

Passed by both Houses



New South Wales

Crimes (Administration of Sentences) Amendment Bill 2022

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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,*

, 2022



New South Wales

Crimes (Administration of Sentences) Amendment Bill 2022

Act No _____, 2022

An Act to amend the *Crimes (Administration of Sentences) Act 1999*, the *Crimes (High Risk Offenders) Act 2006* and other Acts in relation to the Victims Register and high risk offenders; and for related purposes.

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 2022*.

2 Commencement

This Act commences on the date of assent to this Act.

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

[1] Section 3 Interpretation

Omit the definitions of *Chief Executive Officer*, *Justice Health* and *Justice Health* from section 3(1).

Insert instead in alphabetical order—

Chief Executive, Justice Health means the person for the time being holding office or acting as the chief executive of the Justice Health and Forensic Mental Health Network under the *Health Services Act 1997*.

Justice Health means the statutory health corporation named the Justice Health and Forensic Mental Health Network constituted under the *Health Services Act 1997*.

[2] Section 3(1), definition of “Victims Register”

Omit “section 256 of the names of victims of offenders who have requested that they be given notice of the possible parole of the offender concerned”.

Insert instead “Part 16 in which certain victims of offenders are recorded”.

[3] Sections 41C(6), 73(1) and (4), 106F(3), 106G(3), 106U(2), 154A(3)(a), 236B, 236C(1), (3) and (5), 236D(1), and 244(1) and (2)(a)

Omit “Chief Executive Officer” wherever occurring. Insert instead “Chief Executive”.

[4] Sections 67(1) and 276(4)(b)

Omit “whose name” wherever occurring. Insert instead “who”.

[5] Sections 106F(3), 106G(3) and 236D(1)

Omit “Chief Executive Officer’s” wherever occurring. Insert instead “Chief Executive’s”.

[6] Section 135 General duty of Parole Authority relating to release of offender

Insert after section 135(3)(i)—

- (i1) that the High Risk Offenders Assessment Committee under the *Crimes (High Risk Offenders) Act 2006* has recommended that an application be made for an extended supervision order or continuing detention order under that Act or the *Terrorism (High Risk Offenders) Act 2017* in relation to the offender,

Note— Under the *Crimes (High Risk Offenders) Act 2006*, section 24AC(a) and the *Terrorism (High Risk Offenders) Act 2017*, section 63(a) the High Risk Offenders Assessment Committee may make recommendations to the Commissioner about the taking of action by the State in relation to offenders under those Acts.

[7] Section 135(7)

Omit the subsection. Insert instead—

- (7) The Parole Authority, and the Review Council when giving advice for the purposes of subsection (5), must not have regard to the fact that an application for a continuing detention order under the Commonwealth Criminal Code, Part 5.3, Division 105A may be made in relation to the offender.

[8] Section 141A Submissions by Commissioner

Insert after section 141A(1)—

Note— The *Crimes (High Risk Offenders) Act 2006* authorises the use by the Commissioner of certain information obtained under that Act in parole proceedings under this Act, but only with the consent of the provider of the information.

[9] Sections 145(1) and 146(5)(b)

Omit “those victims of the offender (if any) whose names” wherever occurring.

Insert instead “the victims of the offender who”.

[10] Section 153 Submissions by State

Omit the note to section 153(1). Insert instead—

Note— The *Crimes (High Risk Offenders) Act 2006* and the *Terrorism (High Risk Offenders) Act 2017* authorise the use by the State of certain information obtained under those Acts in parole proceedings under this Act, but only with the consent of the provider of the information.

[11] Sections 236B, 236D and 244, headings

Omit “CEO” wherever occurring. Insert instead “**Chief Executive**”.

[12] Section 236D(2)

Omit the subsection.

[13] Sections 256, 256A and 256B

Omit the sections.

[14] Part 16

Insert after Part 15—

Part 16 Victims Register

277 Definitions

In this Part—

adult offender means an offender who is an adult, whether or not the offender committed the relevant offence as an adult.

convicted NSW terrorist offender has the same meaning as in the *Terrorism (High Risk Offenders) Act 2017*.

convicted NSW underlying terrorism offender has the same meaning as in the *Terrorism (High Risk Offenders) Act 2017*.

high risk offender means an offender referred to in section 278(1)(b) or (c).

victim—see section 278.

