

Crimes (Administration of Sentences) Amendment Bill 2016

Second Reading

The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) (11:16): I move:

That this bill be now read a second time.

The Government is pleased to introduce the Crimes (Administration of Sentences) Amendment Bill 2016. The bill is part of the Government's regular legislative review and monitoring program. It will make miscellaneous amendments to the Crimes (Administration of Sentences) Act 1999, and it contains some consequential amendments to other related legislation. The Crimes (Administration of Sentences) Act governs the administration of most sentences in New South Wales and is the legislation under which Corrective Services NSW operates. This bill is another demonstration of the commitment of the Minister for Corrections and this Government to improving the efficiency of corrective services and protecting the safety of our community.

I now turn to the detail of the bill. Items [1] to [5], [8] and [9] in schedule 1 make amendments to the Act to update terminology from "probation and parole service" to "community corrections". Community corrections is now the term used within Corrective Services NSW, and it has already been included in the Crimes (Administration of Sentences) Regulation. The amendments will also change the title of "general manager" of a correctional centre to "governor". This change recognises the significance of the role of the general manager of a correctional centre. General managers are responsible for the management of places of detention and all the inmates incarcerated within them. This role is distinct from other general manager roles in the correctional system.

Items [6], [7], [10] and [11] in schedule 1 make amendments to the Act to enable any magistrate to perform the functions of a visiting magistrate. Visiting magistrates perform an important function under the Act. They hear charges related to correctional centre offences committed by inmates within correctional centres and residential facilities.

Currently section 227 of the Act provides that a visiting magistrate needs to be appointed by the Chief Magistrate. This creates an unnecessary administrative process for appointing individual magistrates. The amendments remove the existing requirement for the Chief Magistrate to appoint each visiting magistrate individually. Instead, any magistrate will be eligible to perform the functions of a visiting magistrate. This will broaden the pool of magistrates who can perform the functions of a visiting magistrate and remove an unnecessary administrative burden from the Local Court. The amendments will not change the existing powers or functions of visiting magistrates.

Items [12], [13] and [14] of schedule 1 will transfer part 4A of the Summary Offences Act 1988 which deals with the stop, search and detain powers of correctional officers and offences relating to correctional facilities and other places of detention into the Crimes (Administration of Sentences) Act. These provisions will be consolidated with the powers to search staff and visitors to correctional centres currently in the Crimes (Administration of Sentences) Regulation 2014. The powers of correctional officers to search and detain staff and visitors to correctional facilities are currently spread between the Summary Offences Act and the Crimes (Administration of Sentences) Regulation. These provisions duplicate and overlap each other. A review of these

powers by the Ombudsman in 2005 concluded it would be much simpler to incorporate all stop, search and detain provisions into a single piece of legislation. The Government agrees. The bill will remove unnecessary duplication and make the responsibilities and powers of correctional officers and the rights of people being searched clearer and more easily accessible.

I will now outline these in detail. Clauses 95 and 247 of the Crimes (Administration of Sentences) Regulation provide for searches of visitors and staff members at a correctional centre or correctional complex. These powers are exercised routinely inside a correctional centre or correctional complex without a suspicion that the person is attempting to introduce contraband, just as passengers are routinely screened for prohibited items at security checkpoints at airport departure gates. Part 4A of the Summary Offences Act provides correctional officers with another set of powers to search staff and visitors, as well as a power to detain a person for up to four hours for the purposes of facilitating a search of the person by a police officer. These search and detain powers can be used if an officer believes on reasonable grounds that a person is attempting to introduce contraband or commit another offence relating to a place of detention. They can also be used with respect to any person in the immediate vicinity of a correctional facility or other place of detention.

In practice, correctional officers use the Crimes (Administration of Sentences) Regulation powers to conduct routine searches of staff and visitors inside correctional centres. They use the Summary Offences Act powers to conduct searches in the immediate vicinity of correctional centres and to detain people inside or outside places of detention. The bill will simplify this unnecessarily complicated range of provisions by consolidating all of them in the Crimes (Administration of Sentences) Act as the main legislation regulating the New South Wales correctional system.

