



New South Wales

Crimes (Administration of Sentences) Legislation Amendment Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Crimes (Administration of Sentences) Act 1999* (*the Act*) so as:

- (a) to insert an objects clause into the Act, and
- (b) to enable the Commissioner of Corrective Services to make submissions with respect to the making of parole orders in exceptional circumstances, and
- (c) to modify the provisions of the Act with respect to the appointment and functions of Official Visitors, and
- (d) to abolish the office of Inspector-General, and
- (e) to enable the ACT to intervene in proceedings before the Serious Offenders Review Council in relation to offenders who are in custody in NSW under ACT law, and
- (f) to make other provision of a minor, consequential or ancillary nature.

This Bill also amends the *Crimes (Administration of Sentences) Regulation 2001* so as:

- (a) to ensure that the right to make telephone calls to exempt bodies (such as the Ombudsman) is not a right that can be withdrawn for the purposes of punishment, and
- (b) to ensure that inmates suspected of having committed offences cannot be confined to their cells for more than 48 hours, and
- (c) to ensure that inmates who are confined to their cells, or who are in segregated or protective custody, are not thereby deprived of essential medical care, and
- (d) to omit references to the Inspector-General.

The amendments made by this Bill give effect to recommendations contained in a statutory review of the *Crimes (Administration of Sentences) Act 1999* that was tabled in both Houses of Parliament on 1 April 2008.

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 the date of assent to the proposed Act.

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

Clause 4 is a formal provision that gives effect to the amendments to the *Crimes (Administration of Sentences) Regulation 2001* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent. Section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

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

Objects clause

Schedule 1 [2] inserts proposed section 2A into the Act. The new section sets out the objects of the Act and the matters to which regard must be had in the pursuit of those objects. It is further provided that nothing in the new section gives rise to any civil cause of action or can be taken into account in any civil proceedings.

Commissioner's submission with respect to parole orders in exceptional circumstances

Schedule 1 [13] inserts proposed section 160AA into the Act. The new section enables the Commissioner to make submissions to the Parole Authority in relation to

the release on parole of an offender under Division 4 of Part 6 (relating to parole orders in exceptional circumstances), and parallels existing section 141A (relating to submissions by the Commissioner in relation to parole orders made in ordinary circumstances).

Official Visitors

Schedule 1 [21] substitutes section 228 of the Act (which deals with the appointment and functions of Official Visitors). The new section differs from the old in the following respects:

- (a) unlike the current section (which requires Official Visitors to be appointed to specific institutions), it provides for appointment of Official Visitors at large, leaving their assignment to specific institutions to be done by the Minister or in accordance with arrangements approved by the Minister,
- (b) unlike the current section, it expressly precludes Official Visitors from conducting investigations and carrying out audits.

Abolition of office of Inspector-General

Schedule 1 [19] omits Part 10 of the Act (Part 10 establishes the office of Inspector-General and defines its functions). **Schedule 1 [3], [23] and [24]** consequentially amend sections 3, 242 and 243 of the Act, and **Schedule 1 [27]** consequentially repeals Schedule 3 to the Act (which contains further provisions with respect to the office of Inspector-General). The office has been vacant since 2003.

ACT's right of intervention

Schedule 1 [5] amends section 71 of the Act so as to ensure that, in proceedings before the Serious Offenders Review Council with respect to the classification of serious offenders, the Australian Capital Territory has the same right of intervention in relation to offenders in custody in NSW under ACT law as the State of New South Wales has in relation to offenders in custody under NSW law.

Miscellaneous matters

Schedule 1 [11], [12], [15] and [16] amend sections 155, 156, 176 and 177 of the Act so as to ensure that the Supreme Court's jurisdiction to give directions under those sections with respect to decisions of the Parole Authority does not extend to a general review of the merits of those decisions.

Schedule 1 [1], [4], [6]–[10], [14], [17], [18], [20], [22], [25] and [26] insert introductory notes into each of the Parts of the Act. These notes give a brief indication as to the contents of each Part.

Schedule 1 [28] amends clause 1 of Schedule 5 to the Act so as to enable savings and transitional regulations to make provision consequent on the enactment of the proposed Act. **Schedule 1 [29]** adds proposed Part 13 to Schedule 5. The new Part contains provisions that preserve the appointments of existing Official Visitors.

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

Telephone calls to exempt bodies

Schedule 2 [3] amends clause 152 so as to ensure that telephone calls to exempt bodies (such as the Ombudsman) are excluded from the list of privileges that are declared to be withdrawable privileges for the purposes of the Act. Withdrawable privileges are privileges that can be withdrawn by way of punishment for certain offences.

Confinement to cell

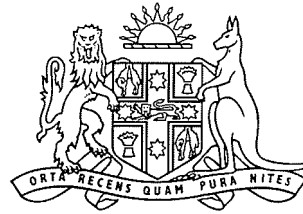
Schedule 2 [4] amends clause 237 so as to ensure that offenders cannot be confined to their cells under that clause for more than 48 hours. That clause authorises an offender who is suspected of having committed an offence to be confined to cell pending further action being taken in relation to the suspected offence.

Medical care for inmates confined to cell

Schedule 2 [5] substitutes clause 255 so as to ensure that offenders who are confined to their cells, or who are in segregated or protective custody, receive essential medical treatment and, for that purpose, are kept under daily observation by Justice Health officers. Daily observation will not be required for offenders confined to cell as a consequence of a general “lock-down”.

