

Crimes (Administration of Sentences) Amendment Bill 2004

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* to provide for a more severe penalty to be imposed on a correctional centre inmate found with a mobile phone and with respect to other miscellaneous matters, including the types of samples that may be taken for the purpose of testing for the presence of prohibited drugs, the conduct of correctional centre disciplinary proceedings, the revocation of periodic detention orders and the extension of sentences.

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, other than the amendments made by Schedule 2 and Schedule 3.2. Clause 2 (2) provides for the amendments made by Schedule 2 to commence on the commencement of certain currently uncommenced amendments in the *Crimes (Administration of Sentences) Further Amendment Act 2002*. Clause 2 (3) provides for the amendments to the *Criminal Appeal Act 1912* to commence on assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Crimes (Administration of Sentences) Act 1999* set out in Schedules 1 and 2.

Clause 4 is a formal provision that gives effect to the amendments to the Acts and instrument set out in Schedule 3.

Schedule 1 Amendment of Crimes (Administration of Sentences) Act 1999

Schedule 1 [1] inserts a definition of *non-invasive sample* in section 3, the definitions section. *Non-invasive sample* is defined to mean samples of specified types of human biological material such as hair and urine (but not blood). **Schedule 1 [15], [16], [19], [21] and [22]** make amendments to replace references to a sample of a particular biological material with the defined term *non-invasive sample*.

The proposed Act makes amendments to remove the distinction between a correctional centre offence dealt with as a *major offence* and a correctional centre offence dealt with as a *minor offence*. **Schedule 1 [2]** omits the definitions of *major offence* and *minor offence* from section 51. **Schedule 1 [3]** replaces references in section 53 to minor offences with references to correctional centre offences. **Schedule 1 [6], [9] and [20]** make amendments consequential on these amendments.

The proposed Act makes amendments to increase certain types of penalties that governors and Visiting Magistrates can impose in administering correctional centre discipline. **Schedule 1 [4]** amends section 53 to increase the maximum number of days of deprivation of withdrawable privileges a governor can impose from 28 to 56. **Schedule 1 [5]** amends section 53 to increase the maximum number of days of confinement to a cell a governor can impose from 3 to 7.

Schedule 1 [10] amends section 56 to increase the maximum number of days of deprivation of withdrawable privileges a Visiting Magistrate can impose from 56 to 90. **Schedule 1 [11]** amends section 56 to increase the maximum period a Visiting Magistrate can extend the term of a sentence (and if applicable, the nonparole period of the sentence) of an inmate from 28 days to 6 months.

Associated with these increases in maximum penalties, **Schedule 1 [12]** amends

section 56 to confer, on a Visiting Magistrate hearing a charge on a correctional centre offence, the power to impose a sentence of imprisonment for a period not exceeding 6 months. **Schedule 1 [18]** makes an amendment to section 62 to confer a right of appeal to the District Court in respect of a sentence of imprisonment imposed under proposed section 56 (1) (f). **Schedule 1 [13]** makes an amendment consequential on this amendment.

Schedule 1 [7] amends section 55 to make certain provision for a Visiting Magistrate to hear a charge on a correctional centre offence by way of audio visual link.

Schedule 1 [8] makes an amendment in the nature of statute law revision.

Schedule 1 [14] inserts proposed section 56A to provide for a governor or Visiting Magistrate dealing with a charge relating to the new correctional centre offence in respect of an inmate found with a mobile phone to order an inmate guilty of the offence to be deprived, for up to 6 months, of such withdrawable privileges as the governor or Visiting Magistrate may determine. Possession of a mobile phone or associated articles is made a correctional centre offence by **Schedule 3.1 [5]**.

Schedule 1 [17] makes an amendment to section 59 to increase, from \$100 to \$500, the maximum amount of compensation that the governor of a correctional centre may order an inmate to pay for loss of or damage to property as a result of the inmate committing a correctional centre offence.

Schedule 1 [23] makes an amendment to section 163 to require the revocation of an offender's periodic detention order for failing to report for a single detention period if the same offender has already had a periodic detention order reinstated previously following revocation for failure to report for 3 or more detention periods. It also makes it clear that, for the purposes of section 163 (2) (a), it is immaterial whether a relevant failure to report occurred before or after a reinstatement of the relevant periodic detention order.

