



New South Wales

Crimes (Administration of Sentences) Legislation Amendment Bill 2018

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 *Children (Detention Centres) Act 1987* and regulations made under those Acts as follows:

- (a) to prohibit sexual conduct or intimate relationships between correctional and other officers who work with inmates or persons on parole or serving sentences in the community and which result in security issues or compromise the administration of sentences,
- (b) to prohibit the possession of remotely piloted aircraft in correctional centres, correctional complexes and certain facilities within those complexes and children's detention centres,
- (c) to prohibit the possession and operation or attempted operation of remotely piloted aircraft in certain airspace above those places and above land in the vicinity of those places in a manner that is likely to threaten the good order or security of those places,
- (d) to provide for exceptions to the proposed offences involving remotely piloted aircraft and to enable a 2 year period in which to commence proceedings for an offence relating to remotely piloted aircraft involving correctional centres, correctional complexes and certain facilities within those complexes,
- (e) to provide for circumstances in which force may be used by correctional officers against visitors,
- (f) to make other minor and consequential amendments.

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 (other than a law revision amendment) on the date of assent to the proposed Act.

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

Offences

Schedule 1 [2] inserts provisions that make it an offence for a correctional employee to engage in sexual conduct or an intimate relationship with an inmate or a person who is the subject of a community-based sentencing order or a parole order if the conduct or relationship causes a risk or potential risk to the safety or the security or the good order and discipline of a correctional centre or correctional complex. It will also be an offence if the conduct or relationship compromises the proper administration of a sentence or any such order. The provisions will apply to correctional officers, other staff members of Corrective Services NSW and certain employees of private operators of correctional centres. An intimate relationship is defined as a relationship between 2 or more persons involving sexual conduct or other physical expressions of affection, or the exchange of written or other communications of a sexual or intimate nature, or both. It will not be an offence if the correctional employee does not know that a person is an inmate or subject to a community-based sentencing order or a parole order.

Schedule 1 [3] inserts a definition of *remotely piloted aircraft*.

Schedule 1 [4] provides that the onus of proof is on the defendant to prove that the defendant had a lawful excuse if an element of an offence relating to a place of detention prohibits a person from doing something without a lawful excuse.

Schedule 1 [5] makes it an offence, without lawful excuse, to have a remotely piloted aircraft in the person's possession in a correctional centre, correctional complex or a residential facility or transitional centre prescribed by the regulations and located in or near a correctional centre or correctional complex. A court may, on conviction, order that the remotely piloted aircraft be forfeited to the Crown. The amendment also inserts offences of being in possession of a remotely piloted aircraft within the airspace at or below 400 feet above any of those places or above land in the vicinity of those places and of operating or attempting to operate a remotely piloted aircraft in that airspace in a manner that threatens or is likely to threaten the good order or security of those places. There will be a defence to the offence of possessing a remotely piloted aircraft in the airspace if it is not for a purpose that threatens or is likely to threaten the good order or security of the place. It will not be an offence, in any case, if a person does the acts prohibited by the proposed offences for a purpose prescribed by the regulations, with the authorisation of a person, or a member of a class of persons, prescribed by the regulations or for a reason prescribed by the regulations.

Schedule 1 [9] provides that proceedings for the proposed offences relating to remotely piloted aircraft must be commenced no later than 2 years after the facts first come to the attention of the Commissioner of Corrective Services.

Powers of correctional officers

Schedule 1 [6] removes the ability of a non-correctional member of staff to carry out a search of a person who is suspected of committing an offence. **Schedule 1 [8]** makes a consequential amendment.

Schedule 1 [7] authorises the use of force (subject to specified limitations) by correctional officers against visitors to protect the officers or other persons from attack or harm, to prevent damage to a place of detention, to prevent unlawful entry or attempts to free an inmate, to remove a visitor who has not complied with a request to leave a place of detention and for the purpose of exercising existing powers (including powers of search, arrest and detention). The amendment also authorises correctional officers to use handcuffs or other equipment prescribed by the regulations for the purpose of restraining a visitor. A report must be given to the governor of a place of detention by a correctional officer who uses force as soon as practicable after the force is used.

