

Passed by both Houses



New South Wales

Crimes (Administration of Sentences) Legislation Amendment Bill 2018

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2018

Clerk of the Parliaments



New South Wales

Crimes (Administration of Sentences) Legislation Amendment Bill 2018

Act No , 2018

An Act to amend the *Crimes (Administration of Sentences) Act 1999* and the *Children (Detention Centres) Act 1987* with respect to misconduct by correctional employees, the possession and operation of remotely piloted aircraft in airspace above, and in the immediate vicinity of, certain places of detention, and the use of force against visitors to places of detention; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes (Administration of Sentences) Legislation Amendment Act 2018*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1 [1] is taken to have commenced on 24 September 2018.

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

[1] Section 181 Warrants committing offenders to correctional centres

Insert “, a re-integration home detention order” after “intensive correction order” in section 181 (1).

[2] Part 11 Administration

Insert after Division 7:

Division 8 Relationships with inmates and other offenders

236P Definitions

(1) In this Division:

community-based order means:

- (a) a parole order, or
- (b) a community correction order, or
- (c) an intensive correction order, or
- (d) a conditional release order, or
- (e) a re-integration home detention order, or
- (f) a suspended sentence order to which clause 76 of Schedule 2 to the *Crimes (Sentencing Procedure) Act 1999* applies.

correctional employee means:

- (a) a member of staff of Corrective Services NSW, or
- (b) a person who is employed at a managed correctional centre to perform duties referred to in section 240 (1) (a), (b) or (c).

inmate includes a person who is subject to a compulsory drug treatment order under Part 4A (including a person who is subject to a community supervision order under that Part).

intimate relationship means a relationship between 2 or more persons involving sexual conduct or other physical expressions of affection, or the exchange of written or other communications of a sexual or intimate nature, or all or any of those things.

sexual conduct means sexual intercourse or other conduct of a sexual nature.

sexual intercourse has the same meaning as in Division 10 of Part 3 of the *Crimes Act 1900*.

(2) For the purposes of this Division, and without limiting the definition of **intimate relationship**, a person who is married to another person or the de facto partner of another person is taken to be in an intimate relationship with the other person.

236Q Misconduct offence

(1) A correctional employee (other than an employee referred to in subsection (2)) is guilty of an offence if the correctional employee engages in sexual conduct or an intimate relationship with an inmate or a person who is subject to a community-based order and the conduct or relationship:

- (a) causes a risk or potential risk to the safety or security of a correctional centre or correctional complex or to good order and discipline within a correctional centre or correctional complex, or

- (b) compromises the proper administration of a sentence or a community-based order.

Maximum penalty: 20 penalty units, or imprisonment for 2 years, or both.

- (2) It is not an offence under this section if a correctional employee did not know, while the employee engaged in sexual conduct or an intimate relationship with an inmate or person subject to a community-based order, that the other person was an inmate or subject to the order.

[3] Section 253A Definitions

Insert in alphabetical order:

remotely piloted aircraft means an unmanned airborne craft, including a drone or other remotely piloted, or otherwise controlled, airborne craft, part of a remotely piloted aircraft and the remote control for a remotely piloted aircraft.

[4] Section 253B Onus of proof regarding lawful authority, lawful excuse or reasonable excuse

Insert “, a lawful excuse” after “lawful authority”.

[5] Sections 253FA and 253FB

Insert after section 253F:

253FA Unlawful possession of remotely piloted aircraft

- (1) A person must not, without lawful excuse, have in the person’s possession a remotely piloted aircraft:
 - (a) in a correctional centre or correctional complex, or
 - (b) in any residential facility or transitional centre located within or near a correctional centre or correctional complex prescribed by the regulations for the purposes of this subsection.Maximum penalty: 20 penalty units, or imprisonment for 2 years, or both.
- (2) If a person is convicted of an offence under this section, the court may, in addition to a penalty it may impose, make an order that the remotely piloted aircraft be forfeited to the Crown, and the remotely piloted aircraft is forfeited accordingly.
- (3) It is not an offence under this section if a person is in possession of a remotely piloted aircraft:
 - (a) for a purpose prescribed by the regulations, or
 - (b) with the authorisation of a person or a member of a class of persons prescribed by the regulations, or
 - (c) for any other reason prescribed by the regulations.

253FB Possession or operation of remotely piloted aircraft in prohibited airspace

- (1) A person must not be in possession of a remotely piloted aircraft within prohibited airspace.
Maximum penalty: 20 penalty units, or imprisonment for 2 years, or both.
- (2) It is a defence to a prosecution for an offence under subsection (1) if the defendant establishes that the possession was not for the purpose of threatening the good order or security of detention premises.

