

Crimes (Administration of Sentences) Amendment Bill 2007

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the Crimes (Administration of Sentences) Act 1999 (**the principal Act**) so as:
 - (i) to clarify the provisions with respect to the appointment and functions of compliance and monitoring officers, and
 - (ii) to enable the Commissioner to authorise persons who are not correctional officers to exercise specified correctional officer functions, and
 - (iii) to provide that an offender who is taken into custody while on release on parole (otherwise than following revocation of parole) does not become eligible for further parole until 12 months after he or she is taken into custody, and
 - (iv) to make further provision with respect to money that is held on behalf of offenders held in full-time imprisonment, and
 - (v) to make provision of a minor, consequential or ancillary nature, and
 - (vi) to make further provision of a savings or transitional nature, and
- (b) to amend the Crimes (Administration of Sentences) Regulation 2001 (**the principal Regulation**) so as:
 - (i) to enable an exempt person (such as a Member of Parliament) or exempt body (such as the Ombudsman, the Judicial Commission or the Anti-Discrimination Board) to ask the Commissioner not to forward to them any mail from specified offenders, and
 - (ii) to enable an offender under a community service order to be tested for drugs and alcohol while in attendance to perform community service work, and
 - (iii) to make provision of a minor, consequential or ancillary nature, and
- (c) to make a consequential amendment to the *Crimes (Serious Sex Offenders) Act 2006*.

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 the date of assent to the proposed Act.

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 *Crimes (Serious Sex Offenders) Act 2006* 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

Compliance and monitoring officers

Schedule 1 [10] substitutes section 235G of the principal Act. The proposed section differs from the existing section in that it extends the range of offenders with respect to whom a compliance and monitoring officer may exercise functions (proposed subsection (6)), extends the range of functions that a compliance and monitoring officer may exercise, but restricts their exercise to offenders who are of or above the age of 18 years (proposed subsection (2)) and expressly permits the use of reasonable force (proposed subsection (5)). **Schedule 1 [1]** inserts a definition of ***compliance and monitoring officer*** into section 3 (1).

Exercise of correctional officer functions by persons other than correctional officers

Schedule 1 [9] amends section 235 of the principal Act so as to enable the Commissioner to authorise a person who is not a correctional officer to exercise correctional officer functions. The amended section will provide that such a person is taken to be a correctional officer while exercising any such function, so giving the person the same immunities as a correctional officer and subjecting the person to the same accountabilities as a correctional officer.

Eligibility for parole of offenders returned to custody while on parole

An offender who is subject to imprisonment becomes eligible for parole on what is described as his or her “parole eligibility date”. That date is defined to be the date on which the offender first becomes eligible for release on parole (determined at the time the offender is sentenced) or, if the offender is returned to custody following revocation of parole, the date occurring 12 months after the date on which he or she is so returned. **Schedule 1 [2]** amends the definition of ***parole eligibility date*** in section 3 of the principal Act so as to ensure that the same 12-month waiting period applies if the offender is taken into custody otherwise than following revocation of parole (such as if the offender is imprisoned for a new offence).

Money held on behalf of offenders in full-time imprisonment

Schedule 1 [4] inserts a new section 76A into the principal Act. The proposed section requires money held on behalf of offenders subject to full-time imprisonment to be deposited into a bank or other authorised deposit-taking institution, allows it to be invested, and allows the proceeds of investment to be applied for the benefit of such offenders, and their families, in such manner as the Commissioner may determine.

Minor, consequential and ancillary amendments

Schedule 1 [3] amends sections 21, 41D, 52, 55, 190, 204 and 235A of the principal Act so as to replace references to “legal practitioner” with references to “Australian legal practitioner”. These amendments reflect changes in nomenclature brought in by the *Legal Profession Act 2004*.

Schedule 1 [5] and [6] amend sections 81 and 104 of the principal Act, dealing with the obligations of offenders under periodic detention orders and home detention orders, so as to make it clear that an offender must not only permit home visits by correctional officers and other members of staff of the Department of Corrective Services but must also permit them entry to the home.

Schedule 1 [7] replaces subsection (3) of section 141 of the principal Act with proposed subsections (3) and (3AA) so as to make it clear that the Parole Authority need only to specify a period during which an offender is to be released on parole (leaving the actual day to be determined administratively having regard to the need to ensure that arrangements are in place to enable the offender to make the transition from custody) rather than, as is presently the case, to fix the actual day of release.

Schedule 1 [8] makes a consequential amendment to section 141 (3A).

Savings and transitional provisions

Schedule 1 [11] amends clause 1 of Schedule 5 to the principal Act so as to enable savings and transitional regulations to be made in connection with the enactment of the proposed Act.

Schedule 1 [12] inserts a new Part 12 into Schedule 5 to the principal Act. The proposed Part contains savings and transitional provisions with respect to the proposed section 76A (see Schedule 1 [4]) and the substituted section 235G (see Schedule 1 [10]).

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

Stop orders on forwarding of mail to exempt persons and exempt bodies

Schedule 2 [1] amends clause 110 of the principal Regulation so as to enable an exempt body or exempt person (that is, a body or person to whom an offender is ordinarily entitled to send, and from whom an offender is ordinarily entitled to receive, unopened mail) to ask the Commissioner not to forward mail from a particular offender (perhaps because previous mail from that offender has been abusive or threatening). Mail that is from any such offender that is addressed to a body or person from whom such a request has been made may be confiscated and dealt with as the Commissioner directs.

Drug and alcohol testing of offenders attending to perform community service work

Schedule 2 [2] inserts a new clause 205A into the principal Regulation. The proposed clause requires an offender under a community service order who is in attendance at a work site or attendance site to undergo testing for alcohol and drugs if required to do so by an authorised officer. These requirements parallel similar requirements that apply under clauses 146 and 148 to offenders who are in full-time or periodic detention.

Minor, consequential and ancillary amendments

Schedule 2 [3] amends clause 217 of the principal Regulation so as to bring it into line with the provisions to be amended by Schedule 1 [5] and [6] and Schedule 3.

Schedule 2 [4] substitutes clause 281 of the principal Regulation so as to update provisions that prescribe the order of ranking of correctional officers and of certain Departmental officers.

Schedule 2 [5] substitutes the definition of *legal practitioner* in the Dictionary to the principal Regulation so as to reflect changes in nomenclature brought in by the *Legal Profession Act 2004*. The amendment reflects the amendments to be made to the principal Act by Schedule 1 [3].

Schedule 3 Amendment of Crimes (Serious Sex Offenders) Act 2006

Schedule 3 substitutes section 11 (a) of the *Crimes (Serious Sex Offenders) Act 2006* so as to bring it into line with the provisions to be amended by Schedule 1 [5] and [6] and Schedule 2 [3].