

[Act 2002 No 79]



New South Wales

Crimes (Administration of Sentences) Further Amendment Bill 2002

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 Principal Act*) as follows:

- (a) to make it clear that inmates who engage in work for which they are paid by the Commissioner of Corrective Services (*the Commissioner*) are not employees for the purposes of any Act or other law,
- (b) to streamline procedures dealing with segregated and protective custody, in particular by providing for segregated and protective custody directions to continue in force until they are revoked, with regular review by the Commissioner, and by providing for the transfer from one correctional centre to another of an inmate held in segregated or protective custody,

* Amended in committee—see table at end of volume.

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- (c) to provide for the mandatory testing (both random and targeted) of correctional officers and other persons employed in the Department of Corrective Services for alcohol and prohibited drugs,
- (d) to provide for the appointment of recognised interstate correctional officers, being correctional officers or police officers from another State or Territory or a member of the Australian Federal Police, and to confer on such recognised interstate correctional officers the functions and immunities of a correctional officer under the law of New South Wales,
- (e) to provide for a person employed in the Department of Corrective Services as a transitional centre officer or as a periodic detention field officer to be given functions of a correctional officer,
- (f) to provide for the Commissioner to dispose of unclaimed property within a correctional centre as the Commissioner may direct,
- (g) to make it clear that if a court imposes 2 or more community service orders on an offender, the maximum period of time for the offender to perform the community service work required by each order commences when the order is made,
- (h) to provide that the Commissioner may issue an evidentiary certificate that a specified person was in the custody of an officer, known as the *designated officer*, at a particular time,
- (i) to enable an Official Visitor to a correctional centre, periodic detention centre or correctional complex to interview non-custodial members of staff, as well as correctional officers,
- (j) to enable the Chief Executive Officer of the Corrections Health Service to delegate his or her functions (but not the Chief Executive Officer's right of unrestricted access to all parts of correctional centres, to medical records and to offenders held in custody),
- (k) to provide that a person who wants to undertake certain activities related to research in the correctional system must obtain the approval of the Commissioner,
- (l) to reform the voting procedures of the Parole Board and the Serious Offenders Review Council to remove the requirement that a judicial member form part of the majority, and to provide for the same voting procedures at a meeting of a Division of the Parole Board or of the Review Council,
- (m) to enable a judicial member of the Parole Board or the Serious Offenders Review Council to rule on a point of law when chairing a meeting of, or presiding over proceedings held before, the Board or the Review Council.

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.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes (Administration of Sentences) Act 1999* set out in Schedule 1.

Schedule 1 Amendments

Segregated and protective custody

Schedule 1 [3] omits Division 2 of Part 2 of the Principal Act and replaces it with a new Division 2 (sections 9–22) that streamlines procedures dealing with segregated and protective custody. Currently, a segregated or protective custody direction can be given for an initial period of 14 days, and subsequently extended for periods of up to 3 months at a time. There is no limit to the number of extensions.

Under the proposed Division, a segregated or protective custody direction, once given, will continue in force until it is revoked. The governor of a correctional centre where an inmate is held in segregated or protective custody must submit a report about the direction to the Commissioner within 14 days after the direction is given, and the Commissioner must review the direction and revoke, confirm or amend it within 7 days after receiving the report. Subsequently the governor must report to the Commissioner about the direction at intervals of 3 months after the direction was first given, and the Commissioner must review the direction within 7 days after each report and revoke, confirm or amend it.

The inmate may apply to the Serious Offenders Review Council for a review of the segregated or protective custody direction after 14 days of segregated or protective custody. The Review Council may confirm, amend or revoke the segregated or protective custody direction.

Currently, an inmate may apply to the Serious Offenders Review Council for a review, but the Review Council may reject the application if the application does not disclose substantial grounds for review or the Review Council has previously determined a review of the same direction and the application does not disclose substantially different grounds for review. Under the proposed Division, the Review

Council will not be able to refuse to review a segregated or protective custody direction if a period of more than 3 months has elapsed since the Review Council determined a review of the direction.

The proposed Division also provides for the transfer of an inmate held in segregated or protective custody from one correctional centre to another.

Currently, either the Commissioner or a governor of a correctional centre may make a segregated or protective custody direction. A direction made by the Commissioner applies to any correctional centre, while a direction made by a governor of a correctional centre does not apply to any other correctional centre.

The proposed amendments:

- (a) provide for a segregated or protective custody direction made by a governor of a correctional centre to continue to apply to the inmate during the transfer of the inmate to another correctional centre, and at the correctional centre to which the inmate is transferred, and
- (b) require the governor of the correctional centre to which the inmate is transferred to review the segregated or protective custody direction within 72 hours after the inmate arrives at the correctional centre, and to determine whether the direction should be confirmed, revoked or amended.