- (3) A person must not, without lawful excuse, operate or attempt to operate a remotely piloted aircraft within prohibited airspace in a way that threatens or is likely to threaten the good order or security of detention premises.
Maximum penalty: 20 penalty units, or imprisonment for 2 years, or both.
- (4) It is not an offence under this section if a person is in possession of or operates or attempts to operate a remotely piloted aircraft:
- (a) for a purpose prescribed by the regulations, or
 - (b) with the authorisation of a person, or a member of a class of persons, prescribed by the regulations, or
 - (c) for any other reason prescribed by the regulations.
- (5) In this section:
- detention premises*** means:
- (a) a correctional centre, other than a police station or court cell complex in which an offender is held in custody, or
 - (b) a correctional complex, or
 - (c) a residential facility or transitional centre located within or near a correctional centre or correctional complex prescribed by the regulations.
- operate a remotely piloted aircraft*** means fly or otherwise use a remotely piloted aircraft, including use a remotely piloted aircraft to photograph, film or otherwise make or transmit a visual or audio recording of the whole or any part of detention premises, or a person, thing or activity on or at detention premises.
- prohibited airspace*** means the airspace above detention premises, and above the land in the immediate vicinity of detention premises, at or below 400 feet above ground level.

[6] Section 253J Conduct of search

Omit “or by a person of the same sex (being a non-correctional member of staff) under the direction of the correctional officer concerned” from section 253J (4).

[7] Sections 253MA and 253MB

Insert after section 253M:

253MA Use of reasonable force—visitors

- (1) A correctional officer may use force to deal with a visitor for the following purposes:
- (a) to protect the correctional officer or another person (including a member of staff of Corrective Services NSW, an inmate or a member of the public) from attack or harm, or imminent attack or harm, but only if there are no other immediate or apparent means available for the protection of the correctional officer or other person,
 - (b) to prevent damage to the place of detention or to any property within the place of detention,
 - (c) to prevent an unlawful attempt to enter the place of detention by force or to free an inmate,
 - (d) to remove the visitor from the place of detention, if the officer is authorised to do so under the regulations.

- (2) A correctional officer may use force to deal with a visitor for the purpose of exercising a power under section 253I or any other provision of this Part.
Note. Section 253I confers powers on a correctional officer to arrest persons suspected of committing an offence under this Part, to search persons, to detain them and to seize things that are evidence of the commission of an offence under this Part (including things that are prohibited to be brought into a place of detention).
- (3) The nature and extent of the force that may be used in relation to a visitor are to be dictated by circumstances, subject to the following:
- (a) the force used must not exceed the force that is reasonably necessary for protection, or to maintain the good order and security of a place of detention, having due regard to the personal safety of correctional officers and others,
 - (b) the infliction of injury on a visitor is to be avoided if at all possible,
 - (c) if a visitor is restrained—once the visitor is satisfactorily restrained, no further force must be used on the visitor other than the force reasonably necessary to maintain that restraint.
- (4) A correctional officer may use handcuffs, or other equipment prescribed by the regulations, for the purpose of restraining a visitor, but only if it is reasonably necessary in the circumstances.
- (5) This section is in addition to section 253L.

253MB Report on use of force

- (1) Any correctional officer who uses force on a visitor must, as soon as reasonably practicable, give a report about the use of force to the governor of the place of detention.
- (2) The report must:
- (a) be in writing, and
 - (b) specify the name of the visitor and the name of the correctional officer involved in the use of force, and
 - (c) specify the location where the force was used, and
 - (d) describe the nature of the force used and the circumstances requiring its use, and
 - (e) be signed by the correctional officer involved in the use of force.

[8] Section 253Q No personal liability for person conducting search under direction of correctional officer

Omit the section.

[9] Section 253R Time within which proceedings must be taken

Insert at the end of the section:

- (2) Despite subsection (1), proceedings for an offence under section 253FA or 253FB must be commenced not later than 2 years from the time the facts first come to the knowledge of the Commissioner.

[10] Schedule 5 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of Crimes
(Administration of Sentences) Legislation
Amendment Act 2018**

**Warrants of commitment relating to offenders subject to re-integration home
detention orders**

- (1) This clause applies to a warrant of commitment issued under section 181 for an offender after the revocation of a re-integration home detention order that was issued:
 - (a) on or after 24 September 2018, and
 - (b) before the amendment of that section by the *Crimes (Administration of Sentences) Legislation Amendment Act 2018*.
- (2) The warrant is taken to be valid and to have always been valid, if it would have been valid if issued on or after the amendment of the section by that Act.

Schedule 2 Amendment of Children (Detention Centres) Act 1987 No 57

[1] Section 32AB

Insert before section 33:

32AB Definition

In this Part:

remotely piloted aircraft means an unmanned airborne craft, including a drone or other remotely piloted, or otherwise controlled, airborne craft, part of a remotely piloted aircraft and the remote control for a remotely piloted aircraft.

[2] Sections 37CA and 37CB

Insert after section 37C:

37CA Unlawful possession of remotely piloted aircraft

- (1) A person who, without lawful excuse, has in the person's possession a remotely piloted aircraft in a detention centre is guilty of an offence and is liable to a penalty not exceeding 20 penalty units, or imprisonment for a period not exceeding 2 years, or both.
- (2) It is not an offence under this section if a person is in possession of a remotely piloted aircraft:
 - (a) for a purpose prescribed by the regulations, or
 - (b) with the authorisation of a person or a member of a class of persons prescribed by the regulations, or
 - (c) for any other reason prescribed by the regulations.

