



New South Wales

Crimes (Administration of Sentences) Amendment Act 2006 No 81

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Crimes (Administration of Sentences) Amendment Act 2006 No 81

Act No 81, 2006

An Act to amend the *Crimes (Administration of Sentences) Act 1999* with respect to the supervision of lifetime parolees and other miscellaneous matters; and for other purposes. [Assented to 27 October 2006]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Crimes (Administration of Sentences) Amendment Act 2006*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Crimes (Administration of Sentences) Act 1999 No 93

The *Crimes (Administration of Sentences) Act 1999* is amended as set out in Schedule 1.

4 Amendment of Crimes (Administration of Sentences) Regulation 2001

The *Crimes (Administration of Sentences) Regulation 2001* is amended as set out in Schedule 2.

5 Amendment of Children (Detention Centres) Act 1987 No 57

The *Children (Detention Centres) Act 1987* is amended as set out in Schedule 3.

6 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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

(Section 3)

[1] The whole Act (sections 3 (1) and 77 (1) and (2) and Schedule 5 excepted)

Omit “governor”, “governors”, “governor’s” and “Governors” (but not “Governor”) wherever occurring.

Insert instead “general manager”, “general managers”, “general manager’s” and “General managers”, respectively.

[2] Section 3 Interpretation

Insert in alphabetical order in section 3 (1):

general manager means:

- (a) in relation to a correctional centre, the general manager of the correctional centre, or
- (b) in relation to a periodic detention centre, the general manager of the correctional centre who is responsible for the periodic detention centre by virtue of a proclamation referred to in section 226 (3),

and includes any person who is for the time being in charge of the correctional centre referred to in paragraph (a) or (b), as the case requires.

[3] Section 3 (1), definition of “governor”

Omit the definition.

[4] Section 41C Transfers to and from juvenile correctional centres

Insert after section 41C (4) (after the note):

- (5) Subsections (2), (3) and (4) do not apply to the transfer of a juvenile inmate to a hospital pursuant to an order by the Commissioner under section 24.
- (6) Such an order may not be made without prior consultation between the Commissioner and the Chief Executive Officer, Justice Health.

[5] Section 77 Attendance of inmates before courts and court officers

Omit “the governor of the correctional centre in which the inmate is held” from section 77 (1).

Insert instead “the Commissioner”.

[6] Section 77 (2)

Omit “governor”.

Insert instead “general manager of the correctional centre in which the inmate is held”.

[7] Section 81 Obligations of offender

Insert at the end of section 81 (c):

, and

- (d) to permit any correctional officer or other member of staff of the Department to visit the offender at the offender’s residential address at any time.

[8] Section 87 Leave of absence for failing to report

Insert after section 87 (2):

- (2A) Leave of absence that is granted before the detention period to which it relates may be granted subject to such conditions as the Commissioner may determine.

[9] Section 104 Obligations of offender

Insert at the end of section 104 (b):

, and

- (c) to permit any correctional officer or other member of staff of the Department to visit the offender at the offender’s residential address at any time.

[10] Section 107 Definitions

Insert in alphabetical order:

community service field officer means a person who is employed for the purpose of supervising offenders subject to community service orders while the offenders are performing community service work.

[11] Section 107, definition of “supervisor”

Omit the definition.

[12] Section 110 Duration of community service order

Omit section 110 (b).

[13] Section 112 Performance of community service work

Omit “supervisors” from section 112 (1) (b).

Insert instead “community service field officers”.

[14] Section 114 Extension of period of community service order

Omit section 114 (2).

[15] Section 115 Revocation of community service orders

Omit section 115 (2B).

[16] Section 117 Regulations

Omit “supervisors” from section 117 (g).

Insert instead “community service field officers”.

[17] Section 128 Conditions of parole generally

Insert “this Act or” after “standard conditions imposed by” wherever occurring in section 128 (1) (a) and (4) (a) and (b).

[18] Section 128 (3)

Insert “but subject to section 128B,” after “subsection (2A),”.

[19] Section 128B

Insert after section 128A:

128B Conditions of parole as to lifetime supervision

- (1) This section applies to an offender serving an existing life sentence within the meaning of Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999*, being an offender in respect of whom a parole order is made as a consequence of the Supreme Court having set a non-parole period for the sentence (but not a specified term) under clause 4 of that Schedule.
- (2) It is a condition of a parole order for an offender to whom this section applies that, for the whole of the period for which the parole order is in force:
 - (a) the offender is to be subject to supervision, as prescribed by the regulations, and
 - (b) in relation to that supervision, the offender must comply with such obligations as the Commissioner may from time to time impose on the offender.

Note. Unless the parole order is sooner revoked, the effect of this provision is supervision for life.

- (3) This section does not permit the Commissioner to impose any obligations that are inconsistent with any standard conditions imposed by this Act or the regulations or any additional conditions imposed by the sentencing court or the Parole Authority.