Under existing section 18 of the Principal Act, the Minister for Corrective Services may confirm, amend or revoke a direction by the Commissioner extending the period of a segregated custody direction or a protective custody direction. This power of the Minister is not included in the proposed Division.

Schedule 1 [8] and [11] make consequential amendments.

Community service orders

Schedule 1 [7] amends section 107 of the Principal Act, a section that defines certain terms used in provisions dealing with the performance of community service work under a community service order. The definition of *relevant maximum period* currently stipulates that an offender has 12 months in which to perform the required number of hours of community service work under a community service order, if the required number of hours is less than 300. If the required number of hours is 300 or more, the offender has 18 months in which to perform the required number of hours.

The proposed amendment makes it clear that the maximum period in which an offender may perform the required number of hours of community service work is calculated from the day on which the order is made. The effect of the amendment

is that if, for example, a court imposes 2 or more community service orders on an offender to perform 200 hours of community service work in respect of each order, the offender has 12 months from the time each order was made to perform the work required by the order.

Transitional centre officers and periodic detention field officers

Schedule 1 [12] inserts sections 235C and 235D, which enable the Commissioner to confer such of the functions of a correctional officer on a transitional centre officer or a periodic detention field officer as the Commissioner may determine. A *transitional centre officer* is a person who is employed at a transitional centre for the purpose of supervising inmates residing at the transitional centre. A *periodic detention field officer* is a person who is employed for the purpose of supervising offenders subject to periodic detention orders while the offenders are outside a periodic detention centre.

Schedule 1 [1] inserts a definition of *transitional centre*. A *transitional centre* consists of premises managed or approved by the Commissioner for the purpose of accommodating certain inmates prior to their release from custody. **Schedule 1 [4]** makes a consequential amendment.

Testing of correctional staff for alcohol and prohibited drugs

Schedule 1 [14] inserts a new Division (sections 236E–236I) dealing with the testing of members of correctional staff (which includes correctional officers) on a random or targeted basis for alcohol or prohibited drugs. The proposed Division is derived from section 211A (Testing of police officers for alcohol and prohibited drugs) of the *Police Act 1990*.

A member of correctional staff may be required to undergo a breath test or breath analysis, or to provide a sample of urine or hair. A member of correctional staff may also be required to undergo such a test or give such a sample if the member of staff is involved in an incident in which a person dies or is injured while in the custody of the member of staff, or as the result of a discharge of a firearm by the member of staff. If a member of correctional staff attends or is admitted to a hospital for examination or treatment because of such an incident, the member of staff may be required to provide a sample of his or her blood, urine or hair. Regulations in connection with testing for alcohol or prohibited drugs may be made with respect to the matters specified in proposed section 236I.

Recognised interstate correctional officers

Schedule 1 [15] inserts a new Division (sections 236J and 236K) providing for the appointment of recognised interstate correctional officers. Proposed section 236J enables the Commissioner to appoint any of the following persons as a recognised interstate correctional officer:

- (a) any person who is employed as a correctional officer in the public service of another State or Territory (other than a probationary correctional officer),
- (b) any member of the police force of another State or Territory (other than a probationary constable),
- (c) any member of the Australian Federal Police.

A recognised interstate correctional officer has all the functions of a correctional officer under the Principal Act or any other Act, subject to the conditions of appointment of the recognised interstate correctional officer (proposed section 236K).

Research

Schedule 1 [18] replaces section 267 of the Principal Act, a section enabling the Commissioner to supply records and information to persons undertaking research in connection with the administration of correctional centres or other specified matters. The proposed section:

- (a) requires the person to obtain the Commissioner's approval to obtain access to certain information or facilities, to persons held in custody and to persons employed by the Department of Corrective Services or a management company (a company that manages a correctional centre), and
- (b) expressly enables the Commissioner to have regard to any recommendations of an ethics committee about the proposed research, and
- (c) revises the list of specified research matters.

Parole Board

Schedule 1 [19] enables the Parole Board to hold a meeting at which some members participate by telephone, closed-circuit television or other means, but only if all the members can be heard by the other members present and by the public (if the meeting is open to the public).

Currently, clause 16 of Schedule 1 to the Principal Act provides that if the Chairperson of the Parole Board and the Alternate Chairperson or Deputy Chairperson, or both, are present at a meeting of the Parole Board, only the Chairperson is entitled to vote with respect to any decision. **Schedule 1 [20]** amends

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clause 16 to enable the Chairperson, the Alternate Chairperson and the Deputy Chairperson to vote at a meeting, but only if it is a meeting that all the community members of the Parole Board are entitled to attend. (Usually no more than 4 community members of the Parole Board may attend a meeting of the Parole Board for the purposes of constituting the Parole Board, however, the Chairperson may convene up to 6 meetings a year of the Parole Board at which all community members may attend.)

