



New South Wales

Crimes (Administration of Sentences) Amendment Bill 2008

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Crimes (Administration of Sentences) Act 1999* (*the Act*) as follows:

- (a) to establish residential facilities to accommodate certain inmates prior to release from custody and persons subject to non-custodial orders (such as good behaviour bonds) or parole orders, and to provide for the management and administration of these facilities,
- (b) to enable further regulations to be made in respect of the seizure and forfeiture of any property (including drugs) that is unlawfully in the possession of an inmate or other person, or that is brought into or found within a correctional centre or correctional complex,
- (c) to confirm that immigration detainees under the *Migration Act 1958* of the Commonwealth and persons sentenced to imprisonment under the *Defence Force Discipline Act 1982* of the Commonwealth may be held in correctional centres,
- (d) to provide that appointments to the Parole Authority are to be for a period not exceeding 3 years (instead of a 3 year fixed term),

- (e) to reduce the maximum number of community members who may attend a Parole Authority meeting (other than a general meeting) from 4 to 2, with no change to the number of community members that make up the pool of people who can be called on to attend meetings,
- (f) to allow a victim of a serious offender to authorise a person to act as his or her agent, with the written approval of the Commissioner, for the purpose of accessing documents held by the Parole Authority in relation to the offender,
- (g) to ensure that an inmate, who is not released on parole on reaching his or her initial parole eligibility date, becomes eligible for release on parole on each anniversary of that parole eligibility date, and no sooner,
- (h) to enable regulations to be made that require any of the functions of the Serious Offenders Review Council in relation to segregated and protective custody of inmates to be exercised by the Chairperson of the Council alone,
- (i) to make further provision in relation to community service orders and the extension of the maximum period of such orders,
- (j) to restrict the circumstances in which money must be held for an inmate,
- (k) to provide that correctional staff may be tested for steroids, in addition to alcohol and prohibited drugs,
- (l) to allow a person in custody under 18 years of age who is being transferred to a juvenile correctional centre to be held temporarily in a children's detention centre if it is necessary or convenient to do so,
- (m) to clarify the powers of a general manager of a correctional centre with respect to work performed by inmates,
- (n) to make other minor, consequential and ancillary amendments.

The Bill also:

- (a) amends the *Children (Detention Centres) Act 1987* to:
 - (i) provide for further circumstances in which a detainee aged between 18 and 21 years may not be detained in a children's detention centre, and
 - (ii) confirm that the Children's Court is to continue to exercise its functions as the Parole Authority in respect of the parole orders for certain detainees under 18 years of age who are being held in a correctional centre, and
- (b) makes an amendment to the *Summary Offences Act 1988* consequential on the amendments to the *Crimes (Administration of Sentences) Act 1999* described above.

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 Act set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts set out in Schedule 2.

Clause 5 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

Residential facilities

Schedule 1 [32] establishes a new type of facility for offenders, known as *residential facilities*, that will accommodate certain inmates prior to their release from custody and other offenders who are subject to non-custodial orders (such as good behaviour bonds) or parole orders (*non-custodial residents*). Residential facilities will be proclaimed by the Governor.

Part 2 of the Act (Imprisonment by way of full-time detention) will apply to residential facilities and to inmates (other than non-custodial residents) accommodated in residential facilities in the same way as it applies to correctional centres and inmates held in correctional centres, subject to minor modifications, and any other modifications prescribed by the regulations. The regulations may also provide for the application to residential facilities of other provisions of the Act that apply to correctional centres.

A manager of each residential facility is to be employed under the *Public Sector Employment and Management Act 2002*. The Commissioner may appoint persons to supervise residents of residential facilities, and may determine their functions from time to time, which may include the functions of a correctional officer.

Schedule 1 [27] provides that the Commissioner of Corrective Services (the *Commissioner*) has the care, direction, control and management of residential facilities.

Schedule 1 [2], [34] and [35] are consequential amendments.