[20] Section 138 Release of offender on parole

Omit “or before” from section 138 (1).

[21] Section 139 Notice to offender of decision to refuse parole

Omit “forming an initial intention” from section 139 (1).

Insert instead “deciding”.

[22] Section 139 (1) (a)

Omit “intention”. Insert instead “decision”.

[23] Section 139 (2) (a)

Omit “initial intention”. Insert instead “decision”.

[24] Section 141A Submissions by Commissioner

Insert after section 141A (3):

- (4) The regulations may make provision for or with respect to submissions by the Commissioner under this section, including provisions relating to the application of this Subdivision in connection with any such submission.

[25] Section 164A Parole Authority may reinstate revoked periodic detention order

Omit section 164A (1). Insert instead:

- (1) If an offender’s periodic detention order has been revoked under this Division or under section 179, the Parole Authority:
- (a) on the application of the offender, and
 - (b) subject to Part 5 of the *Crimes (Sentencing Procedure) Act 1999*,
- may make an order reinstating the offender’s revoked periodic detention order in respect of the remaining balance of the offender’s sentence.

- (1A) Such an application:
- (a) may not be made until the offender has, since the periodic detention order was revoked, served at least 3 months of the offender's sentence by way of full-time detention, and
 - (b) must state what the offender has done, or is doing, to ensure that the offender will not fail to comply with the offender's obligations under the periodic detention order in the event that it is reinstated.

[26] Section 165AA Release of offender pending assessment for home detention

Insert "or permitting the offender to remain at large" after "custody" in section 165AA (1).

[27] Section 175 Decision after review

Omit section 175 (1A). Insert instead:

- (1A) Despite subsection (1) (a) and (b), the Parole Authority may not rescind the revocation of:
- (a) a periodic detention order of an offender who has failed to apply for, or been refused, leave of absence with respect to 3 or more detention periods, or
 - (b) a periodic detention order that it has revoked under section 163 (1C), or
 - (c) a home detention order that it has revoked under section 167 (6),
- except in such circumstances as may be prescribed by the regulations as constituting manifest injustice.

[28] Section 175A

Insert after section 175:

175A Review not available in certain circumstances

If an offender's periodic detention order, home detention order or parole order is revoked within 30 days before the date on which the offender's sentence expires (ignoring any extension of the sentence under section 168 (3)):

- (a) the revocation notice referred to in section 173 is not required to comply with the requirements of section 173 (2) (b) or (c), and
- (b) the offender is not entitled to seek reconsideration of the revocation of the order under section 174.

[29] Section 181 Warrants committing offenders to correctional centres

Insert after section 181 (1A):

- (1B) The Parole Authority may, by order, recall or suspend any warrant that it has issued under this section.

[30] Section 181 (2)

Insert “or order” after “warrant”.

[31] Section 181 (3)

Omit “A warrant”.

Insert instead “Subject to any order under subsection (1B), a warrant”.

[32] Section 181 (4)

Insert “or orders” after “warrants”.

[33] Section 185 Functions of Parole Authority

Insert after section 185 (3):

- (4) The regulations may make provision for or with respect to submissions by the Commissioner under this section.

[34] Section 190 Rights of parties making submissions

Omit “147 (3)” from section 190 (3). Insert instead “147 (2)”.

[35] Section 193A Access to documents held by Parole Authority

Insert “, but only to the extent to which those documents indicate the measures that the offender has taken, or is taking, to address his or her offending behaviour” after “the offender” in section 193A (2).

[36] Sections 235E–235G

Insert after section 235D:

235E Functions of community service field officers

- (1) In this section:
community service field officer means a person who is employed for the purpose of supervising offenders subject to community service orders while the offenders are performing community service work.
- (2) The functions of community service field officers are to be as determined from time to time by the Commissioner.

-
- (3) Community service field officers must at all times exercise their functions in such manner as the Commissioner, having regard to current circumstances, may from time to time direct.

235F Common work sites

- (1) At any place at which both offenders under periodic detention orders and offenders under community service orders are carrying out community service work:
- (a) any periodic detention field officer who is authorised by the Commissioner in that regard may exercise the functions of a community service field officer, and
 - (b) any community service field officer who is authorised by the Commissioner in that regard may exercise the functions of a periodic detention field officer.
- (2) In this section:
- community service field officer* has the same meaning as it has in section 235E.
- periodic detention field officer* has the same meaning as it has in section 235D.

235G Functions of Departmental compliance and monitoring officers

- (1) The Commissioner may appoint any member of staff of the Department (including any correctional officer or probation and parole officer) as a compliance and monitoring officer.
- (2) A compliance and monitoring officer may, in relation to an offender who is outside a correctional centre, exercise such of the following functions as are specified in the instrument of his or her appointment as a compliance and monitoring officer or in a subsequent instrument executed by the Commissioner:
- (a) the functions of a correctional officer in relation to the arrest of offenders under section 39 in relation to the arrest of inmates unlawfully absent from custody,
 - (b) the functions of a correctional officer under the regulations in relation to the testing of offenders for the presence of alcohol or drugs,
 - (c) the functions of a correctional officer under Part 4A of the *Summary Offences Act 1988* in relation to offences relating to places of detention,
 - (d) such other functions as are ancillary to the functions referred to in the foregoing paragraphs.

