amends section 37J so as to make it clear that testing of staff for alcohol and prohibited drugs can be conducted not only on a random basis but also on the basis of the results of previous testing.