Law revision

Schedule 1 [1] re-inserts a reference to re-integration home detention orders in a provision that enables warrants of commitment to be issued when community-based sentencing orders are revoked. The reference was inadvertently omitted and the amendment will be taken to have commenced on the day the reference was omitted.

Schedule 1 [10] validates warrants of commitment issued, before the amendment made by Schedule 1 [1], in relation to offenders whose re-integration home detention orders were revoked.

Schedule 2 Amendment of Children (Detention Centres) Act 1987 No 57

Schedule 2 [1] inserts a definition of *remotely piloted aircraft*.

Schedule 2 [2] makes it an offence to have, without lawful excuse, a remotely piloted aircraft in the person's possession in a detention centre. The amendment also inserts offences of being in possession of a remotely piloted aircraft within the airspace at or below 400 feet above a detention centre or above land in the vicinity of a detention centre and of operating or attempting to operate a remotely piloted aircraft in that airspace in a manner that threatens or is likely to threaten the good order of a detention centre. It will be a defence to the offence of possessing a remotely piloted aircraft in the airspace if it is not for a purpose that threatens or is likely to threaten the good order or security of the detention centre. It will not be an offence, in any case, if a person does the acts prohibited by the proposed offences for a purpose prescribed by the regulations, with the authorisation of a person, or a member of a class of persons, prescribed by the regulations or for a reason prescribed by the regulations.

Schedule 3 Amendment of Crimes (Administration of Sentences) Regulation 2014

Schedule 3 [1] enables a correctional officer to use flexicuffs to restrain a visitor to a place of detention in circumstances where the officer is authorised to use force in relation to the visitor.

Schedule 3 [2] prescribes the circumstances in which it will not be an offence to possess or operate or attempt to operate a remotely piloted aircraft in or near a correctional centre or other place of detention. The circumstances include where a person is in possession of or operating a remotely piloted aircraft for law enforcement purposes as an officer of or person acting on behalf of a law enforcement agency, is administering or enforcing the *Crimes (Administration of Sentences) Act 1999*, is dealing with a fire or other emergency or is authorised in writing by the Commissioner of Corrective Services or the governor of the relevant place of detention to be in possession of the aircraft. The amendment also prescribes residential facilities and transitional centres to which the proposed offences relating to remotely piloted aircraft will apply.

Schedule 4 Amendment of Children (Detention Centres) Regulation 2015

Schedule 4 prescribes the circumstances in which it will not be an offence to possess or operate a remotely piloted aircraft in a detention centre. The circumstances include where a person is in possession of or operating a remotely piloted aircraft for law enforcement purposes as an officer of or person acting on behalf of a law enforcement agency, is administering or enforcing the *Children (Detention Centres) Act 1987*, is dealing with a fire or other emergency or is authorised in writing by the Secretary of the Department of Justice or the centre manager of the detention centre to be in possession of the aircraft.



New South Wales

Crimes (Administration of Sentences) Legislation Amendment Bill 2018

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New South Wales

Crimes (Administration of Sentences) Legislation Amendment Bill 2018

No. , 2018

A Bill for

An Act to amend the *Crimes (Administration of Sentences) Act 1999* and the *Children (Detention Centres) Act 1987* with respect to misconduct by correctional employees, the possession and operation of remotely piloted aircraft in airspace above, and in the immediate vicinity of, certain places of detention, and the use of force against visitors to places of detention; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes (Administration of Sentences) Legislation Amendment Act 2018*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1 [1] is taken to have commenced on 24 September 2018.

