

## Crimes (Administration of Sentences) Amendment Bill 2000

### Explanatory note

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

#### Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Crimes (Administration of Sentences) Act 1999* with respect to full-time detention, periodic detention, home detention, parole, the Parole Board, the Serious Offenders Review Council and other matters concerning the administration of sentences.

#### 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 giving effect to the amendments to the *Crimes (Administration of Sentences) Act 1999* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Crimes (Sentencing Procedure) Act 1999* set out in Schedule 2.

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

**Schedule 1 [2]** amends section 3 of the *Crimes (Administration of Sentences) Act 1999* (**the Act**) to expand the definition of **law enforcement agency** to include certain specified agencies (such as the National Crime Authority and the Independent Commission Against Corruption) and other agencies prescribed by the regulations. The amendment facilitates the interviewing of inmates by these law enforcement agencies.

**Schedule 1 [3]** and **[4]** amend section 6 of the Act to clarify that inmates may be ordered by the governor of a correctional centre to perform work outside a correctional centre for the Department of Corrective Services (**the Department**) or other public or local authorities.

As a consequential amendment, **Schedule 1 [33]** amends section 118 of the Act to expand the definition of **community service work** (as used in Division 2 of Part 5 of the Act) to include work performed by an offender outside a correctional centre in accordance with section 6 (2). The amendment will apply the general provisions (relating, among other things, to the restrictions on, and civil liability relating to, community service work) to this work performed outside a correctional centre under section 6 (2). **Schedule 1 [6]**, **[28]** and **[32]** make further consequential amendments.

**Schedule 1 [5]** amends section 19 of the Act to enable the Serious Offenders Review Council to reject an application for a review of a segregated or protective custody direction if the Council has previously reviewed the same direction and the application does not, in the opinion of the Council, disclose substantially different grounds for review.

**Schedule 1 [7]** makes a law revision amendment.

**Schedule 1 [8]** amends sections 38, 77 and 249 of the Act (all relating to the custody or escort of offenders) to expand the definition of **correctional officer** (as used in those sections) to include persons employed on a temporary basis by the Department as correctional officers and persons holding authorities under section 240 of the Act to perform escort duties (that is, persons employed in a privately managed correctional centre).

**Schedule 1 [9]** replaces section 39 of the Act with a new section that gives police and correctional officers the power to arrest an inmate:

- (a) who has contravened or manifested an intention to contravene a local leave order, a local leave permit or an interstate leave permit, or
- (b) whose local leave order, local leave permit or interstate leave permit has been revoked, or

- (c) who has not returned to a correctional centre at the expiry of the period specified in a local leave order, local leave permit or interstate leave permit, or
- (d) who has escaped from custody.

The Commissioner of Corrective Services (*the Commissioner*) may also issue a warrant for the arrest of an inmate if it appears to the Commissioner that any of the occurrences outlined above has taken place.

**Schedule 1 [10]** amends section 59 of the Act to increase, from \$50 to \$100, the amount that the governor of a correctional centre may order an inmate to pay in compensation for causing loss or damage to property as a result of committing a correctional centre offence.

**Schedule 1 [11]** inserts proposed section 72A into the Act to clarify that an inmate must be supplied with treatment that, in the opinion of a medical officer, is necessary for the preservation of the health of the inmate, other inmates and of any other person.

**Schedule 1 [12]** replaces section 73 of the Act with a new section that provides that the Chief Executive Officer, Corrections Health Service (and not medical practitioners in general) is the appropriate person to consent to the carrying out of compulsory medical treatment on an inmate in accordance with the Act if the inmate does not consent and the illness is serious or life threatening. If the Chief Executive Officer is not a medical practitioner, a person who is a medical practitioner is to be designated to carry out the function of consenting under this section.

**Schedule 1 [13]** amends section 75 of the Act to make it clear that the power of the Commissioner to confiscate property unlawfully in the possession of an inmate includes the power to confiscate money in the possession of an inmate.

**Schedule 1 [14]** amends section 77 (3) of the Act to make it clear that an inmate is in lawful custody while the inmate is in the custody of a sheriff's officer.

