Crimes (Administration of Sentences) Legislation Amendment Bill 2008

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Second Reading

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, and Vice-President of the Executive Council) [5.55 p.m.]: I move:

That this bill be now read a second time.

The Crimes (Administration of Sentences) Act 1999 is the principal Act that governs the administration of sentences in New South Wales. The object of the Crimes (Administration of Sentences) Legislation Amendment Bill 2008 is to make miscellaneous amendments to the Crimes (Administration of Sentences) Act 1999, and to regulations under that Act, as a consequence of a statutory review carried out under section 273 of that Act, which was tabled in both Houses of Parliament on 1 April 2008. The bill includes amendments related to the Act so as: to insert an objects clause into the Act, to enable the Commissioner of Corrective Services to make submissions with respect to the making of parole orders in exceptional circumstances, to modify the provisions of the Act with respect to the appointment and functions of official visitors, to formally remove the office of Inspector-General from the Act, to enable the Australian Capital Territory to make submissions to the Serious Offenders Review Council in relation to Australian Capital Territory offenders who are in custody in New South Wales, to insert introductory notes for all the major parts of the Act, and to make other miscellaneous amendments.

This bill also amends the Crimes (Administration of Sentences) Regulation 2001 so as: to ensure that the right to make telephone calls to exempt bodies cannot be withdrawn from inmates for the purposes of punishment, to ensure that inmates suspected of having committed offences cannot be confined to their cells for more than 48 hours, and to clarify that inmates who are confined to their cells due to a correctional centre lockdown do not need to be observed daily by Justice Health. I now turn to the details of the bill.

Schedule 1 [2] inserts a section 2A into the Act, which sets out four objects of the Act. Firstly, to ensure that inmates in custody are removed from the general community and placed in a safe, secure and humane environment; secondly, to ensure that offenders who are required to be supervised—under, say, a good behaviour bond—are kept under supervision in a safe, secure and humane manner; thirdly, that the safety of people whose work it is to supervise offenders—whether in a correctional centre or in the community—is not endangered; and, fourthly, to provide opportunities for the rehabilitation of offenders with a view to re-integrating them back into the general community. In the pursuit of these objects due regard is to be had to the interests of victims. Importantly, the bill clearly specifies that nothing in the proposed section 2A can form the basis of civil litigation proceedings or be taken into account in any civil proceedings.

Existing section 160 of the Crimes (Administration of Sentences) Act 1999 enables the State Parole Authority to make an order directing the release of an offender on parole who would not otherwise be eligible for release on parole if the offender is dying or, if the Parole Authority is satisfied that it is necessary because of exceptional extenuating circumstances. Proposed section 160AA allows the Commissioner of Corrective Services to make submissions with respect to the making of parole orders in exceptional circumstances, and provides that the Parole Authority must not make a decision without taking the commissioner's submission into account. This provision parallels existing section 141A of the Act, which covers submissions by the commissioner in relation to parole orders in ordinary circumstances.

Schedule 1 [21] will insert a new section 228, which deals with the appointment and functions of official visitors who are ministerially appointed community representatives and who visit correctional centres and provide independent reports about issues affecting the welfare of inmates. The new section differs from the old section in that it changes the official visitor scheme to provide that the Minister for Justice approve the appointment of official visitors generally and not to a specific correctional centre; that the Department of Corrective Services administer the official visitors scheme on behalf of the Minister for Justice; that the Minister be compelled to appoint sufficient numbers of official visitors to cover absences and emergency situations; and that official visitors not be appointed to specific correctional centres, but that at least one official visitor be assigned to each correctional facility at all times. The new section also makes the important clarification that there are no investigative or general auditing functions assigned to official visitors.

The Office of the Inspector-General of Corrective Services closed in 2003 and, accordingly, the bill removes all

references in the Act and the regulation to the Inspector-General or the Inspector-General's Office. The bill amends also section 71 of the Act to provide that the Australian Capital Territory may make submissions in proceedings before the Serious Offenders Review Council with respect to the reduction in classification of serious offenders who are in custody in New South Wales under Australian Capital Territory law. I note that exciting times are afoot in the Australian Capital Territory as it has built its first correctional centre, the Alexander Maconochie Centre—which I do not think was a very bright idea—which is expected to be fully operational sometime during 2008. This is akin to the power that the State of New South Wales has in relation to serious offenders being held in custody under New South Wales law.

The Crimes (Administration of Sentences) Act 1999 is the product of the consolidation of several Acts relating to the administration of sentences, namely, the Correctional Centres Act 1952, the Community Service Orders Act 1979, the Periodic Detention of Prisoners Act 1981, the Home Detention Act 1996, and the parole provisions of the Sentencing Act 1989. As a result, the Act covers multifarious topics, making it rather lengthy and cumbersome to navigate. Therefore, the bill proposes to add introductory notes under the major parts of the Act. This should assist in understanding the construction of the legislation. It should be noted that section 3 (3) of the Act already stipulates that any notes in the text do not form part of the Act.

The remainder of schedule 1 to the bill includes minor and consequential amendments, including an amendment to sections 155, 156, 176 and 177 of the Act to make it abundantly clear that the Supreme Court does not have the jurisdiction to review the merits of a decision by the Parole Authority. Schedule 2 to the bill amends the Crimes (Administration of Sentences) Regulation 2001 to ensure that the right of inmates in correctional centres to make telephone calls to exempt bodies, such as the Ombudsman, cannot be withdrawn for the purposes of punishment in response to correctional centre offences.

Clause 237 of the regulation currently authorises an offender who is suspected of having committed a correctional centre offence to be confined to a cell, pending further action being taken in relation to the suspected offence. The bill amends clause 237 of the regulation to provide that the maximum time an offender can be confined to his or her cell under suspicion of having committed a correctional centre offence is 48 hours. This is proportionate to the length of time that a general manager may confine an inmate to his or her cell as a penalty for having been found guilty of committing a correctional centre offence—that is, confinement for up to seven days.

Finally, the bill amends clause 255 of the regulation so as to ensure that inmates who are confined to their cells as punishment for a correctional centre offence, or inmates who are confined to their cells in segregated or protective custody, are kept under daily observation by Justice Health officers. The result of this amendment will be that daily observation will not be required for offenders confined to a cell as a consequence of a general lockdown in a correctional centre. Of course, any inmates locked in cells as a result of a lockdown would have the usual access to necessary medical care. I thank Ms Irene Moss, AO, for undertaking the statutory review of the Crimes (Administration of Sentences) Act 1999, which has given rise to these amendments. I commend the bill to the House.