Schedule 1 [24] inserts proposed section 249 (2) to make it clear that the definition of a *person in custody* includes persons refused bail or granted bail but not released under section 20 of the *Bail Act 1978* and persons arrested or apprehended under section 50 of the *Bail Act 1978*.

Schedule 1 [25] makes an amendment to section 250 to make it clear that a correctional officer into whose keeping a person in custody has been given can convey the person in custody to a court.

Schedule 1 [26]–[28] make amendments to section 255 to provide for the effect of the extension of a sentence on a sentence to be served partly consecutively with the extended sentence. **Schedule 1 [26]** makes an amendment to make it clear that section 255 applies in respect of a partly consecutive sentence.

Schedule 1 [27] provides that on the extension of the non-parole period of a sentence, the date of commencement of a partly consecutive sentence (that would otherwise commence before the end of the non-parole period of the extended sentence) is extended by the period the non-parole period is extended.

Schedule 1 [28] makes a corresponding amendment to provide that a partly consecutive sentence (that would otherwise commence after the end of the nonparole period of an extended sentence) is extended by the period for which the term is extended.

Schedule 1 [29] makes an amendment to clause 3 of Schedule 2 to provide that the nomination of the deputy of an official member of the Serious Offenders Review Council may be for a specified period or an indefinite period and, in respect of the period the nomination is in force, has effect according to its terms (subject to any revocation). Provision is also made for a list of officers of the Department eligible to be nominated as the deputy of an official member to be established and for such a deputy only to be chosen from the list of eligible

officers. A provision is also included to make it clear that the revocation of the appointment of an official member automatically results in the revocation of the nomination of a deputy of the official member.

Schedule 1 [30] and [31] contain amendments to Schedule 5 in relation to savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 Further amendments to Crimes (Administration of Sentences) Act 1999

Schedule 2 makes amendments to provisions to be inserted in the *Crimes (Administration of Sentences) Act 1999* by Schedule 1 [14] to the *Crimes (Administration of Sentences) Further Amendment Act 2002* to replace references to particular biological materials with the defined term **non-invasive sample** (to be inserted by **Schedule 1 [1]**).

Schedule 3 Amendment of other Acts and instrument

Schedule 3.1 makes amendments to the *Crimes (Administration of Sentences) Regulation 2001*.

Schedule 3.1 [1] makes it an offence against the *Crimes (Administration of Sentences) Regulation 2001* for an inmate to have in his or her possession a mobile phone or any part of it, a mobile phone SIM card or any part of it, or a mobile phone charger or any part of it. **Schedule 3.1 [5]** makes an amendment to specify the new offence as a correctional centre offence by including it in Schedule 2 to the Regulation. An amendment made by **Schedule 3.4** includes a related offence in the *Summary Offences Act 1988*, enabling such conduct to be dealt with as an offence against that Act (with a maximum penalty of imprisonment for 2 years or 50 penalty units (currently \$5,500), or both) rather than as a correctional centre offence. **Schedule 3.1 [5]** also amends Schedule 2 to reflect the abolition of the distinction between a correctional centre offence treated as a major offence and a correctional centre offence treated as a minor offence.

Schedule 3.1 [2]–[4] and [6] make consequential amendments to reflect the abolition of the distinction between a correctional centre offence treated as a major offence and a correctional centre offence treated as a minor offence.

Schedule 3.2 makes amendments to the *Criminal Appeal Act 1912* to give effect to provisions with respect to certain time not being counted as part of a term of imprisonment under a person's sentence.

Schedule 3.3 makes an amendment to the *Freedom of Information Act 1989* to omit the matter relating to the office of Inspector-General of Corrective Services from Schedule 2, following the expiry of the position of Inspector-General of Corrective Services on 1 October 2003.

Schedule 3.4 makes an amendment to the *Summary Offences Act 1988* to make it an offence against the *Summary Offences Act 1988* for an inmate, without reasonable excuse (proof of which lies on the inmate), to have in his or her possession in a place of detention a mobile phone or any part of it, a mobile phone SIM card or any part of it, or a mobile phone charger or any part of it. The maximum penalty for this offence is imprisonment for 2 years or 50 penalty units (currently \$5,500), or both.