Schedule 1	Amendment of Crimes (Administration of Sentences) Act 1999 No 93	1
		2
[1]	Section 181 Warrants committing offenders to correctional centres	3
	Insert “, a re-integration home detention order” after “intensive correction order” in section 181 (1).	4
		5
[2]	Part 11 Administration	6
	Insert after Division 7:	7
	Division 8 Relationships with inmates and other offenders	8
236P	Definitions	9
	(1) In this Division:	10
	<i>community-based order</i> means:	11
	(a) a parole order, or	12
	(b) a community correction order, or	13
	(c) an intensive correction order, or	14
	(d) a conditional release order, or	15
	(e) a re-integration home detention order, or	16
	(f) a suspended sentence order to which clause 76 of Schedule 2 to the <i>Crimes (Sentencing Procedure) Act 1999</i> applies.	17
		18
	<i>correctional employee</i> means:	19
	(a) a member of staff of Corrective Services NSW, or	20
	(b) a person who is employed at a managed correctional centre to perform duties referred to in section 240 (1) (a), (b) or (c).	21
		22
	<i>inmate</i> includes a person who is subject to a compulsory drug treatment order under Part 4A (including a person who is subject to a community supervision order under that Part).	23
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	<i>intimate relationship</i> means a relationship between 2 or more persons involving sexual conduct or other physical expressions of affection, or the exchange of written or other communications of a sexual or intimate nature, or all or any of those things.	26
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	<i>sexual conduct</i> means sexual intercourse or other conduct of a sexual nature.	30
	<i>sexual intercourse</i> has the same meaning as in Division 10 of Part 3 of the <i>Crimes Act 1900</i> .	31
		32
	(2) For the purposes of this Division, and without limiting the definition of <i>intimate relationship</i> , a person who is married to another person or the de facto partner of another person is taken to be in an intimate relationship with the other person.	33
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		35
		36
236Q	Misconduct offence	37
	(1) A correctional employee (other than an employee referred to in subsection (2)) is guilty of an offence if the correctional employee engages in sexual conduct or an intimate relationship with an inmate or a person who is subject to a community-based order and the conduct or relationship:	38
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		41
	(a) causes a risk or potential risk to the safety or security of a correctional centre or correctional complex or to good order and discipline within a correctional centre or correctional complex, or	42
		43
		44

(b)	compromises the proper administration of a sentence or a community-based order.	1
	Maximum penalty: 20 penalty units, or imprisonment for 2 years, or both.	2
(2)	It is not an offence under this section if a correctional employee did not know, while the employee engaged in sexual conduct or an intimate relationship with an inmate or person subject to a community-based order, that the other person was an inmate or subject to the order.	3
[3]	Section 253A Definitions	4
	Insert in alphabetical order:	5
	<i>remotely piloted aircraft</i> means an unmanned airborne craft, including a drone or other remotely piloted, or otherwise controlled, airborne craft, part of a remotely piloted aircraft and the remote control for a remotely piloted aircraft.	6
[4]	Section 253B Onus of proof regarding lawful authority, lawful excuse or reasonable excuse	7
	Insert “, a lawful excuse” after “lawful authority”.	8
[5]	Sections 253FA and 253FB	9
	Insert after section 253F:	10
253FA	Unlawful possession of remotely piloted aircraft	11
(1)	A person must not, without lawful excuse, have in the person’s possession a remotely piloted aircraft:	12
(a)	in a correctional centre or correctional complex, or	13
(b)	in any residential facility or transitional centre located within or near a correctional centre or correctional complex prescribed by the regulations for the purposes of this subsection.	14
	Maximum penalty: 20 penalty units, or imprisonment for 2 years, or both.	15
(2)	If a person is convicted of an offence under this section, the court may, in addition to a penalty it may impose, make an order that the remotely piloted aircraft be forfeited to the Crown, and the remotely piloted aircraft is forfeited accordingly.	16
(3)	It is not an offence under this section if a person is in possession of a remotely piloted aircraft:	17
(a)	for a purpose prescribed by the regulations, or	18
(b)	with the authorisation of a person or a member of a class of persons prescribed by the regulations, or	19
(c)	for any other reason prescribed by the regulations.	20
253FB	Possession or operation of remotely piloted aircraft in prohibited airspace	21
(1)	A person must not be in possession of a remotely piloted aircraft within prohibited airspace.	22
	Maximum penalty: 20 penalty units, or imprisonment for 2 years, or both.	23
(2)	It is a defence to a prosecution for an offence under subsection (1) if the defendant establishes that the possession was not for the purpose of threatening the good order or security of detention premises.	24