Seizure and forfeiture of property

At present, the Act permits the regulations to provide for the circumstances in which it is lawful for an inmate to acquire or retain property, and to provide for the seizure, forfeiture and disposal of property unlawfully brought into a correctional centre. **Schedule 1 [9]** extends those regulation-making powers, so that the regulations may provide for the seizure, forfeiture and destruction or other disposal of:

- (a) any property (including money) found within, or sent to or delivered to, a correctional centre or correctional complex that it is unlawful for an inmate to acquire or retain possession of, and
- (b) any drug, or any thing reasonably suspected of being a drug, that is:
 - (i) in the possession of an inmate, or
 - (ii) in the possession of any other person in a correctional centre or correctional complex, or
 - (iii) found within a correctional centre or correctional complex, or
 - (iv) sent to or delivered to a correctional centre or correctional complex.

The Act also allows the Commissioner to confiscate any property unlawfully in the possession of an inmate and this property becomes the property of the State and may be disposed of as the Commissioner directs. **Schedule 1 [6]** makes it clear that such property may be destroyed or otherwise disposed of.

Immigration and Defence Force detainees

Schedule 1 [3] puts it beyond doubt that Part 2 of the Act (which applies to full-time inmates in a correctional centre) applies:

- (a) to a person sentenced to imprisonment under the *Defence Force Discipline Act 1982* of the Commonwealth who is committed to a correctional centre to serve that sentence, and
- (b) to an immigration detainee within the meaning of the *Migration Act 1958* of the Commonwealth who is held in a correctional centre under that Act.

Schedule 1 [4] provides that a Defence Force detainee is a convicted inmate for the purposes of the Act. Section 6 of the Act provides that the general manager of a correctional centre can direct convicted inmates to perform work. **Schedule 1 [1]** amends the definition of *convicted inmate* accordingly.

Parole matters

Currently, a victim of a serious offender is entitled to be given access to all documents held by the Parole Authority in respect of the offender relating to the measures the offender has taken, or is taking, to address his or her offending behaviour. **Schedule 1 [23] and [24]** provide that an agent of the victim, who is authorised in writing by the victim and the Commissioner, may access the documents on the victim's behalf. A victim may revoke an authorisation at any time by notice in writing to the Commissioner.

Schedule 1 [15]–[22] provide that an inmate, who is still in custody after his or her initial parole eligibility date, becomes eligible for release on parole on every anniversary of his or her parole eligibility date, and no sooner (subject to manifest injustice considerations). If the Parole Authority orders the release of the offender, on an annual review of the offender's case, the release order will not take effect until the anniversary of the offender's parole eligibility date.

Schedule 1 [36] provides that members appointed to the Parole Authority (that is, judicial members and community members) may be appointed for a period of up to 3 years. At present, appointed members have a fixed term of 3 years.

The Parole Authority is made up of at least 4 judicial members (including the Chairperson), at least 10 community members and at least 2 official members (from the NSW Police Force and the Probation and Parole Service). However, not all members attend each Parole Authority meeting. Currently, the Act provides that a meeting of the Parole Authority is to consist of the Chairperson, no more than 4 community members and no more than 2 official members (that is, a maximum total of 7 members at most meetings). **Schedule 1 [37]** provides that no more than 2 community members may attend a meeting, so that the maximum number of members at most Parole Authority meetings is 5. The Chairperson continues to be able to convene up to 6 meetings of the Parole Authority each year at which all community and official members may attend.

Community service orders

At present, section 110 of the Act provides that a community service order remains in force until the offender has performed the required number of hours of work, unless sooner revoked. **Schedule 1 [10]** provides that a community service order expires if the relevant maximum period (generally 12 or 18 months) expires, even if that occurs before the inmate has completed the required number of hours of work. **Schedule 1 [13]** provides, however, that if an application is made to the Local Court to extend the period of an order and the relevant maximum period expires before the application is determined, the community service order is taken to remain in force until the application is determined by the Court. **Schedule 1 [12] and [14]** ensure that an application to extend or revoke a community service order can still be heard if the relevant maximum period has expired. **Schedule 1 [11]** is a consequential amendment.