278 Meaning of “victim”

(1) In this Part, **victim** means the following—

- (a) a victim, in relation to an offender within the meaning of this Act, of—
 - (i) an offence for which the offender is serving a sentence of imprisonment, or
 - (ii) an offence taken into account under the *Crimes (Sentencing Procedure) Act 1999*, Part 3, Division 3 at the time the offender was sentenced for the offence referred to in subparagraph (i),
- (b) a victim of a serious offence, if the offender is—

- (i) an offender within the meaning of the *Crimes (High Risk Offenders) Act 2006*, and
 - (ii) serving, or has at any time served, a sentence of imprisonment for the serious offence,
 - (c) a victim of an offence of a sexual nature, if the offender is—
 - (i) an offender within the meaning of the *Crimes (High Risk Offenders) Act 2006*, and
 - (ii) serving a sentence of imprisonment for the offence of a sexual nature,
 - (d) a victim of an indictable offence, if the offence resulted in the offender being a convicted NSW terrorist offender or convicted NSW underlying terrorism offender.
- (2) A victim includes a person who, as a direct result of an act committed, or apparently committed, by an offender or high risk offender in the course of an offence—
- (a) suffers actual physical bodily harm, mental illness or nervous shock, or
 - (b) has property deliberately taken, destroyed or damaged.
- (3) In this section, a reference to a sentence of imprisonment includes a sentence of imprisonment served by intensive correction, whether or not subject to a home detention condition.
- (4) In this section—
- offence of a sexual nature*** has the same meaning as in the *Crimes (High Risk Offenders) Act 2006*.
- serious offence*** has the same meaning as in the *Crimes (High Risk Offenders) Act 2006*.

279 Victims Register

- (1) There is to be a Victims Register.
- (2) The following are to be recorded in the Victims Register—
 - (a) a victim of an offender within the meaning of this Act if—
 - (i) the offender is serving a sentence of imprisonment by full-time detention, and
 - (ii) the victim requests to be recorded in the Victims Register,
 - (b) a victim of an offender within the meaning of this Act if—
 - (i) the offender is serving a sentence of imprisonment for a personal violence offence by intensive correction, whether or not subject to a home detention condition, and
 - (ii) the victim requests to be recorded in the Victims Register,
 - (c) a victim of a high risk offender who requests to be given notice if an application for an order is made in relation to the offender under the *Crimes (High Risk Offenders) Act 2006*,
 - (d) a victim of a convicted NSW terrorist offender or convicted NSW underlying terrorism offender who requests to be given notice of an application for an order in relation to the offender under the *Terrorism (High Risk Offenders) Act 2017*, Part 2 or 3.
- (3) In this section—

personal violence offence has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*.

280 Family representatives of victims

- (1) The family representative of a victim must be recorded in the Victims Register instead of the victim—
 - (a) if the victim is dead or under an incapacity, or
 - (b) if the victim is less than 18 years of age, or
 - (c) in circumstances prescribed by the regulations.
- (2) If a victim is 16 or 17 years of age, the Commissioner may direct that the victim is recorded in the Victims Register instead of the family representative of the victim.
- (3) In determining whether to record the victim in the Victims Register under subsection (2), the Commissioner must consider the victim's individual circumstances.
- (4) If the family representative of a victim is recorded in the Victims Register under this section, a reference in this Part, other than in this section and section 278, to a victim is to be read as a reference to the family representative.

281 Victims may nominate representatives

- (1) A victim who is recorded in the Victims Register under this Part may nominate to the Commissioner an individual who, for the purposes of this Part, may—
 - (a) act on the victim's behalf, and
 - (b) receive information on the victim's behalf.
- (2) The Commissioner may refuse to accept the nomination of an individual if the Commissioner considers it is not appropriate in the circumstances, taking into account the following—
 - (a) the security, discipline and good order of a correctional centre,
 - (b) the safety and welfare of offenders and other persons,
 - (c) the risks of unauthorised disclosure of information,
 - (d) the safety of the community.