- (3) A person must not, without lawful excuse, operate or attempt to operate a remotely piloted aircraft within prohibited airspace in a way that threatens or is likely to threaten the good order or security of detention premises. 1
Maximum penalty: 20 penalty units, or imprisonment for 2 years, or both. 2
3
- (4) It is not an offence under this section if a person is in possession of or operates or attempts to operate a remotely piloted aircraft: 4
(a) for a purpose prescribed by the regulations, or 5
(b) with the authorisation of a person, or a member of a class of persons, 6
prescribed by the regulations, or 7
(c) for any other reason prescribed by the regulations. 8
9
10
- (5) In this section: 11
detention premises means: 12
(a) a correctional centre, other than a police station or court cell complex in 13
which an offender is held in custody, or 14
(b) a correctional complex, or 15
(c) a residential facility or transitional centre located within or near a 16
correctional centre or correctional complex prescribed by the 17
regulations. 18
operate a remotely piloted aircraft means fly or otherwise use a remotely 19
piloted aircraft, including use a remotely piloted aircraft to photograph, film 20
or otherwise make or transmit a visual or audio recording of the whole or any 21
part of detention premises, or a person, thing or activity on or at detention 22
premises. 23
prohibited airspace means the airspace above detention premises, and above 24
the land in the immediate vicinity of detention premises, at or below 400 feet 25
above ground level. 26
- [6] Section 253J Conduct of search** 27
Omit “or by a person of the same sex (being a non-correctional member of staff) under the 28
direction of the correctional officer concerned” from section 253J (4). 29
- [7] Sections 253MA and 253MB** 30
Insert after section 253M: 31
- 253MA Use of reasonable force—visitors** 32
- (1) A correctional officer may use force to deal with a visitor for the following 33
purposes: 34
(a) to protect the correctional officer or another person (including a 35
member of staff of Corrective Services NSW, an inmate or a member of 36
the public) from attack or harm, or imminent attack or harm, but only if 37
there are no other immediate or apparent means available for the 38
protection of the correctional officer or other person, 39
(b) to prevent damage to the place of detention or to any property within the 40
place of detention, 41
(c) to prevent an unlawful attempt to enter the place of detention by force 42
or to free an inmate, 43
(d) to remove the visitor from the place of detention, if the officer is 44
authorised to do so under the regulations. 45

(2)	A correctional officer may use force to deal with a visitor for the purpose of exercising a power under section 253I or any other provision of this Part.	1 2
	Note. Section 253I confers powers on a correctional officer to arrest persons suspected of committing an offence under this Part, to search persons, to detain them and to seize things that are evidence of the commission of an offence under this Part (including things that are prohibited to be brought into a place of detention).	3 4 5 6
(3)	The nature and extent of the force that may be used in relation to a visitor are to be dictated by circumstances, subject to the following:	7 8
	(a) the force used must not exceed the force that is reasonably necessary for protection, or to maintain the good order and security of a place of detention, having due regard to the personal safety of correctional officers and others,	9 10 11 12
	(b) the infliction of injury on a visitor is to be avoided if at all possible,	13
	(c) if a visitor is restrained—once the visitor is satisfactorily restrained, no further force must be used on the visitor other than the force reasonably necessary to maintain that restraint.	14 15 16
(4)	A correctional officer may use handcuffs, or other equipment prescribed by the regulations, for the purpose of restraining a visitor, but only if it is reasonably necessary in the circumstances.	17 18 19
(5)	This section is in addition to section 253L.	20
253MB	Report on use of force	21
(1)	Any correctional officer who uses force on a visitor must, as soon as reasonably practicable, give a report about the use of force to the governor of the place of detention.	22 23 24
(2)	The report must:	25
	(a) be in writing, and	26
	(b) specify the name of the visitor and the name of the correctional officer involved in the use of force, and	27 28
	(c) specify the location where the force was used, and	29
	(d) describe the nature of the force used and the circumstances requiring its use, and	30 31
	(e) be signed by the correctional officer involved in the use of force.	32
[8]	Section 253Q No personal liability for person conducting search under direction of correctional officer	33 34
	Omit the section.	35
[9]	Section 253R Time within which proceedings must be taken	36
	Insert at the end of the section:	37
(2)	Despite subsection (1), proceedings for an offence under section 253FA or 253FB must be commenced not later than 2 years from the time the facts first come to the knowledge of the Commissioner.	38 39 40