Item [14] of schedule 1 to the bill will insert a new section 253I into the Crimes (Administration of Sentences) Act which will preserve the power to routinely stop and search a person in a correctional centre or correctional complex, search a person in the immediate vicinity of a correctional centre or other place of detention if an officer believes on reasonable grounds that the person is committing or attempting to commit an offence relating to a place of detention, and detain a person inside or in the immediate vicinity of a correctional centre or other place of detention if an officer believes on reasonable grounds that the person is committing or attempting to commit an offence relating to a place of detention.

Section 27J of the Summary Offences Act currently contains safeguards that are applied when searching and detaining a person. Item [14] of schedule 1 to the bill will insert a new section 253M into the Crimes (Administration of Sentences) Act that preserves these safeguards. In particular, a correctional officer can only detain a person for as long as is reasonably necessary to exercise his or her powers and in any case for no longer than four hours. In this way, these amendments will not expand the search and detention powers of correctional officers or restrict them. They will not affect the day-to-day routine and manner of searches of staff and visitors carried out in correctional facilities.

As is the case currently, officers will not be able to conduct physical searches of visitors and staff. They will only be able to conduct searches in the immediate vicinity of a correctional facility if they believe on reasonable grounds that a person is attempting to introduce contraband or commit another offence relating to a place of detention. The power to detain a person will continue to be for no longer than is reasonably necessary and in any event for no longer than

four hours. The existing powers of correctional officers to routinely search inmates, including the power to strip search, will be unaffected.

The bill will also transfer the existing offences relating to places of detention currently in part 4A of the Summary Offences Act to the Crimes (Administration of Sentences) Act. Some offences such as trafficking alcohol and other prohibited substances into a place of detention without lawful authority will be amended to make it clear that the onus of proof to establish a defence of lawful authority rests with the defendant. This implements a recommendation from the Ombudsman's 2005 review of part 4A of the Summary Offences Act. Offences that have a defence of lawful authority generally provide that the defendant has to establish that he or she had lawful authority to do what was otherwise prohibited. For example, section 417 of the Crimes Act 1900 provides that where an offence in that Act makes doing something or possessing something without lawful authority or excuse an offence, the defendant bears the burden of proving that he or she had that authority or excuse.

In the case of a visitor to a correctional facility, it is common knowledge that items like alcohol, drugs, weapons and mobile phones are prohibited items. It is appropriate that defendants who claim they had lawful authority to bring such items into a correctional facility should be required to prove that claim. New part 13A of the Crimes (Administration of Sentences) Act will replace "mentally incapacitated person" with "a person with impaired intellectual functioning". Section 27G (5) of the Summary Offences Act currently requires searches of a mentally incapacitated person to be conducted in the presence of an adult who accompanies the person or, if there is no such adult, a Corrective Services search observation staff member.

The Ombudsman's review of part 4A of the Summary Offences Act noted that the term "mentally incapacitated person" is problematic in that it is difficult to determine whether a person fits this description. A mentally incapacitated person is defined as "a person who is incapable of managing his or her affairs". A person is not necessarily incapable simply because he or she has an intellectual disability, a brain injury or a mental illness. The Ombudsman considered the term "impaired intellectual functioning" in section 33 of the Law Enforcement (Powers and Responsibilities) Act 2002 to be a more appropriate term as it encompasses a range of people with varying degrees of mental illness, intellectual disabilities and other cognitive impairments.

Items [15], [16] and [17] of schedule 1 to the bill make amendments to the Crimes (Administration of Sentences) Act to establish a new approach to disclosure of information in the correctional system that will prevent corrupt disclosure of sensitive corrections information but at the same give Corrective Services as an organisation more ability to share information. The amendments are necessary to ensure that Corrective Services NSW can carry out its functions efficiently and effectively. They will also give Corrective Services greater scope to assist other public sector agencies by providing information.

