

Passed by both Houses



New South Wales

Crimes (Administration of Sentences) Amendment Bill 2014

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2014



New South Wales

Crimes (Administration of Sentences) Amendment Bill 2014

Act No , 2014

An Act to make miscellaneous amendments to the *Crimes (Administration of Sentences) Act 1999* and the regulations under that Act and related amendments to the *Fines Act 1996*.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes (Administration of Sentences) Amendment Act 2014*.

2 Commencement

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

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

[1] **Section 7A**

Insert after section 7:

7A Deductions from remuneration earned by inmates on external work release program

- (1) Any remuneration earned by an inmate as a participant in an external work release program is to be paid by the employer to the Commissioner on behalf of the inmate.
- (2) The Commissioner may deduct from such remuneration an amount, calculated in accordance with the directions of the Minister, to contribute towards:
 - (a) the costs of administering the external work release program, and
 - (b) travel fares and other expenses relating to the inmate's participation in the external work release program, and
 - (c) the costs of the inmate's imprisonment during the period in which such remuneration is earned.
- (3) The Commissioner must cause a record to be kept of remuneration received and deductions made under this section.
- (4) In this section:
external work release program means a program provided under this Act which enables an eligible inmate to work in paid employment in the community during the inmate's sentence, in accordance with a local leave permit.

[2] **Section 10 Segregated custody of inmates**

Omit "the association of the inmate with other inmates constitutes or is likely to constitute a threat to" from section 10 (1).

Insert instead "such segregation is necessary to secure".

[3] **Section 76A Inmates' money**

Insert "the Commissioner or" after "received by" in section 76A (1) (c).

[4] **Section 78B**

Insert after section 78A:

78B Recording of conversations made over cell call alarm systems

- (1) Section 7 (1) of the *Surveillance Devices Act 2007* does not apply to the installation, use or maintenance of a listening device to record conversations made through a cell call alarm system in a correctional centre.
- (2) A *cell call alarm system* is a communication system designed to enable inmates to notify staff of emergencies while locked in their cells.

[5] **Section 118 Definitions**

Insert after paragraph (d) of the definition of *community service work*:

- (d1) community service work performed by an offender who is a resident of a residential facility, pursuant to a condition to which such residency is subject, and

[6] Section 118, definition of “offender”

Insert at the end of paragraph (d):

, or

- (e) while a resident of a residential facility, pursuant to a condition to which such residency is subject.

[7] Section 128 Conditions of parole generally

Omit “section 128B” from section 128 (3). Insert instead “sections 128B and 128C”.

[8] Section 128C

Insert after section 128B:

128C Condition of parole order in exceptional circumstances as to supervision

It is a condition of a parole order made under section 160 in respect of an offender that, for the whole of the period for which the parole order is in force, the offender is to be subject to supervision, as prescribed by the regulations.

[9] Sections 137B and 143B

Omit “offender’s parole eligibility date” wherever occurring.

Insert instead “date on which the offender first becomes eligible for release on parole”.

[10] Section 138 Release of offender on parole

Insert “(other than an order made following consideration of the offender’s case under section 137B)” after “date” where firstly occurring in section 138 (1AA) (a).

[11] Section 151 Release of serious offender on parole

Insert “(other than an order made following consideration of the offender’s case under section 143B)” after “date” where firstly occurring in section 151 (1) (a).

[12] Section 170 Revocation of parole order

Insert after section 170 (1) (a1):

- (a2) in the case of an offender who has been granted parole under section 160 on the grounds that he or she is dying or because of exceptional extenuating circumstances, if it is satisfied that those grounds or circumstances no longer exist, or

[13] Section 181 Warrants committing offenders to correctional centres

Omit section 181 (2). Insert instead:

- (2) A warrant under this section is to be signed by the Secretary of the Parole Authority and as soon as practicable afterwards countersigned by a judicial member of the Parole Authority.
- (2A) An order under this section is to be signed by a judicial member of the Parole Authority.

[14] Section 181 (5) and (6)

Insert after section 181 (4):

- (5) A warrant under this section has effect on its signing by the Secretary of the Parole Authority and is not invalid merely because it is not countersigned by a judicial member of the Parole Authority.

- (6) A reference in this section to a judicial member of the Parole Authority is a reference to a judicial member referred to in section 183 (2) (a).

[15] Section 194 Security of certain information

Insert after section 194 (1):

- (1A) Nothing in this Act or the regulations requires a person to be provided with information about the content of a report or other document, a copy of which is not (by operation of subsection (1)) required to be provided to a person, if, in the opinion of a judicial member:
- (a) not providing the information to the person is necessary in the public interest, and
 - (b) that public interest outweighs any right to procedural fairness that may be denied by not providing the information.

