

Passed by both Houses



New South Wales

Crimes (Administration of Sentences) Amendment Bill 2007

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2007

Clerk of the Parliaments



New South Wales

Crimes (Administration of Sentences) Amendment Bill 2007

Act No , 2007

An Act to amend the *Crimes (Administration of Sentences) Act 1999* and the regulations under that Act in relation to the management of correctional centres; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes (Administration of Sentences) Amendment Act 2007*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Crimes (Administration of Sentences) Act 1999 No 93

The *Crimes (Administration of Sentences) Act 1999* is amended as set out in Schedule 1.

4 Amendment of Crimes (Administration of Sentences) Regulation 2001

The *Crimes (Administration of Sentences) Regulation 2001* is amended as set out in Schedule 2.

5 Amendment of Crimes (Serious Sex Offenders) Act 2006 No 7

The *Crimes (Serious Sex Offenders) Act 2006* is amended as set out in Schedule 3.

6 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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

(Section 3)

[1] Section 3 Interpretation

Insert in alphabetical order in section 3 (1):

compliance and monitoring officer means a member of staff of the Department who is appointed as a compliance and monitoring officer under section 235G.

[2] Section 3 (1), definition of “parole eligibility date”

Insert “while on release on parole or” after “custody” in paragraph (b) of the definition.

[3] Sections 21 (4) and (5), 41D (5), (6) and (7) (b), 52 (2) (d) and (e), 55 (4), 190 (1) (a), 204 (a) and 235A (f)

Omit “a legal practitioner” wherever occurring.

Insert instead “an Australian legal practitioner”.

[4] Section 76A

Insert after section 76:

76A Inmates’ money

- (1) Any money:
 - (a) that is surrendered by an inmate on being taken into custody at a correctional centre, or
 - (b) that is paid to an inmate pursuant to section 7, or
 - (c) that is received by a correctional officer or other member of staff of the Department on an inmate’s behalf,is to be deposited in an authorised deposit-taking institution.
- (2) Until repaid, money so deposited may be invested by the Treasurer in any form of investment approved by the Treasurer.
- (3) Interest from any such investment may be applied for the benefit of inmates and their families in such manner as the Commissioner may determine.

[5] Section 81 Obligations of offender

Omit section 81 (d). Insert instead:

- (d) to permit any correctional officer or other member of staff of the Department to visit the offender at the offender's residential address at any time and, for that purpose, to enter the premises at that address.

[6] Section 104 Obligations of offender

Omit section 104 (c). Insert instead:

- (c) to permit any correctional officer or other member of staff of the Department to visit the offender at the offender's residential address at any time and, for that purpose, to enter the premises at that address.

[7] Section 141 Decision following review

Omit section 141 (3). Insert instead:

- (3) If the Parole Authority decides that the offender should be released on parole, the Parole Authority must make an order directing the release of the offender on a day occurring during a period specified in accordance with subsection (3AA).
- (3AA) The period to be specified in a parole order under this section is to be:
 - (a) if the order is made earlier than the offender's parole eligibility date, a period beginning no earlier than the offender's parole eligibility date and ending no later than 35 days after that date, and
 - (b) in any other case, a period beginning no earlier than the date on which the order is made and ending no later than 35 days after that date.

[8] Section 141 (3A)

Omit "a day on which to release a violent offender under subsection (3)".

Insert instead "when a violent offender should be released".

[9] Section 235 Functions of correctional officers

Insert after section 235 (2):

- (3) The Commissioner may, by order in writing, authorise any person to exercise such functions of a correctional officer as are specified in the order, subject to such conditions as are so specified.

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- (4) The functions so specified may include not only functions under this Act but also functions under any other Act or law.
 - (5) In the exercise of any such function, a person so authorised is taken to be, for all purposes, a correctional officer.

[10] Section 235G

Omit the section. Insert instead:

235G Functions of Departmental compliance and monitoring officers

- (1) The Commissioner may appoint any member of staff of the Department (including any correctional officer or probation and parole officer) as a compliance and monitoring officer to exercise such of the functions referred to in subsections (2) and (3) as are specified in the instrument of his or her appointment or in a subsequent instrument executed by the Commissioner.
- (2) The functions exercisable by a compliance and monitoring officer may include any of the following:
 - (a) functions associated with the conduct of an intervention program under Part 4 of Chapter 7 of the *Criminal Procedure Act 1986*,
 - (b) functions associated with the administration of an extended supervision order or interim supervision order under Part 2 of the *Crimes (Serious Sex Offenders) Act 2006*,
 - (c) functions of a correctional officer under Part 4A of the *Summary Offences Act 1988* in relation to offences relating to places of detention,
 - (d) functions of a probation and parole officer, or of any other person within the Probation and Parole Service, under this or any other Act,
 - (e) functions of a correctional officer under section 39 in relation to the arrest of inmates unlawfully absent from custody,
 - (f) functions of a correctional officer under the regulations in relation to the testing of offenders (including offenders who are on release on parole) for the presence of alcohol or drugs,