Currently, section 257 of the Act prohibits a person from disclosing information obtained through the administration of the Act unless the disclosure falls into one of a small number of exceptions. It is a criminal offence for anyone to disclose information contrary to this provision. The current provision routinely prevents Corrective Services from sharing necessary information where no exception applies. For example, Corrective Services has been able to disclose information in cases where police are seeking a missing person and want to know whether the person is in custody, a law enforcement agency is seeking access to the Corrective Services NSW database to gather intelligence information, the Commonwealth Government is seeking to know whether an individual receiving Centrelink benefits is now in custody and no longer eligible, or

another government department has asked for background information about a sex offender that has been deported to its jurisdiction.

In this way, the provision prohibits Corrective Services from making disclosures that may be necessary for the efficient and effective operation of the justice system and the public sector more broadly. The bill will add a new component to section 257 so the provision no longer criminalises disclosures that are approved by the Commissioner of Corrective Services or permitted by an official Corrective Services policy. This addition will give Corrective Services NSW staff broader scope to disclose information in appropriate cases as determined by the commissioner within the bounds of privacy laws. This will allow Corrective Services to carry out its day-to-day functions and facilitate the functions of other agencies. The changes to section 257 will not affect the operation of privacy law.

Section 257 will continue to prohibit inappropriate disclosure of corrections information by rogue individuals. A person who has obtained information under the Act and who discloses it in a way contrary to section 257—that is, in a way that does not fall into one of the exceptions, is not authorised by the commissioner and is not authorised by any official Corrective Services policy—will commit an offence. The bill increases the penalty for this offence from a maximum of 10 penalty units to a maximum of 100 penalty units or two years imprisonment, or both. The increased maximum penalty will ensure that sensitive corrections information is protected and criminal disclosure is appropriately punished.

Currently, section 257A of the Act allows the Commissioner of Corrective Services to enter into an information-sharing arrangement with the Commissioner of Fines Administration. The provision allows the Commissioner of Corrective Services and the Commissioner of Fines Administration to exchange information, including personal information, about inmates and fine defaulters in order to facilitate fine debt enforcement. The bill will replace the existing provision with a similar but more general provision that facilitates information sharing in two ways. First, the new provision will allow the Commissioner of Corrective Services to enter into information-sharing arrangements with prescribed public sector agencies to facilitate the regular exchange of information. To ensure such arrangements are necessary and appropriate, the agencies with which the commissioner can enter into an arrangement and the information that can be exchanged under such an arrangement will be prescribed by regulation.

This is an extension of the existing section 257A. The existing information-sharing arrangement with the Commissioner of Fines Administration will be able to be carried over through prescribing the relevant matters in the regulation. Arrangements entered into under this provision will ensure that Corrective Services NSW can perform its role efficiently and assist other public sector agencies in the exercise of their functions, as has occurred through the existing arrangement in relation to the fine debts of inmates. Secondly, the new section 257A will allow the Commissioner of Corrective Services to disclose information to any person notwithstanding privacy legislation on a case-by-case basis where the disclosure is reasonably necessary for certain specific purposes. This will allow the commissioner to disclose corrections information in appropriate cases in response to ad hoc requests for information from public sector agencies, other governments, the media and private individuals. To ensure that the purposes permitting disclosure are transparent and appropriate, these will be prescribed by regulation after consultation with relevant stakeholders.

Overall, the amendments in this bill will improve the administration of justice in this State. They will assist Corrective Services NSW, courts and other agencies within the Department of Justice

to perform their work more efficiently. In particular, the new information-sharing framework will greatly assist Corrective Services in carrying out its functions and facilitate the functions of other public sector agencies. Safeguards will ensure that disclosure is limited to appropriate purposes and that sensitive information is protected. I commend the bill to the House.