**Schedule 1 [15]** amends section 77 (5) of the Act to insert a definition of *court* that includes the Children's Court, the Federal Court of Australia, the Family Court of Australia, the Federal Magistrates Court of Australia, the Dust Diseases Tribunal and any other court or body prescribed by the regulations for the purposes of the definition. The amendment will allow such a body to make an order directing that an inmate be brought before it for the purposes of a legal proceeding, inquest or inquiry.

**Schedule 1 [16]–[21]** amend section 79 of the Act to expand and clarify the regulation-making power under the Act.

**Schedule 1 [22]** and **[23]** amend sections 82 and 89 of the Act to provide that where an offender, who is the subject of a periodic detention order, fails to report for a detention period as required by the order, but during that detention period is taken into custody (whether in relation to the original offence concerned or otherwise and whether as an inmate of a correctional centre or not), the offender is for the purposes of section 89 taken to have reported late for that detention period without leave of absence. The offender's sentence is then extended in accordance with section 89.

**Schedule 1 [24]** and **[25]** amend section 93 of the Act to give the Parole Board, instead of a Local Court, the responsibility of hearing appeals from the Commissioner's refusal to grant a periodic detainee a leave of absence.

**Schedule 1 [26]** and **[27]** amend section 98 (2) of the Act to make it clear that under that section the regulations may apply provisions of any regulations made under Part 2 of the Act, in addition to the actual provisions of Part 2, to a periodic detention offender to whom section 98 applies.

**Schedule 1 [29]** makes a law revision amendment.

**Schedule 1 [30]** inserts proposed section 115 (2A) into the Act to provide that an application for the revocation of a community service order may be made up to one month after the relevant maximum period of the order has expired.

**Schedule 1 [31]** replaces section 116 of the Act to enable a court, where an application for the extension or revocation of an offender's community order has been made, to issue a warrant for the offender's arrest if it is satisfied that the whereabouts of the offender are unknown. The proposed new section will also allow the court to authorise an authorised justice (such as a

clerk of the court) to issue a warrant under this section on behalf of the court.

**Schedule 1 [34]** amends section 138 of the Act to make it clear that the Parole Board has power to amend or repeal its orders.

**Schedule 1 [35], [38] and [40]** amend sections 163, 167 and 170 of the Act to enable an offender to apply for the revocation of his or her periodic detention order, home detention order or parole order.

**Schedule 1 [36]** amends section 163 of the Act to enable the Parole Board to revoke an offender's periodic detention order on health or compassionate grounds and, on the application of the Commissioner, make such other orders in relation to the offender as it considers appropriate.

**Schedule 1 [37]** replaces section 165 of the Act which enables the Parole Board to make a home detention order that replaces a periodic detention order that has been revoked by the Board. The new section:

- (a) provides that a home detention order may be made under that section in relation to the remainder of an offender's sentence only if that remainder is 18 months or less, and
- (b) gives the Parole Board the power, when it refers an offender for assessment as to his or her suitability for home detention under section 165 (1), to order the stay of execution of the offender's sentence and the release of the offender, subject to such supervision as may be prescribed by the regulations, until the Board decides whether or not to make a home detention order.

**Schedule 1 [38]** also amends section 167 of the Act to enable the Parole Board to revoke a home detention order if the person with whom the offender resides during the period of home detention withdraws his or her consent to the continued operation of the order.

**Schedule 1 [39]** inserts proposed section 168A into the Act to enable the Parole Board, on the application of an offender whose home detention order has been revoked, to re-instate the order if the offender has served at least three months of his or her sentence by way of full-time detention.

**Schedule 1 [42]** amends section 179 of the Act to enable the Parole Board, when it revokes a consecutive periodic detention order under section 179 of the Act, to make a home detention order in accordance with section 165 of the Act. **Schedule 1 [41]** makes a consequential amendment.

**Schedule 1 [43]** inserts proposed section 179A into the Act to require the Parole Board, where it revokes the first of two or more consecutive home detention orders but not the subsequent order or orders that have been made in respect of an offender, to refer the offender for a new assessment as to the offender's suitability for home detention before the second or any subsequent home detention order comes into force.

**Schedule 1 [44]** amends sections 180 and 181 of the Act to enable the Secretary of the Parole Board to sign warrants on behalf of the Board.

**Schedule 1 [45]** amends section 184 of the Act to redefine what constitutes a Division of the Parole Board. A Division is to consist of one judicial member, at least one community member and either the Secretary of the Parole Board or one or more official members or both.

