



New South Wales

Crimes (Administration of Sentences) Legislation Amendment Bill 2018

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to amend the *Crimes (Administration of Sentences) Act 1999*, the *Children (Detention Centres) Act 1987* and regulations made under those Acts as follows:

- (a) to prohibit sexual conduct or intimate relationships between correctional and other officers who work with inmates or persons on parole or serving sentences in the community and which result in security issues or compromise the administration of sentences,
- (b) to prohibit the possession of remotely piloted aircraft in correctional centres, correctional complexes and certain facilities within those complexes and children's detention centres,
- (c) to prohibit the possession and operation or attempted operation of remotely piloted aircraft in certain airspace above those places and above land in the vicinity of those places in a manner that is likely to threaten the good order or security of those places,
- (d) to provide for exceptions to the proposed offences involving remotely piloted aircraft and to enable a 2 year period in which to commence proceedings for an offence relating to remotely piloted aircraft involving correctional centres, correctional complexes and certain facilities within those complexes,
- (e) to provide for circumstances in which force may be used by correctional officers against visitors,
- (f) to make other minor and consequential amendments.

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 (other than a law revision amendment) on the date of assent to the proposed Act.

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

Offences

Schedule 1 [2] inserts provisions that make it an offence for a correctional employee to engage in sexual conduct or an intimate relationship with an inmate or a person who is the subject of a community-based sentencing order or a parole order if the conduct or relationship causes a risk or potential risk to the safety or the security or the good order and discipline of a correctional centre or correctional complex. It will also be an offence if the conduct or relationship compromises the proper administration of a sentence or any such order. The provisions will apply to correctional officers, other staff members of Corrective Services NSW and certain employees of private operators of correctional centres. An intimate relationship is defined as 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 both. It will not be an offence if the correctional employee does not know that a person is an inmate or subject to a community-based sentencing order or a parole order.

Schedule 1 [3] inserts a definition of *remotely piloted aircraft*.

Schedule 1 [4] provides that the onus of proof is on the defendant to prove that the defendant had a lawful excuse if an element of an offence relating to a place of detention prohibits a person from doing something without a lawful excuse.

Schedule 1 [5] makes it an offence, without lawful excuse, to have a remotely piloted aircraft in the person's possession in a correctional centre, correctional complex or a residential facility or transitional centre prescribed by the regulations and located in or near a correctional centre or correctional complex. A court may, on conviction, order that the remotely piloted aircraft be forfeited to the Crown. The amendment also inserts offences of being in possession of a remotely piloted aircraft within the airspace at or below 400 feet above any of those places or above land in the vicinity of those places and of operating or attempting to operate a remotely piloted aircraft in that airspace in a manner that threatens or is likely to threaten the good order or security of those places. There will be a defence to the offence of possessing a remotely piloted aircraft in the airspace if it is not for a purpose that threatens or is likely to threaten the good order or security of the place. It will not be an offence, in any case, if a person does the acts prohibited by the proposed offences for a purpose prescribed by the regulations, with the authorisation of a person, or a member of a class of persons, prescribed by the regulations or for a reason prescribed by the regulations.

Schedule 1 [9] provides that proceedings for the proposed offences relating to remotely piloted aircraft must be commenced no later than 2 years after the facts first come to the attention of the Commissioner of Corrective Services.

Powers of correctional officers

Schedule 1 [6] removes the ability of a non-correctional member of staff to carry out a search of a person who is suspected of committing an offence. **Schedule 1 [8]** makes a consequential amendment.

Schedule 1 [7] authorises the use of force (subject to specified limitations) by correctional officers against visitors to protect the officers or other persons from attack or harm, to prevent damage to a place of detention, to prevent unlawful entry or attempts to free an inmate, to remove a visitor who has not complied with a request to leave a place of detention and for the purpose of exercising existing powers (including powers of search, arrest and detention). The amendment also authorises correctional officers to use handcuffs or other equipment prescribed by the regulations for the purpose of restraining a visitor. A report must be given to the governor of a place of detention by a correctional officer who uses force as soon as practicable after the force is used.

Law revision

Schedule 1 [1] re-inserts a reference to re-integration home detention orders in a provision that enables warrants of commitment to be issued when community-based sentencing orders are revoked. The reference was inadvertently omitted and the amendment will be taken to have commenced on the day the reference was omitted.

Schedule 1 [10] validates warrants of commitment issued, before the amendment made by Schedule 1 [1], in relation to offenders whose re-integration home detention orders were revoked.

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

Schedule 2 [1] inserts a definition of *remotely piloted aircraft*.

Schedule 2 [2] makes it an offence to have, without lawful excuse, a remotely piloted aircraft in the person's possession in a detention centre. The amendment also inserts offences of being in possession of a remotely piloted aircraft within the airspace at or below 400 feet above a detention centre or above land in the vicinity of a detention centre and of operating or attempting to operate a remotely piloted aircraft in that airspace in a manner that threatens or is likely to threaten the good order of a detention centre. It will be a defence to the offence of possessing a remotely piloted aircraft in the airspace if it is not for a purpose that threatens or is likely to threaten the good order or security of the detention centre. It will not be an offence, in any case, if a person does the acts prohibited by the proposed offences for a purpose prescribed by the regulations, with the authorisation of a person, or a member of a class of persons, prescribed by the regulations or for a reason prescribed by the regulations.

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

Schedule 3 [1] enables a correctional officer to use flexicuffs to restrain a visitor to a place of detention in circumstances where the officer is authorised to use force in relation to the visitor.

Schedule 3 [2] prescribes the circumstances in which it will not be an offence to possess or operate or attempt to operate a remotely piloted aircraft in or near a correctional centre or other place of detention. The circumstances include where a person is in possession of or operating a remotely piloted aircraft for law enforcement purposes as an officer of or person acting on behalf of a law enforcement agency, is administering or enforcing the *Crimes (Administration of Sentences) Act 1999*, is dealing with a fire or other emergency or is authorised in writing by the Commissioner of Corrective Services or the governor of the relevant place of detention to be in possession of the aircraft. The amendment also prescribes residential facilities and transitional centres to which the proposed offences relating to remotely piloted aircraft will apply.

Schedule 4 Amendment of Children (Detention Centres) Regulation 2015

Schedule 4 prescribes the circumstances in which it will not be an offence to possess or operate a remotely piloted aircraft in a detention centre. The circumstances include where a person is in possession of or operating a remotely piloted aircraft for law enforcement purposes as an officer of or person acting on behalf of a law enforcement agency, is administering or enforcing the *Children (Detention Centres) Act 1987*, is dealing with a fire or other emergency or is authorised in writing by the Secretary of the Department of Justice or the centre manager of the detention centre to be in possession of the aircraft.