

### Agreement in Principle

**Mr BARRY COLLIER** (Miranda—Parliamentary Secretary) [4.18 p.m.]: I move:

That this bill be now agreed to in principle.

The Government is pleased to introduce the Crimes (Administration of Sentences) Amendment Bill 2009, which amends the Crimes (Administration of Sentences) Act 1999, which I will hereafter refer to as the Act. This bill confirms current arrangements within the New South Wales correctional system for, firstly, the care, control and management of inmates in connection with the designation of inmates for the management of security and other risks; and, secondly, the separation of inmates from other inmates in a correctional centre. The amendments in the bill make it clear that nothing in the Act requires the placement or conditions of custody of inmates to be the same for all inmates. Further, it makes it clear that a decision to separate an inmate from other inmates does not constitute segregated custody of that inmate. This bill gives the Department of Corrective Services greater certainty in regards to how it can operate, it confirms the current capacity of the commissioner to manage the correctional system and it confirms that the commissioner is justified in using different conditions of custody to ensure inmates in that system are appropriately managed.

Given the variety of reasons that inmates commit crimes and the varying nature of the crimes they commit, each inmate must be treated differently to ensure the good order, management and security of our correctional system. There are necessary distinctions between classification and designation of inmates and management regimes, compared with segregated custody directions and separation of inmates for management purposes. A recent case in the Supreme Court has necessitated the need to introduce this bill to reinforce those distinctions and the existing right of the Commissioner of Corrective Services to manage inmates in the appropriate way. This bill is necessary to confirm the intent of existing legislation and to make it abundantly clear that the conditions for custody for all inmates are not, and do not need to be, identical or equivalent.

I turn now to the provisions of the bill. Schedule 1 [1] confirms current arrangements in that the conditions of custody of inmates may vary for different inmates, including with respect to association of inmates in the same correctional centre. The amendment confirms that inmates or groups of inmates may be held separately from other inmates in a correctional centre for the purposes of the care, control or management of a specific inmate or group of inmates. Any such separation may arise from a requirement of the Act or its regulation, the classification or designation of the inmates, any program undertaken by the inmates or any intensive monitoring required of the inmates.

The amendment also confirms that inmates may be held separately from other inmates without the making of a segregated custody direction. There are two important concepts that need to be distinguished in modern correctional management. They are "segregated custody" and "separation" of inmates. Segregated custody is the process whereby the commissioner may direct that an inmate be held in segregated custody if of the opinion that association of the inmate with other inmates constitutes, or is likely to constitute, a threat to the personal safety of any other person, the security of a correctional centre, or the good order and discipline within a correctional centre.

Such a direction is often made as a result of an explicit, exhibited behaviour by an inmate—for example, an assault on a fellow inmate or member of staff. Segregated custody is not a punishment. It is used where there are no other means of managing the inmate. The Act provides for an independent system of review of segregated custody directions at specified time frames. As part of the daily management of inmates subjected to a segregated custody direction, there may be restrictions imposed on an inmate regarding, for example, association with other inmates, the number of hours confined to the cell, access to telephones and the ability to work in industries. In the New South Wales correctional system, such management restrictions are not limited to inmates subject to a segregated custody direction.

Other inmates who are not subject to such a direction may also be subject to constraints or restrictions regarding association with other inmates, the number of hours confined to a cell, access to telephones and the ability to work in industries. For example, an inmate undertaking a specific program, such as the Custody Based Intensive Treatment Program for Sex Offenders, will be located in a closed wing or unit in a correctional centre, and will be able to associate only with inmates undertaking that specific program. A similar situation prevails for inmates subject to a compulsory drug treatment order. These inmates are only located in the Compulsory Drug Treatment Correctional Centre at Parklea. While on stage one of that program, they are prohibited from having any visitors and can only associate with a tightly controlled group of other inmates with similar orders.

The Department of Corrective Services also has to deal with inmates who form inmate factions within the system. These inmate factions have the potential to become what the commissioner describes as security threat groups. Once organised, the individual activities of such groups and the fall-out from the rivalries that can arise between them, can pose a real threat to the safety of staff, other inmates and the security of correctional centres.

Therefore, for some years now the department has operated the Security Threat Group Intervention Program, which seeks to address the offending behaviour of inmates in these groups. It is a well-grounded principle in New South Wales penal law that inmates may be separated and managed according to their needs—whether, for example, the separation is for the purpose of addressing the inmate's criminogenic needs by way of programs and services, owing to an inmate's intellectual or physical disability, a medical condition or simply on the basis of gender.

Some basic examples of this fundamental tenet may be found in the Crimes (Administration of Sentences) Regulation 2008—for instance, clause 30, which provides for the separation of classes of inmates; clause 31, which provides for the separation of inmates on the basis of their sex; clause 32, which provides for the separation of inmates found or suspected to be in an infectious or verminous condition from other inmates; and chapter 2, part 2.2, which relates to the case management and classification of inmates. The Department of Corrective Services is the lead agency for State Plan priority R2—that is, reducing re-offending. It has responsibility for reducing the levels of re-offending by 10 per cent over a 10-year period.

The department's mission is to "Manage offenders in a safe, secure and humane manner and reduce risks of re-offending" and its vision is to "Contribute to a safer community through quality correctional services". The department uses a variety of strategies to achieve its mission and vision, and to work towards achieving the State Plan target. One such strategy is the development and implementation of case plans addressing the criminogenic needs of offenders. A range of behavioural programs and services addressing offending behaviour are encouraged for those inmates where an assessment indicates that they should be undertaken. Programs may target, for example, attitudes, behaviours and cognitions which are supportive of crime or indicative of psychopathy and other anti-social behaviours and attitudes; drug and alcohol abuse; development of victim empathy by sex offenders; and/or anger and violence management.

The types of programs an inmate may be placed in, or encouraged to participate in, and the extent of that participation will be determined, in part, by the inmate's level of risk of re-offending. Participation in some programs will inevitably entail separation from mainstream living conditions and attendant restrictions and limitations on daily routines in correctional centres and specified placements. The need for this bill arises from the fact that the conditions of custody for all inmates cannot be the same, nor do they need to be, and the possibility that there may be some misunderstanding of the distinction between the separation of inmates and the segregated custody of inmates.

The separation of inmates and different conditions of custody is a fundamental tenet of modern penology and offender and correctional centre management. The ambit of the Act and its regulation are indicative of this. Hence, the bill amends the Act to confirm the current arrangement—namely, that the conditions of custody of inmates need not be the same for all inmates. The bill makes it clear that the conditions of custody of inmates may vary, including with respect to association with other inmates, whether on the basis of classification or designation of the inmate, or otherwise. The amendment ensures that anything previously done or omitted that would have been validly done or omitted had the amendment been in force at that time is taken to have been validly done or omitted.

Schedule 1 [2] confirms that the regulation may make further provision for the designation of inmates for the management of security or other risks. There is already a general regulation-making power contained in section 271 of the Crimes (Administration of Sentences) Act with respect to any matter. However, for the sake of being prudent and in order to be consistent with section 79, which provides for some specific regulation-making powers with respect to full-time imprisonment, subsection (c1) is being inserted into the Crimes (Administration of Sentences) Act. Schedule 1 [3] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act. I commend the bill to the House.