**Schedule 1 [46]** inserts proposed section 192A into the Act to provide that the Minister must, as soon as practicable after receiving the annual report of the Parole Board, table it in Parliament. If a House of Parliament is not sitting when the Minister seeks to table an annual report, the Minister is to present copies of the report to the Clerk of the House.

**Schedule 1 [47]**—see note on **Schedule 1 [50]**.

**Schedule 1 [48]** amends section 195 of the Act to provide that the Serious Offenders Review Council is to consist of at least 8, but not more than 14 members.

**Schedule 1 [49]** inserts proposed section 209 (2) and (3) into the Act to provide that if a House of Parliament is not sitting when the Minister seeks to table the annual report of the Serious Offenders Review Council, the Minister is to present copies of the report to the Clerk of the House.

**Schedule 1 [50]** inserts proposed section 209A into the Act to provide that a judicial member of the Serious Offenders Review Council may prohibit the disclosure of a report or document

under the Act, if the member is of the opinion that the disclosure may adversely affect the security, discipline or good order of a correctional centre, endanger the person or any other person, jeopardise the conduct of any lawful investigation, or prejudice the public interest.

**Schedule 1 [47]** amends section 194 of the Act to bring it into line with proposed section 209A relating to the Serious Offenders Review Council.

**Schedule 1 [51]** inserts proposed section 235B into the Act to allow the Commissioner to issue (and from time to time amend or revoke) instructions, not inconsistent with the Act or the regulations, or with the *Public Sector Management Act 1988* or the regulations made under that Act, to the staff of the Department (including correctional officers) with respect to the management and control of the Department.

**Schedule 1 [52]** inserts proposed Division 4 of Part 11 (sections 236A–236C) into the Act. The proposed Division contains provisions relating to the Corrections Health Service.

Proposed section 236A sets out the functions of the Corrections Health Service. Proposed section 236B states that the Chief Executive Officer, Corrections Health Service is to have unfettered access to all correctional centres (including periodic detention centres). Proposed section 236C provides for the appointment of medical officers for correctional centres by the Chief Executive Officer, Corrections Health Service. **Schedule 1 [1]** amends section 3 (1) of the Act as a consequence to insert definitions of **Chief Executive Officer, Corrections Health Service, Corrections Health Service** and **medical officer**. **Schedule 1 [53]** makes another consequential amendment.

**Schedule 1 [54]** amends clause 12 of Schedule 1 to the Act to provide that the representative of the Serious Offenders Review Council, who is entitled to be present and be heard at a meeting of the Parole Board where a matter relating to a serious offender is being considered, need not be a member of the Review Council.

**Schedule 1 [55]** and **[56]** insert new subclauses into Schedules 1 and 2 to the Act to provide that, despite the provisions of those Schedules that restrict the attendance of community members at meetings of the Parole Board and Serious Offenders Review Council, the Chairpersons of the Review Council and Board may convene up to 6 meetings a year of those bodies at which all community members of those bodies may attend.

**Schedule 1 [57]** amends clause 1 (1) of Schedule 5 to the Act to allow regulations of a savings and transitional nature consequent on the enactment of this Bill to be made.

**Schedule 1 [58]** amends clause 31 of Schedule 5 to the Act (a savings and transitional provision) to clarify that, when revoking an offender's periodic detention order imposed on an offender before 1 February 1999, the Parole Board does not have to make a parole order immediately but must consider whether the offender should be released on parole within 30 days of the revocation. The amendment also makes it clear that the clause does not operate to create a non-parole period for a sentence if the remainder of the term of the sentence concerned is 6 months or less.

**Schedule 1 [59]** inserts a savings and transitional clause into Schedule 5 of the Act to validate proceedings of the Parole Board, at meetings of the Board held after 10 August 2000 but before the commencement of the proposed Act, that were attended by a person not authorised by clause 12 of Schedule 1 to the Act as in force at that time.

## **Schedule 2      Amendment of Crimes (Sentencing Procedure) Act 1999**

**Schedule 2 [1], [2]** and **[3]** make amendments to section 98 of the *Crimes (Sentencing Procedure) Act 1999* that correspond with the amendments made by **Schedule 1 [31]** to section 116 of the *Crimes (Administration of Sentences) Act 1999*.