[10] Schedule 5 Savings, transitional and other provisions	1
Insert at the end of the Schedule, with appropriate Part and clause numbering:	2
Part Provisions consequent on enactment of Crimes (Administration of Sentences) Legislation Amendment Act 2018	3
	4
	5
Warrants of commitment relating to offenders subject to re-integration home detention orders	6
	7
(1) This clause applies to a warrant of commitment issued under section 181 for an offender after the revocation of a re-integration home detention order that was issued:	8
	9
	10
(a) on or after 24 September 2018, and	11
(b) before the amendment of that section by the <i>Crimes (Administration of Sentences) Legislation Amendment Act 2018</i> .	12
	13
(2) The warrant is taken to be valid and to have always been valid, if it would have been valid if issued on or after the amendment of the section by that Act.	14
	15

Schedule 2	Amendment of Children (Detention Centres) Act	1
	1987 No 57	2
[1]	Section 32AB	3
	Insert before section 33:	4
	32AB Definition	5
	In this Part:	6
	<i>remotely piloted aircraft</i> means an unmanned airborne craft, including a drone	7
	or other remotely piloted, or otherwise controlled, airborne craft, part of a	8
	remotely piloted aircraft and the remote control for a remotely piloted aircraft.	9
[2]	Sections 37CA and 37CB	10
	Insert after section 37C:	11
	37CA Unlawful possession of remotely piloted aircraft	12
	(1) A person who, without lawful excuse, has in the person's possession a	13
	remotely piloted aircraft in a detention centre is guilty of an offence and is	14
	liable to a penalty not exceeding 20 penalty units, or imprisonment for a period	15
	not exceeding 2 years, or both.	16
	(2) It is not an offence under this section if a person is in possession of a remotely	17
	piloted aircraft:	18
	(a) for a purpose prescribed by the regulations, or	19
	(b) with the authorisation of a person or a member of a class of persons	20
	prescribed by the regulations, or	21
	(c) for any other reason prescribed by the regulations.	22
	37CB Possession or operation of remotely piloted aircraft in prohibited airspace	23
	(1) A person who is in possession of a remotely piloted aircraft within prohibited	24
	airspace is guilty of an offence and is liable to a penalty not exceeding	25
	20 penalty units, or imprisonment for a period not exceeding 2 years, or both.	26
	(2) It is a defence to a prosecution for an offence under subsection (1) if the	27
	defendant establishes that the possession was not for the purpose of	28
	threatening the good order or security of a detention centre.	29
	(3) A person who, without lawful excuse, operates or attempts to operate a	30
	remotely piloted aircraft within prohibited airspace in a way that threatens or	31
	is likely to threaten the good order or security of a detention centre, is guilty	32
	of an offence and is liable to a penalty not exceeding 20 penalty units, or	33
	imprisonment for a period not exceeding 2 years, or both.	34
	(4) It is not an offence under this section if a person is in possession of or operates	35
	or attempts to operate a remotely piloted aircraft:	36
	(a) for a purpose prescribed by the regulations, or	37
	(b) with the authorisation of a person, or a member of a class of persons,	38
	prescribed by the regulations, or	39
	(c) for any other reason prescribed by the regulations.	40

- (5) In this section: 1
- operate a remotely piloted aircraft* means fly or otherwise use a remotely 2
piloted aircraft, including use a remotely piloted aircraft to photograph, film 3
or otherwise make or transmit a visual or audio recording of the whole or any 4
part of a detention centre, or a person, thing or activity on or at a detention 5
centre. 6
- prohibited airspace* means the airspace above any detention centre, and above 7
the land in the immediate vicinity of a detention centre, at or below 400 feet 8
above ground level. 9