282 Administration of Victims Register

- (1) Subject to the regulations, the Victims Register must be kept by a government agency as directed by the Minister.
- (2) Members of staff of the government agency that keeps the Victims Register may assist—
 - (a) the Review Council and the Parole Authority to give notices to victims under this Part or section 67 or 145, and
 - (b) the Parole Authority to give a victim of a serious offender or a victim's authorised agent access to documents specified by the Parole Authority for the purposes of section 193A, and
 - (c) the Review Council and the Parole Authority to carry out other ancillary functions relating to the matters referred to in paragraphs (a) and (b).
- (3) The Review Council or the Parole Authority may delegate to members of staff of the government agency that keeps the Victims Register the functions of the Review Council or the Parole Authority specified in subsection (2), but only

in relation to the victim of an adult offender, whether or not the offender committed the relevant offence as an adult.

283 Regulations

- (1) The regulations may provide for the following—
 - (a) the keeping of the Victims Register,
 - (b) the way in which notice to victims may or must be given under—
 - (i) this Act, or
 - (ii) the *Crimes (High Risk Offenders) Act 2006*, or
 - (iii) the *Terrorism (High Risk Offenders) Act 2017*,
 - (c) the circumstances, if any, in which notice referred to in paragraph (b) is not required to be given,
 - (d) the identification of persons who are victims for the purposes of this Act, the *Crimes (High Risk Offenders) Act 2006* or the *Terrorism (High Risk Offenders) Act 2017*, including—
 - (i) the determination of the persons who are family representatives of victims, and
 - (ii) the provision, by a person claiming to be a victim, of evidence of the person's identity and the circumstances by which the person claims to be a victim.
- (2) A regulation under subsection (1) must not be inconsistent with—
 - (a) the *Crimes (High Risk Offenders) Act 2006*, section 21A, or
 - (b) the *Terrorism (High Risk Offenders) Act 2017*, section 51.

284 Notice to victims of re-integration home detention and parole consideration

- (1) The Parole Authority must give notice to a victim of an offender who is recorded in the Victims Register if—
 - (a) the offender is due for consideration of whether the offender should be released under a re-integration home detention order or on parole, or
 - (b) the offender is eligible for or has applied for release on parole.
- (2) The notice must be given subject to and in accordance with the regulations.
- (3) Without limiting subsection (2), the notice must contain the following information—
 - (a) the matter being notified,
 - (b) that the victim may make a submission to the Parole Authority about the matter,
 - (c) the form a submission may take,
 - (d) the period within which a submission must be made,
 - (e) that the Parole Authority will consider a submission made before the end of that period.
- (4) The Parole Authority must consider submissions made in accordance with this section.
- (5) The Parole Authority is not required to give notice to a victim under this section of a matter if the matter is included in another requirement to give notice to the victim under this Act.

- (6) A failure by the Parole Authority to comply with this section does not affect the validity of a decision or order made by the Parole Authority.

285 Information to be given to victims by Commissioner

- (1) The Commissioner may give written notice of the following to a victim of an adult offender who is recorded in the Victims Register—
- (a) a change to the offender's earliest possible release date,
 - (b) the death of the offender while serving a sentence or released on parole,
 - (c) the name of the correctional centre in which the offender is serving a sentence,
 - (d) the escape of the offender while serving a sentence,
 - (e) the security classification of the offender,
 - (f) a decision by the Commissioner to reclassify a serious offender to a low security classification,
 - (g) a decision by the Commissioner to issue a local leave permit for the offender,
 - (h) the exercise, by the Governor, of the prerogative of mercy in relation to the offender,
 - (i) a transfer of the offender into the custody of another State, a Territory or the Commonwealth.
- (2) The Commissioner may also give written notice of the following to a victim of a high risk offender who is recorded in the Victims Register—
- (a) if the offender is the subject of an extended supervision order under the *Crimes (High Risk Offenders) Act 2006* or the *Terrorism (High Risk Offenders) Act 2017*—the release of the offender from custody at the commencement of the extended supervision order or the return of the offender to custody following a failure to comply with the requirements of the order,
 - (b) if the offender is the subject of a continuing detention order under the *Crimes (High Risk Offenders) Act 2006* or the *Terrorism (High Risk Offenders) Act 2017*—the expiry of the order and the release of the offender from custody.
- (3) The Commissioner may also give written notice to a victim of an adult offender who is recorded in the Victims Register under section 279(2)(b) if the offender is returned to custody while serving a sentence of imprisonment by intensive correction.
- (4) The Commissioner may exercise the Commissioner's functions under subsections (1)–(3)—
- (a) at the request of the victim, or
 - (b) at the Commissioner's discretion.
- (5) The Commissioner is not required to give notice to a victim under this section of a matter if the matter is included in another requirement to give notice to the victim under this Act.

