



New South Wales

# Crimes (Administration of Sentences) Amendment Bill 2016

## 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 principal Act**) as follows:

- (a) to enable Magistrates to perform the functions of a Visiting Magistrate under the principal Act without having to be specifically appointed as a Visiting Magistrate,
- (b) to transfer to the principal Act certain powers and associated offences relating to places of detention that are currently contained in Part 4A of the *Summary Offences Act 1988* and various provisions of the *Crimes (Administration of Sentences) Regulation 2014*,
- (c) to ensure that the prohibition on disclosure of information in the principal Act does not criminalise disclosures that are a routine part of the core business of Corrective Services NSW and to increase the penalty for breach of the prohibition,
- (d) to enable the Commissioner of Corrective Services (the **Commissioner**) to disclose for prescribed purposes, information obtained in connection with the exercise of the Commissioner's official functions,
- (e) to streamline the information sharing provisions in the principal Act,
- (f) to provide for other minor, consequential and ancillary matters (including changing or updating references to certain entities),
- (g) to enact provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

The Bill also makes consequential amendments to the *Crimes (Administration of Sentences) Regulation 2014*, the *Summary Offences Act 1988* and the *Summary Offences Regulation 2015*.

## 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.

## **Schedule 1      Amendment of Crimes (Administration of Sentences) Act 1999 No 93**

### **Visiting Magistrates**

**Schedule 1 [10]** removes the requirement that a Visiting Magistrate must be appointed to that position by the Chief Magistrate and confers on all Magistrates the functions of Visiting Magistrates conferred or imposed under the principal Act or any other Act or law.

**Schedule 1 [4]–[7], [11] and [13]** make consequential amendments.

### **Consolidation of stop, search and detain powers in places of detention**

**Schedule 1 [14]** substantially re-enacts (with some modifications) and consolidates in proposed Part 13A of the principal Act certain offences and powers of correctional officers relating to places of detention that are currently contained in Part 4A of the *Summary Offences Act 1988* (Offences relating to places of detention) and clauses 95 (Searching of visitors) and 247 (Officers may be searched) of the *Crimes (Administration of Sentences) Regulation 2014*.

The modifications include inserting proposed section 253B to reverse the onus of proof regarding lawful authority in relation to offences in proposed Part 13A that prohibit certain conduct if done without lawful authority, so that the onus of proving lawful authority lies with the defendant (rather than with the prosecution, to prove absence of lawful authority). Proposed section 253B also restates the current position regarding onus of proof in relation to offences in proposed Part 13A that prohibit certain conduct if done without reasonable excuse, namely, that the onus of proving reasonable excuse lies with the defendant.

The modifications also replace the term *mentally incapacitated person* with the term (a person with) *impaired intellectual functioning* for the purposes of the proposed Part.

**Schedule 1 [12]** makes a consequential amendment.

### **Minor, consequential and ancillary amendments**

**Schedule 1 [1], [4] and [5]** replace references in the principal Act to “general manager” of a correctional centre with references to “governor” of a correctional centre and make consequential amendments in relation to the definitions of those terms.

**Schedule 1 [2]–[5], [8] and [9]** update references to the Probation and Parole Service (now Community Corrections) and associated terms in the principal Act and make consequential amendments in relation to the definitions of those terms.

### **Disclosure of information**

**Schedule 1 [16]** amends the prohibition on the disclosure of information obtained in connection with the administration or execution of the principal Act to make it clear that a disclosure that is authorised by, or in accordance with an official policy made by, the Commissioner is a disclosure made with lawful excuse, within that exception to the prohibition. The item also makes it clear that a disclosure made by a member of the State Parole Authority or the Serious Offenders Review Council is within that exception to the prohibition if it is authorised by, or in accordance with a policy made by, the Chairperson of the Authority or the Review Council (as applicable).

**Schedule 1 [15]** increases the maximum penalty for breach of the prohibition on the disclosure of information from 10 penalty units to 100 penalty units or imprisonment for 2 years, or both.

**Schedule 1 [17]** replaces the existing provision for information sharing arrangements in the principal Act with a more streamlined provision that authorises the Commissioner to enter into information sharing arrangements with agencies that are prescribed by the regulations under the principal Act. The information that may be shared under a particular information sharing arrangement is also to be prescribed by the regulations.

The proposed provision also authorises the Commissioner to disclose information obtained in connection with the exercise of the Commissioner's functions under the principal Act or any other Act, for any purpose prescribed by the regulations.

The authority to disclose, request or receive information under the proposed provision applies despite the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.

### **Savings and transitional provisions**

**Schedule 1 [18]** enacts specific savings and transitional provisions as a consequence of the enactment of the proposed Act.

## **Schedule 2      Amendment of other legislation**

**Schedule 2** makes consequential amendments to the *Crimes (Administration of Sentences) Regulation 2014*, the *Summary Offences Act 1988* and the *Summary Offences Regulation 2015*.