[16] Section 209A Security of certain information

Insert at the end of the section:

- (2) Nothing in this Act or the regulations requires a person to be provided with information about the content of a report or other document, a copy of which is not (by operation of subsection (1)) required to be provided to a person, if, in the opinion of a judicial member:
- (a) not providing the information to the person is necessary in the public interest, and
 - (b) that public interest outweighs any right to procedural fairness that may be denied by not providing the information.

[17] Section 235G Functions of Departmental compliance and monitoring officers

Omit “Part 2 of” from section 235G (2) (b).

[18] Section 236M Accommodation of offenders in residential facilities

Omit “non-custodial orders (referred to as *non-custodial residents*)” from section 236M (1) (b).

Insert instead “community-based orders”.

[19] Section 236M (3) (a)

Omit “a non-custodial resident”.

Insert instead “a person residing in a residential facility who is the subject of a community-based order”.

[20] Section 236M (5)

Omit the subsection. Insert instead:

- (5) In this section, a *community-based order* means any of the following orders:
- (a) an order under Division 3 of Part 2 of the *Crimes (Sentencing Procedure) Act 1999*,
 - (b) a parole order, a home detention order or an intensive correction order,
 - (c) an extended supervision order or an interim supervision order under the *Crimes (High Risk Offenders) Act 2006*,

- (d) a community supervision order (within the meaning of Part 4A), if the person subject to it is in community custody (Stage 3) (within the meaning of that Part).

[21] Section 241A

Insert after section 241:

241A Testing of correctional centre staff for alcohol and prohibited drugs

- (1) In this section:
 - employee* of a management company means a person employed by the management company, who holds an authority under section 240 to perform duties at a correctional centre managed by the management company.
 - prohibited drug* has the same meaning as in the *Drug Misuse and Trafficking Act 1985*.
- (2) A management company must:
 - (a) prepare and implement a program, approved by the Commissioner, for the testing of its employees for alcohol and prohibited drugs, and
 - (b) ensure that its employees are not under the influence of alcohol or any prohibited drug when on duty, or when present at their place of work and about to go on duty, and
 - (c) report to the Commissioner, if requested in writing by the Commissioner to do so, on the implementation of the program.
- (3) The Commissioner may, whenever the Commissioner considers it appropriate to do so, direct a management company to require an employee to undergo testing for alcohol and prohibited drugs:
 - (a) in accordance with the testing program approved by the Commissioner, or
 - (b) in accordance with Division 5 of Part 11 (as applied by subsection (5)) and the regulations.
- (4) A management company must comply with a direction of the Commissioner given under this section.
- (5) Division 5 of Part 11 applies in relation to the testing of an employee for alcohol and prohibited drugs as if the references to a member of correctional staff in that Division were references to an employee referred to in this section.
- (6) For the purposes of subsection (3) (b), the regulations may make provision, in relation to employees referred to in this section, for or with respect to any matter for or with respect to which regulations may be made under Division 5 of Part 11 in relation to members of correctional staff (other than a matter referred to in section 236I (j) or (k)).
- (7) This section applies to and in respect of a submanagement company and the persons it employs for the purposes of a submanagement agreement in the same way as it applies to and in respect of a management company and its employees.

[22] Schedule 1 Parole Authority

Insert at the end of clause 13:

- (2) The Secretary of the Parole Authority may act as a non-judicial member for the purposes of constituting a quorum for a meeting of the Parole Authority

and for the purposes of the meeting if the judicial member who is to preside at the meeting considers it necessary because:

- (a) the business to be conducted at the meeting is of an urgent nature, and
- (b) no other non-judicial member is readily available to constitute a quorum.

While so acting, the Secretary has all the functions of a non-judicial member and is taken to be such a member.

[23] Schedule 5 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

any other Act that amends this Act

[24] Schedule 5, Part 19

Insert after clause 109:

**Part 19 Provisions consequent on enactment of Crimes
(Administration of Sentences) Amendment Act
2014**

110 Definition

In this Part:

amending Act means the *Crimes (Administration of Sentences) Amendment Act 2014*.