- (g) such other functions as are ancillary to the functions referred to in the foregoing paragraphs,
but only in relation to offenders who are outside a correctional centre and only in relation to offenders who are of or above the age of 18 years.
- (3) The functions referred to in subsection (2) may be exercised in relation to an offender, in accordance with the legislative provisions under which they arise, wherever the offender may be.
- (4) Subsection (3) is not to be construed as conferring on a compliance and monitoring officer any power to enter premises otherwise than with the consent of the occupier of those premises.
- (5) Subject to subsection (4), a compliance and monitoring officer may use such force as is reasonably necessary in the exercise of his or her functions under this section.
- (6) In this section, *offender* means:
- (a) an inmate referred to in Part 2 who is absent from a correctional centre, or
 - (b) an offender referred to in Part 3, 4, 5 or 6, or
 - (c) an offender referred to in Part 8 of the *Crimes (Sentencing Procedure) Act 1999*, or
 - (d) an offender or accused person the subject of an intervention program under Part 4 of Chapter 7 of the *Criminal Procedure Act 1986*, or
 - (e) a sex offender the subject of an extended supervision order or interim supervision order under Part 2 of the *Crimes (Serious Sex Offenders) Act 2006*.

[11] Schedule 5 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes (Administration of Sentences) Amendment Act 2007

[12] **Schedule 5, Part 12**

Insert after Part 11:

**Part 12 Provisions consequent on enactment of
Crimes (Administration of Sentences)
Amendment Act 2007**

96 Definition

In this Part:

the 2007 amending Act means the *Crimes (Administration of Sentences) Amendment Act 2007*.

97 Inmates' money

Section 76A, as inserted by the 2007 amending Act, extends to any money that, before the commencement of that section, had been surrendered, paid or received as referred to in subsection (1) of that section.

98 Compliance and monitoring officers

Any appointment as a compliance and monitoring officer that was in force under section 235G immediately before its substitution by the 2007 amending Act is taken to have been made under the new section 235G.

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

(Section 4)

[1] Clause 110 Certain letters and parcels privileged

Insert after clause 110 (1):

- (1A) An exempt body or exempt person may, by written notice sent to the Commissioner, direct that letters or parcels from a specified inmate, or from inmates of a specified class, are not to be posted to that body or person.
- (1B) Subclause (1) does not apply to any letter or parcel from an inmate the subject of a notice under subclause (1A), and any such letter or parcel may instead be confiscated.
- (1C) A letter or parcel that has been confiscated under subclause (1B) may, together with its contents, be dealt with in accordance with the directions of the Commissioner.

[2] Clause 205A

Insert after clause 205:

205A Testing for alcohol and drugs

- (1) On forming a suspicion that an offender who is in attendance at a work site or attendance site has recently consumed or is under the influence of alcohol or any other intoxicating substance, an authorised testing officer may require the offender to undergo a breath test.
- (2) On forming a suspicion that an offender who is in attendance at a work site or attendance site:
 - (a) has been administered (whether by himself or herself or otherwise) with a drug, or
 - (b) is under the influence of a drug,an authorised testing officer may require the offender to supply a sample of urine for testing or analysis and give directions as to how the sample is to be supplied.
- (3) An offender must not refuse or fail to comply with a requirement under this clause.
Maximum penalty: 5 penalty units.

- (4) In this clause, *authorised testing officer* means a person who is authorised by the Commissioner to exercise the functions of an authorised testing officer for the purposes of this clause.

[3] Clause 217 Supervision conditions generally

Omit clause 217 (2) (d). Insert instead:

- (d) to reside at an address approved by the officer,
(d1) to permit the officer to visit the offender at the offender's residential address at any time and, for that purpose, to enter the premises at that address,

[4] Clause 281

Omit the clause. Insert instead:

281 Order of ranking of correctional and other officers

- (1) The order of ranking of correctional officers, in descending order, is as follows:
- Deputy Commissioner
 - Assistant Commissioner
 - Chief Superintendent
 - General Manager
 - Superintendent
 - Manager of Security
 - Deputy Superintendent
 - Senior Assistant Superintendent
 - Principal Correctional Officer
 - Assistant Superintendent
 - Chief Correctional Officer
 - Senior Correctional Officer
 - Correctional Officer
 - Probationary Correctional Officer

- (2) The order of ranking of Departmental officers employed in the Corrective Services Industries Branch of the Department, in descending order, is as follows:

Manager of Industries (Level 1)

Manager of Industries (Level 2)

Manager, Centre Services and Employment

Manager, Business Unit

Senior Overseer

Overseer

[5] Dictionary

Omit the definition of *legal practitioner*. Insert instead:

legal practitioner means an Australian legal practitioner within the meaning of the *Legal Profession Act 2004*.

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

(Section 5)

Section 11 Conditions that may be imposed on supervision order

Omit section 11 (a). Insert instead:

- (a) to permit any corrective services officer to visit the offender at the offender's residential address at any time and, for that purpose, to enter the premises at that address, or