286 Information to be given to victims by Parole Authority

- (1) The Parole Authority must give written notice to a victim of an adult offender who is recorded in the Victims Register of the following matters relating to the offender—

- (a) that the Authority has made a re-integration home detention order releasing the offender and the date of the release,
 - (b) any additional conditions placed on the re-integration home detention order,
 - (c) that the conditions of the re-integration home detention order have been changed, and particulars of the change,
 - (d) that the offender's re-integration home detention order has been revoked.
- (2) The Parole Authority must give written notice to a victim of an adult offender who is recorded in the Victims Register of the following matters relating to the offender—
- (a) that the Parole Authority or the Governor has made a parole order releasing the offender on parole and the date of the release,
 - (b) any additional conditions placed on the parole order,
 - (c) that the conditions of the parole order have been changed, and particulars of the change,
 - (d) that the offender's parole has been revoked.
- (3) Notice of the revocation of an order is not required to be given under this section until a review of the order has been finally determined.
- (4) The Parole Authority is not required to give notice to a victim under this section of a matter if the matter is included in another requirement to give notice to the victim under this Act.

[15] Schedule 5 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
2022**

Victims Register

- (1) The Victims Register constituted under section 279, as inserted by the amending Act, is a continuation of the Victims Register in force immediately before the repeal of section 256 by the amending Act.
- (2) A person is a victim for the purposes of the Act, Part 16, as inserted by the amending Act, whether the relevant offence was committed by the offender before or after the insertion of Part 16.
- (3) In this clause—
amending Act means the *Crimes (Administration of Sentences) Amendment Act 2022*.

Schedule 2 Amendment of Crimes (High Risk Offenders) Act 2006 No 7

[1] Section 21A Victim statements

Omit “in respect of the offender for the purposes of section 256(2)(b) of the *Crimes (Administration of Sentences) Act 1999*” from section 21A(8), definition of *victim*.

Insert instead “in relation to the offender under the *Crimes (Administration of Sentences) Act 1999*, section 279(2)(c)”.

[2] Section 25 Provision of certain information to Attorney General

Insert after section 25(3)—

(4) The State and the Commissioner of Corrective Services are authorised to use information provided to the Attorney General under this section in proceedings before the State Parole Authority under the *Crimes (Administration of Sentences) Act 1999* concerning the parole of an offender, but only with the consent of the provider of the information.

(5) Subsection (4) applies despite anything to the contrary in this or another Act.

[3] Schedule 2 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provision consequent on enactment of Crimes (Administration of Sentences) Amendment Act 2022

Application of amendments

Section 25(4), as inserted by the *Crimes (Administration of Sentences) Amendment Act 2022*, extends to information that was provided to the Attorney General before the commencement of the subsection.

Schedule 3 Consequential amendments to other legislation

3.1 Government Information (Public Access) Act 2009 No 52

Schedule 1 Information for which there is conclusive presumption of overriding public interest against disclosure

Omit “section 256 (Victims Register)” from clause 1(1), matter relating to the *Crimes (Administration of Sentences) Act 1999*.

Insert instead “section 283 (Regulations)”.

3.2 Terrorism (High Risk Offenders) Act 2017 No 68

Section 51 Victim statements

Omit “in respect of the offender for the purposes of section 256(2)(c) of the *Crimes (Administration of Sentences) Act 1999*” from section 51(12), definition of *victim*.

Insert instead “in relation to the offender under the *Crimes (Administration of Sentences) Act 1999*, section 279(2)(d)”.