Schedule 3	Amendment of Crimes (Administration of Sentences) Regulation 2014	1
		2
[1] Clause 319B		3
	Insert after clause 319A:	4
319B Powers of correctional officers—restraint of visitors		5
	For the purposes of section 253MA (4) of the Act, flexicuffs are prescribed.	6
[2] Clauses 322A–322C		7
	Insert after clause 322:	8
322A Unlawful possession of remotely piloted aircraft		9
(1)	For the purposes of section 253FA (3) (a) of the Act, the following purposes are prescribed:	10
	(a) law enforcement, in the person’s capacity as an officer of, or person acting on behalf of, a law enforcement agency,	11
	(b) administering or enforcing the Act,	12
	(c) dealing with a fire or other emergency.	13
(2)	For the purposes of section 253FA (3) (b) of the Act, authorisation in writing by the Commissioner or the governor of the relevant correctional centre or correctional complex to be in possession of the remotely piloted aircraft is prescribed.	14
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		19
322B Unlawful possession and operation of remotely piloted aircraft within prohibited airspace		20
		21
(1)	For the purposes of section 253FB (4) (a) of the Act, the following purposes are prescribed:	22
	(a) law enforcement, in the person’s capacity as an officer of, or person acting on behalf of, a law enforcement agency,	23
	(b) administering or enforcing the Act,	24
	(c) dealing with a fire or other emergency.	25
(2)	For the purposes of section 253FB (4) (b) of the Act, authorisation in writing by the Commissioner or the governor of the relevant correctional centre or correctional complex to be in possession of the remotely piloted aircraft is prescribed.	26
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322C Remotely piloted aircraft—detention premises		32
	For the purposes of paragraph (c) of the definition of <i>detention premises</i> in section 253FB (5) of the Act, the following residential facilities and transitional centres are prescribed:	33
	(a) Bolwara Transitional Centre, Emu Plains,	34
	(b) Miruma residential facility, Cessnock,	35
	(c) Nunyara Community Offender Support Program Centre, Malabar.	36
		37
		38

Schedule 4	Amendment of Children (Detention Centres) Regulation 2015	1
		2
Clauses 153A and 153B		3
Insert after clause 153:		4
153A	Unlawful possession of remotely piloted aircraft	5
(1)	For the purposes of section 37CA (2) (a) of the Act, the following purposes are prescribed:	6
		7
(a)	law enforcement, in the person's capacity as an officer of, or person acting on behalf of, a law enforcement agency,	8
		9
(b)	administering or enforcing the Act,	10
(c)	dealing with a fire or other emergency.	11
(2)	For the purposes of section 37CA (2) (b) of the Act, authorisation in writing by the Secretary or the centre manager of the relevant detention centre to be in possession of the remotely piloted aircraft is prescribed.	12
		13
		14
(3)	In this clause and clause 153B:	15
	law enforcement agency means any of the following:	16
(a)	the NSW Police Force, or the police force of another State or a Territory,	17
		18
(b)	the New South Wales Crime Commission,	19
(c)	the Australian Federal Police,	20
(d)	the Australian Criminal Intelligence Commission,	21
(e)	the Director of Public Prosecutions of New South Wales, of another State or a Territory or of the Commonwealth,	22
		23
(f)	the Law Enforcement Conduct Commission,	24
(g)	the Independent Commission Against Corruption,	25
(h)	the Department of Justice.	26
153B	Unlawful possession and operation of remotely piloted aircraft within prohibited airspace	27
		28
(1)	For the purposes of section 37CB (4) (a) of the Act, the following purposes are prescribed:	29
		30
(a)	law enforcement, in the person's capacity as an officer of, or person acting on behalf of, a law enforcement agency,	31
		32
(b)	administering or enforcing the Act,	33
(c)	dealing with a fire or other emergency.	34

- (2) For the purposes of section 37CB (4) (b) of the Act, authorisation in writing
by the Secretary or the centre manager of the relevant detention centre to be in
possession of the remotely piloted aircraft is prescribed. 1
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3