111 Validation of certain deductions

- (1) A deduction made before the commencement of section 7A (2) from remuneration earned by an inmate as a participant in an external work release program is taken to have been validly made at the time it was made if it would have been validly made on or after that commencement.
- (2) Accordingly, no compensation is payable in respect of such a deducted amount or in respect of interest that may have accrued on such a deducted amount had it not been deducted.
- (3) In subclause (1):
external work release program has the same meaning as in section 7A, but extends to a corresponding program under the former *Correctional Centres Act 1952* (a *corresponding program*).
- (4) For the purposes of applying subclause (1) to a deduction from remuneration earned by an inmate as a participant in a corresponding program, a reference in section 7A (2) to an external work release program and to remuneration earned by an inmate from participation in such a program is taken to be a reference to a corresponding program and to remuneration earned by an inmate as a participant in such a program.

112 Segregated custody directions

A segregated custody direction in force under Division 2 of Part 2 of this Act immediately before the amendment of section 10 by the amending Act continues to have effect under (and subject to) Division 2 of Part 2 as if section 10 had not been so amended.

113 Protection from civil liability in respect of certain community service work performed by residents of residential facilities

Sections 120 and 121, as extended in their operation by the amendments made to section 118 by the amending Act, apply in relation to community service work performed by an offender the subject of those amendments, whether occurring before or on or after the date on which those amendments commence.

114 Parole in exceptional extenuating circumstances

- (1) Section 128C applies only in relation to a parole order made under section 160 on or after the date on which section 128C commences.
- (2) Section 170 (1) (a2) extends to a parole order made under section 160 before the date on which section 170 (1) (a2) commences.

115 Consideration of parole so as to avoid manifest injustice

Sections 137B and 143B, as amended by the amending Act, apply to an offender whether the date on which the offender first becomes eligible for release on parole occurs before, or on or after, the date on which those amendments commence.

116 Signing of warrants

A warrant in force under section 181 immediately before the amendment of section 181 by the amending Act is taken to be a warrant in force under that section as so amended, and may be enforced accordingly.

117 Security of certain information

- (1) Section 194 (1A) extends to a report or other document (or any part of the report or document) that is not required to be provided to a person by operation of section 194 (1) before the commencement of section 194 (1A).
- (2) Section 209A (2) extends to a report or other document (or any part of the report or document) that is not required to be provided to a person by operation of section 209A before the commencement of section 209A (2).

118 Accommodation of offenders in residential facilities

The amendments made to section 236M by the amending Act apply as if those amendments had commenced on the commencement of Division 7 of Part 11 of this Act.

Schedule 2 Amendment of Fines Act 1996 No 99

[1] Section 18 Special provision relating to certain victims support levies

Insert “and to any remuneration earned by the offender as a participant in an external work release program (within the meaning of section 7A of that Act)” after “*Crimes (Administration of Sentences) Act 1999*” in section 18 (8).

[2] Schedule 3 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) Amendment Act 2014

Definition

In this Part:

amending Act means the *Crimes (Administration of Sentences) Amendment Act 2014*.

Validation of certain deductions and enforcement of certain fines

- (1) A victims support levy enforced, before the amendment of this Act by the amending Act, by means of a deduction from remuneration earned by an offender as a participant in an external work release program is taken to have been validly enforced if it would have been validly enforced had this Act as so amended (and any relevant provision to which it refers) then been in force with any necessary modification.
- (2) A deduction for the purposes of enforcing a victims support levy made before the amendment of this Act by the amending Act from remuneration earned by an offender as a participant in an external work release program is taken to have been validly made at the time it was made if it would have been validly made had this Act as so amended (and any relevant provision to which it refers) then been in force with any necessary modification.
- (3) Accordingly, no compensation is payable in respect of such a deducted amount or in respect of interest that may have accrued on such a deducted amount had it not been deducted.
- (4) In this clause:
external work release program has the same meaning as in section 7A of the *Crimes (Administration of Sentences) Act 1999*, but extends to a corresponding program under the former *Correctional Centres Act 1952*.
- (5) A reference in this clause to a victims support levy extends to include a reference to a compensation levy payable under Part 5 of the former *Victims Support and Rehabilitation Act 1996* or Part 6A of the former *Victims Compensation Act 1987*.

Schedule 3 Amendment of Crimes (Administration of Sentences) Regulation 2008

[1] Clause 228 Imposition and extension of supervision conditions

Insert “or 128C” after “section 128B” wherever occurring in clause 228 (4) and (5).

[2] Clause 228 (6)

Omit “section 128B (2) (a)”. Insert instead “sections 128B (2) (a) and 128C”.

[3] Clauses 229 (5) and 230 (2)

Insert “or 128C” after “section 128B” wherever occurring.

[4] Clause 328 Operation of biometric identification system in correctional centres

Omit clause 328 (1). Insert instead:

- (1) The Commissioner may authorise the operation in correctional centres of a biometric identification system for the purposes of controlling access to the centre by all persons (including persons performing the duties of a custodian of offenders).