37CB Possession or operation of remotely piloted aircraft in prohibited airspace

- (1) A person who is in possession of a remotely piloted aircraft within prohibited airspace is guilty of an offence and is liable to a penalty not exceeding 20 penalty units, or imprisonment for a period not exceeding 2 years, or both.
- (2) It is a defence to a prosecution for an offence under subsection (1) if the defendant establishes that the possession was not for the purpose of threatening the good order or security of a detention centre.
- (3) A person who, without lawful excuse, operates or attempts to operate a remotely piloted aircraft within prohibited airspace in a way that threatens or is likely to threaten the good order or security of a detention centre, is guilty of an offence and is liable to a penalty not exceeding 20 penalty units, or imprisonment for a period not exceeding 2 years, or both.
- (4) It is not an offence under this section if a person is in possession of or operates or attempts to operate a remotely piloted aircraft:
 - (a) for a purpose prescribed by the regulations, or
 - (b) with the authorisation of a person, or a member of a class of persons, prescribed by the regulations, or
 - (c) for any other reason prescribed by the regulations.

(5) In this section:

operate a remotely piloted aircraft means fly or otherwise use a remotely piloted aircraft, including use a remotely piloted aircraft to photograph, film or otherwise make or transmit a visual or audio recording of the whole or any part of a detention centre, or a person, thing or activity on or at a detention centre.

prohibited airspace means the airspace above any detention centre, and above the land in the immediate vicinity of a detention centre, at or below 400 feet above ground level.

Schedule 3 Amendment of Crimes (Administration of Sentences) Regulation 2014

[1] Clause 319B

Insert after clause 319A:

319B Powers of correctional officers—restraint of visitors

For the purposes of section 253MA (4) of the Act, flexicuffs are prescribed.

[2] Clauses 322A–322C

Insert after clause 322:

322A Unlawful possession of remotely piloted aircraft

- (1) For the purposes of section 253FA (3) (a) of the Act, the following purposes are prescribed:
 - (a) law enforcement, in the person's capacity as an officer of, or person acting on behalf of, a law enforcement agency,
 - (b) administering or enforcing the Act,
 - (c) dealing with a fire or other emergency.
- (2) For the purposes of section 253FA (3) (b) of the Act, authorisation in writing by the Commissioner or the governor of the relevant correctional centre or correctional complex to be in possession of the remotely piloted aircraft is prescribed.

322B Unlawful possession and operation of remotely piloted aircraft within prohibited airspace

- (1) For the purposes of section 253FB (4) (a) of the Act, the following purposes are prescribed:
 - (a) law enforcement, in the person's capacity as an officer of, or person acting on behalf of, a law enforcement agency,
 - (b) administering or enforcing the Act,
 - (c) dealing with a fire or other emergency.
- (2) For the purposes of section 253FB (4) (b) of the Act, authorisation in writing by the Commissioner or the governor of the relevant correctional centre or correctional complex to be in possession of the remotely piloted aircraft is prescribed.

322C Remotely piloted aircraft—detention premises

For the purposes of paragraph (c) of the definition of *detention premises* in section 253FB (5) of the Act, the following residential facilities and transitional centres are prescribed:

- (a) Bolwara Transitional Centre, Emu Plains,
- (b) Miruma residential facility, Cessnock,
- (c) Nunyara Community Offender Support Program Centre, Malabar.

Schedule 4 Amendment of Children (Detention Centres) Regulation 2015

Clauses 153A and 153B

Insert after clause 153:

153A Unlawful possession of remotely piloted aircraft

- (1) For the purposes of section 37CA (2) (a) of the Act, the following purposes are prescribed:
 - (a) law enforcement, in the person's capacity as an officer of, or person acting on behalf of, a law enforcement agency,
 - (b) administering or enforcing the Act,
 - (c) dealing with a fire or other emergency.
- (2) For the purposes of section 37CA (2) (b) of the Act, authorisation in writing by the Secretary or the centre manager of the relevant detention centre to be in possession of the remotely piloted aircraft is prescribed.
- (3) In this clause and clause 153B:
law enforcement agency means any of the following:
 - (a) the NSW Police Force, or the police force of another State or a Territory,
 - (b) the New South Wales Crime Commission,
 - (c) the Australian Federal Police,
 - (d) the Australian Criminal Intelligence Commission,
 - (e) the Director of Public Prosecutions of New South Wales, of another State or a Territory or of the Commonwealth,
 - (f) the Law Enforcement Conduct Commission,
 - (g) the Independent Commission Against Corruption,
 - (h) the Department of Justice.

153B Unlawful possession and operation of remotely piloted aircraft within prohibited airspace

- (1) For the purposes of section 37CB (4) (a) of the Act, the following purposes are prescribed:
 - (a) law enforcement, in the person's capacity as an officer of, or person acting on behalf of, a law enforcement agency,
 - (b) administering or enforcing the Act,
 - (c) dealing with a fire or other emergency.

- (2) For the purposes of section 37CB (4) (b) of the Act, authorisation in writing by the Secretary or the centre manager of the relevant detention centre to be in possession of the remotely piloted aircraft is prescribed.