Inmates' money

Schedule 1 [7] removes the requirement that money received by a correctional officer or other member of staff on an inmate's behalf must be deposited in an authorised deposit-taking institution and held for the inmate, if it is unlawful for the inmate to receive that money while in custody. The Act currently permits the regulations to provide for the circumstances in which an inmate may lawfully possess property while in custody. **Schedule 1 [8]** makes it clear that property includes any money, so that the regulations can prohibit inmates from receiving money while in custody.

Other amendments

Schedule 1 [26] provides that the regulations may require any of the functions of the Serious Offenders Review Council that relate to segregated and protective custody of inmates to be exercised by the Chairperson alone. **Schedule 1 [25]** is a consequential amendment.

Schedule 1 [28]–[31] provide for correctional staff to be tested for steroids, as well as alcohol and prohibited drugs.

Section 252 of the Act provides that a person in custody may be accommodated in a correctional centre, police station or court cell complex while being transferred from one place or another, if it is necessary or convenient to do so. **Schedule 1 [33]** provides that a person under 18 years of age who is being transferred to a juvenile correctional centre may also be temporarily held in a children's detention centre.

Schedule 1 [5] makes it clear that the general manager of a correctional centre may direct a convicted inmate to perform community service or other work within the correctional centre, within the correctional complex but outside the correctional centre, or outside the correctional complex.

Schedule 1 [4] provides that an inmate, who is aged 21 years or more and who is sentenced to full-time imprisonment in a correctional centre by the Children's Court, is a convicted inmate. Under the Act, the general manager of a correctional centre may direct a convicted inmate to perform work. **Schedule 1 [1]** amends the definition of *convicted inmate* accordingly.

Schedule 1 [38] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [39] contains savings and transitional provisions.

Schedule 2 Amendment of other Acts

Detention Centres

Section 9A of the *Children (Detention Centres) Act 1987* provides that the following persons are not to be detained in a juvenile detention centre:

- (a) a person aged 21 years or over who is subject to an arrest warrant of any kind,
- (b) a person aged between 18 and 21 years who is subject to an arrest warrant of a certain kind (including, for example, a warrant for an alleged breach of a probation order, good behaviour bond or community service order or an alleged escape from custody).

Under Part 13 of the *Crimes (Administration of Sentences) Act 1999*, these persons may be held in correctional centres.

Schedule 2.1 [2] clarifies that section 9A applies to a person arrested in relation to an alleged escape from custody (under section 39 of the *Crimes (Administration of Sentences) Act 1999*) only if the person is arrested pursuant to a warrant.

Schedule 2.1 [3] extends the operation of section 9A to:

- (a) a person aged between 18 and 21 years who is the subject of an arrest warrant issued because of a suspension or revocation of parole or a failure to appear at a parole hearing, and
- (b) a person aged between 18 and 21 years who is the subject of an order or warrant made or issued for an escape from a detention centre.

Crimes (Administration of Sentences) Amendment Bill 2008

Explanatory note

Accordingly, a person between 18 and 21 years who is arrested pursuant to one of these warrants or orders is not to be detained in a children's detention centre. **Schedule 2.1 [1] and [5]** are consequential amendments.

Schedule 2.1 [4] provides that if a detainee, who is being detained as a result of the revocation of his or her parole by the Children's Court, is transferred to a correctional centre, the Children's Court is to continue to exercise the functions of the Parole Authority with respect to the revocation of that parole. This includes, for instance, the function of reviewing that revocation.

Places of detention

Part 4A of the *Summary Offences Act 1988* makes provision for offences relating to places of detention, which are defined as correctional centres, correctional complexes and periodic detention centres. **Schedule 2.2** amends the definition of *place of detention* to include a residential facility.