- (3) The functions referred to in subsection (2) may be exercised in relation to an offender, in accordance with the legislative provisions under which they arise, wherever the offender may be.
Note. For example, the functions conferred by this section may be exercised:
- (a) in relation to an inmate under Part 2 who is absent from a correctional centre, and
 - (b) in relation to an offender under Part 3 who has failed to report as required during a detention period, and
 - (c) in relation to an offender under Part 4 who is absent from home during the period of a home detention order, and
 - (d) in relation to an offender under Part 5 while required to be performing community service work.
- (4) Subsection (3) is not to be construed as conferring on a compliance and monitoring officer any power to enter premises otherwise than with the consent of the occupier of those premises.
- (5) In this section, *offender* means:
- (a) an inmate referred to in Part 2 who is absent from a correctional centre, or
 - (b) an offender referred to in Part 3, 4 or 5.

[37] Section 236F Testing of staff for alcohol and prohibited drugs

Insert “and, in particular, on the basis of the results of previous testing” after “basis” in section 236F (2).

[38] Schedule 5 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes (Administration of Sentences) Amendment Act 2006

[39] Schedule 5, Part 11

Insert after Part 10:

Part 11 Provisions consequent on enactment of Crimes (Administration of Sentences) Amendment Act 2006

89 Definition

In this Part:

the 2006 amending Act means the *Crimes (Administration of Sentences) Amendment Act 2006*.

90 Duration of community service orders

Section 110, as amended by the 2006 amending Act, extends to any community service order in force before the commencement of that amendment.

91 Reinstatement of revoked periodic detention orders

Section 164A, as in force immediately before it was amended by the 2006 amending Act, continues to apply to any application made before the commencement of that amendment as if that Act had not been enacted.

92 Rescission of revocation of certain orders

Section 175, as amended by the 2006 amending Act, extends to any periodic detention order or home detention order that had been revoked before the commencement of that amendment.

93 Review of revocation of certain orders

Section 175A, as inserted by the 2006 amending Act, extends to any periodic detention order, home detention order or parole order that had been revoked before the commencement of that amendment, other than an order in respect of which the offender had, before the commencement of that amendment, notified the Secretary of the Parole Authority under section 174 of the offender's intention to make submissions to the Parole Authority.

94 Suspension of warrants of commitment

Section 181, as amended by the 2006 amending Act, extends to any warrant issued under that section before the commencement of those amendments.

95 References to "governor"

On and from the date on which the 2006 amending Act substitutes references in this Act to "governor" with references to "general manager", a reference in any other Act or instrument to the governor of a correctional centre is taken to be a reference to the general manager of a correctional centre.

Schedule 2 Amendment of Crimes (Administration of Sentences) Regulation 2001

(Section 4)

[1] Clause 216 Imposition and extension of supervision conditions

Insert after clause 216 (2B):

- (2C) Subclauses (1)–(2B) do not apply to an offender to whom section 128B of the Act applies.

[2] Clause 216 (3)

Omit the subclause. Insert instead:

- (3) For the purposes of section 128 (3) of the Act:
- (a) the prescribed supervision for an offender (other than an offender to whom section 128B of the Act applies) is supervision by a probation and parole officer, and
 - (b) the prescribed supervision for an offender to whom section 128B of the Act applies is supervision by a probation and parole officer or by some other Departmental officer.

[3] Clause 217 Supervision conditions generally

Insert after clause 217 (4):

- (5) Subclauses (3) and (4) do not apply to an offender to whom section 128B of the Act applies.

[4] Clause 218 Variation of conditions so as to require supervision

Insert at the end of the clause:

- (2) This clause does not apply to an offender to whom section 128B of the Act applies.

[5] Clause 218A

Insert after clause 218:

218A Commissioner to review supervision obligations for offenders serving existing life sentences

- (1) This clause applies to an offender to whom section 128B of the Act applies.
- (2) An offender's section 128B obligations must be reviewed by the Commissioner at intervals of not more than 12 months.

- (3) As soon as practicable after imposing any section 128B obligations on an offender, the Commissioner must notify the Parole Authority of that fact.
- (4) In this clause, *section 128B obligation* means an obligation to which an offender is subject under section 128B (2) (b) of the Act.

Schedule 3 Amendment of Children (Detention Centres) Act 1987

(Section 5)

Section 37J Testing of juvenile justice officers for alcohol and prohibited drugs

Insert “and, in particular, on the basis of the results of previous testing” after “basis” in section 37J (2).

[Second reading speech made in—
Legislative Assembly on 17 October 2006
Legislative Council on 19 October 2006]

BY AUTHORITY