Schedule 1 [21] replaces clause 17 of Schedule 1 to the Principal Act in order to:

- (a) provide that a decision of the Parole Board is made by a majority of members of the Parole Board, whether or not a judicial member forms part of the majority, and
- (b) provide that a decision of a Division of the Parole Board is made by a majority of members of the Division, rather than by the judicial member supported by at least one non-judicial member of the Division.

Currently, clause 17 (1) requires that a judicial member forms part of the majority of a Parole Board for the purposes of a decision of the Parole Board. Clause 17 (3) provides that at a meeting of a Division of the Parole Board, a decision supported by the votes cast by the judicial member and at least one non-judicial member is the decision of the Division. The effect of this provision is that a minority vote at a meeting of a Division may in some circumstances be the decision of the Division. The proposed amendment removes this possibility.

Schedule 1 [22] inserts a new clause in Schedule 1 to the Principal Act to provide that at a meeting of the Parole Board, a question of law or of mixed law and fact, or a question as to whether a question is a question of law or of mixed law and fact, is to be decided by the person presiding at the meeting alone.

Serious Offenders Review Council

Schedule 1 [9] amends section 197 of the Principal Act, a section setting the functions of the Serious Offenders Review Council. Currently, section 197 (3) enables the Review Council to delegate any function that it has relating to segregated and protective custody directions to the Chairperson or to a judicial member of the Review Council. The proposed amendment provides that the judicial member to which a function is delegated is to be nominated by the Chairperson.

Schedule 1 [23] enables the Review Council to hold a meeting at which some members participate by telephone, closed-circuit television or other means, but only if all the members can be heard by the other members present and by the public (if the meeting is open to the public).

Schedule 1 [24]–[27] amend clause 11A of Schedule 2 to the Principal Act. Clause 11A deals with the conduct of proceedings before the Review Council by the use of audio visual links. The proposed amendments make minor changes to references to the term *party* in the clause, to accommodate the fact that some persons involved in proceedings before the Review Council may not strictly speaking be parties to the proceedings.

Schedule 1 [28]–[30] make changes to the voting procedures of the Review Council and the determination of questions of law that reflect the amendments made in respect of the Parole Board by Schedule 1 [19]–[22].

Other amendments

Schedule 1 [2] inserts a provision into the Principal Act that makes it clear that an inmate who receives money from the Commissioner for any work done by the inmate is not an employee of the Crown, or of any other person.

Schedule 1 [6] amends section 76 of the Principal Act, a section dealing with the sale of unclaimed property found within a correctional centre. Currently the section provides for such property to be sold. The proposed amendment enables the Commissioner to also dispose of the property as the Commissioner may direct. The amendment is consistent with section 75 of the Principal Act, which allows the Commissioner to dispose of property that is unlawfully in the possession of an inmate as the Commissioner may direct.

Schedule 1 [10] amends section 228 of the Principal Act, which deals with the functions of Official Visitors to correctional centres. Currently section 228 provides for an Official Visitor to visit a correctional centre, correctional complex or periodic detention centre for the purpose of giving interviews to correctional officers and offenders. The proposed amendment provides for Official Visitors also to give interviews to other members of staff employed within the Department of Corrective Services at the complex or centre visited by the Official Visitor.

Schedule 1 [13] inserts a new section 236D that enables the Chief Executive Officer of the Corrections Health Service to delegate his or her functions, other than the power to delegate. Proposed section 236D (2) makes it clear that the Chief Executive Officer cannot delegate the Chief Executive Officer's right of free and unfettered access to correctional centres, medical records and offenders held in custody.

Schedule 1 [17] amends section 260 of the Principal Act, a section that enables the Commissioner or other prescribed persons to issue certificates about certain matters. Such a certificate is admissible in any legal proceedings and is evidence of the facts stated in the certificate. The proposed amendment enables an evidentiary

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certificate to be issued stating that on a date or during a period specified in the certificate, a specified person was in the custody of the *designated officer* within the meaning of section 38 or 249. Those provisions deal with circumstances where an inmate or a person is held, or taken to be held, in custody. **Schedule 1 [5] and [16]** amend the definition of *designated officer* in sections 38 and 249 to describe more accurately the position of designated officer.

Savings and transitional provisions

Schedule 1 [31] enables regulations of a savings or transitional nature to be made by the Governor consequential on the enactment of the proposed Act. **Schedule 1 [32]** inserts savings and transitional provisions consequential on the enactment of the proposed Act into the Principal Act.