

## **Crimes (Administration of Sentences) Legislation 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**) so as:

- (a) to insert an objects clause into the Act, and
- (b) to enable the Commissioner of Corrective Services to make submissions with respect to the making of parole orders in exceptional circumstances, and
- (c) to modify the provisions of the Act with respect to the appointment and functions of Official Visitors, and
- (d) to abolish the office of Inspector-General, and
- (e) to enable the ACT to intervene in proceedings before the Serious Offenders Review Council in relation to offenders who are in custody in NSW under ACT law, and
- (f) to make other provision of a minor, consequential or ancillary nature.

This Bill also amends the Crimes (Administration of Sentences) Regulation 2001 so as:

- (a) to ensure that the right to make telephone calls to exempt bodies (such as the Ombudsman) is not a right that can be withdrawn for the purposes of punishment, and
- (b) to ensure that inmates suspected of having committed offences cannot be confined to their cells for more than 48 hours, and
- (c) to ensure that inmates who are confined to their cells, or who are in segregated or protective custody, are not thereby deprived of essential medical care, and
- (d) to omit references to the Inspector-General.

The amendments made by this Bill give effect to recommendations contained in a statutory review of the *Crimes (Administration of Sentences) Act 1999* that was tabled in both Houses of Parliament on 1 April 2008.

#### 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** 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. 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**

### **Objects clause**

**Schedule 1 [2]** inserts proposed section 2A into the Act. The new section sets out the objects of the Act and the matters to which regard must be had in the pursuit of those objects. It is further provided that nothing in the new section gives rise to any civil cause of action or can be taken into account in any civil proceedings.

### **Commissioner's submission with respect to parole orders in exceptional circumstances**

Schedule 1 [13] inserts proposed section 160AA into the Act. The new section enables the Commissioner to make submissions to the Parole Authority in relation to the release on parole of an offender under Division 4 of Part 6 (relating to parole orders in exceptional circumstances), and parallels existing section 141A (relating to submissions by the Commissioner in relation to parole orders made in ordinary circumstances).

### **Official Visitors**

**Schedule 1 [21]** substitutes section 228 of the Act (which deals with the appointment and functions of Official Visitors). The new section differs from the old in the following respects:

(a) unlike the current section (which requires Official Visitors to be appointed to specific institutions), it provides for appointment of Official Visitors at large, leaving their assignment to specific institutions to be done by the Minister or in accordance with arrangements approved by the Minister,

(b) unlike the current section, it expressly precludes Official Visitors from conducting investigations and carrying out audits.

### **Abolition of office of Inspector-General**

**Schedule 1 [19]** omits Part 10 of the Act (Part 10 establishes the office of Inspector-General and defines its functions).

**Schedule 1 [3], [23] and [24]** consequentially amend sections 3, 242 and 243 of the Act, and

**Schedule 1 [27]** consequentially repeals Schedule 3 to the Act (which contains further provisions with respect to the office of Inspector-General). The office has been vacant since 2003.

### **ACT's right of intervention**

**Schedule 1 [5]** amends section 71 of the Act so as to ensure that, in proceedings before the Serious Offenders Review Council with respect to the classification of serious offenders, the Australian Capital Territory has the same right of intervention in relation to offenders in custody in NSW under ACT law as the State of New South Wales has in relation to offenders in custody under NSW law.

### **Miscellaneous matters**

**Schedule 1 [11], [12], [15] and [16]** amend sections 155, 156, 176 and 177 of the Act so as to ensure that the Supreme Court's jurisdiction to give directions under those sections with respect to decisions of the Parole Authority does not extend to a general review of the merits of those decisions.

**Schedule 1 [1], [4], [6]–[10], [14], [17], [18], [20], [22], [25] and [26]** insert introductory notes into each of the Parts of the Act. These notes give a brief indication as to the contents of each Part.

**Schedule 1 [28]** amends clause 1 of Schedule 5 to the Act so as to enable savings and transitional regulations to make provision consequent on the enactment of the proposed Act.

**Schedule 1 [29]** adds proposed Part 13 to Schedule 5. The new Part contains provisions that preserve the appointments of existing Official Visitors.

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

### **Telephone calls to exempt bodies**

**Schedule 2 [3]** amends clause 152 so as to ensure that telephone calls to exempt bodies (such as the Ombudsman) are excluded from the list of privileges that are declared to be withdrawable privileges for the purposes of the Act. Withdrawable privileges are privileges that can be withdrawn by way of punishment for certain offences.

### **Confinement to cell**

**Schedule 2 [4]** amends clause 237 so as to ensure that offenders cannot be confined to their cells under that clause for more than 48 hours. That clause authorises an offender who is suspected of having committed an offence to be confined to cell pending further action being taken in relation to the suspected offence.

### **Medical care for inmates confined to cell**

**Schedule 2 [5]** substitutes clause 255 so as to ensure that offenders who are confined to their cells, or who are in segregated or protective custody, receive essential medical treatment and, for that purpose, are kept under daily observation by Justice Health officers. Daily observation will not be required for offenders confined to cell as a consequence of a general “lock-down”.

### **Removal of references to Inspector-General**

**Schedule 2 [1], [2] and [6]** omit references to the Inspector-General from clauses 77 and 113 and from the Dictionary.