Removal of references to Inspector-General

Schedule 2 [1], [2] and [6] omit references to the Inspector-General from clauses 77 and 113 and from the Dictionary.



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New South Wales

Crimes (Administration of Sentences) Legislation Amendment Bill 2008

No. , 2008

A Bill for

An Act to make miscellaneous amendments to the *Crimes (Administration of Sentences) Act 1999*, and to regulations under that Act, as a consequence of a statutory review carried out under section 273 of that Act.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes (Administration of Sentences) Legislation Amendment Act 2008</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Crimes (Administration of Sentences) Act 1999 No 93	7
The <i>Crimes (Administration of Sentences) Act 1999</i> is amended as set out in Schedule 1.	8 9
4 Amendment of Crimes (Administration of Sentences) Regulation 2001	10
The <i>Crimes (Administration of Sentences) Regulation 2001</i> is amended as set out in Schedule 2.	11 12
5 Repeal of Act	13
(1) This Act is repealed on the day following the day on which this Act commences.	14 15
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	16 17

Schedule 1	Amendment of Crimes (Administration of Sentences) Act 1999	1
		2
	(Section 3)	3
[1] Part 1 Preliminary		4
Insert after the heading:		5
	Introductory note. This Part contains machinery provisions, including a statement of the objects of the Act and a provision that defines various words and expressions that are used in the Act.	6
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		8
[2] Section 2A		9
Insert after section 2:		10
2A Objects of Act		11
(1) This Act has the following objects:		12
(a) to ensure that those offenders who are required to be held in custody are removed from the general community and placed in a safe, secure and humane environment,		13
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(b) to ensure that other offenders are kept under supervision in a safe, secure and humane manner,		16
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(c) to ensure that the safety of persons having the custody or supervision of offenders is not endangered,		18
		19
(d) to provide for the rehabilitation of offenders with a view to their reintegration into the general community.		20
		21
(2) In the pursuit of these objects, due regard must be had to the interests of victims of the offences committed by offenders.		22
		23
(3) Nothing in this section gives rise to any civil cause of action or can be taken into account in any civil proceedings.		24
		25
[3] Section 3 Interpretation		26
Omit the definition of <i>Inspector-General</i> from section 3 (1).		27
[4] Part 2 Imprisonment by way of full-time detention		28
Insert after the heading:		29
	Introductory note. This Part applies to those offenders who have been sentenced to imprisonment by way of full-time detention (referred to as <i>inmates</i>) and to other persons who are required to be held in custody. It deals with the following matters:	30
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(a) the general obligations of inmates (Division 1),		34
(b) the circumstances in which an inmate can be kept in segregated or protective custody (Division 2),		35
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(c)	the circumstances in which an inmate may be transferred to another correctional centre, or to hospital, or given leave of absence (Division 3),	1 2 3
(d)	the management of juvenile inmates (Division 3A),	4
(e)	the conveyance and detention of prisoners received from the Australian Capital Territory (Division 4),	5 6
(f)	the conveyance and detention of prisoners received from Norfolk Island (Division 5),	7 8
(g)	the prescription of correctional centre offences, the penalties they attract and the procedure for dealing with both correctional centre offences and other offences (Division 6),	9 10 11
(h)	the procedure to be followed in determining whether a serious offender is to be given a low security classification permitting unescorted leave of absence from a correctional centre (Division 7),	12 13 14 15
(i)	other miscellaneous matters (Division 8).	16
[5]	Section 71 Submissions by State	17
	Insert after section 71 (4):	18
(5)	The power exercisable by the State under this section may also be exercised by the Australian Capital Territory in relation to a prisoner within the meaning of Division 4 and, for that purpose, references in this section to the State are taken to extend to the Australian Capital Territory.	19 20 21 22 23
[6]	Part 3 Imprisonment by way of periodic detention	24
	Insert after the heading:	25
	Introductory note. This Part applies to those offenders who have been sentenced to imprisonment by way of periodic detention. It deals with the following matters:	26 27 28
(a)	the general obligations of offenders (Division 1),	29
(b)	the way in which periodic detention orders are to be administered (Division 2),	30 31
(c)	offences relating to periodic detention (Division 3),	32
(d)	other miscellaneous matters (Division 4).	33
[7]	Part 4 Imprisonment by way of home detention	34
	Insert after the heading:	35
	Introductory note. This Part applies to those offenders who have been sentenced to imprisonment by way of home detention. It deals with the conditions governing home detention and the general obligations of offenders.	36 37 38 39

[8] Part 4A Imprisonment by way of compulsory drug treatment detention	1
Insert after the heading:	2
Introductory note. This Part applies to those offenders who have been sentenced to imprisonment by the Drug Court for the purpose of undergoing compulsory drug treatment. It deals with the following matters:	3
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(a) a general description of the 3 stages of compulsory drug treatment detention and the general obligations of offenders (Division 1),	7
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	9
(b) the way in which compulsory drug treatment orders are to be administered (Division 2),	10
	11
(c) the revocation of compulsory drug treatment orders (Division 3),	12
(d) the role of the Drug Court as the parole authority for offenders (Division 4),	13
	14
(e) other miscellaneous matters (Division 5).	15
[9] Part 5 Community service work and other work performed by offenders	16
Insert after the heading:	17
Introductory note. This Part applies to those offenders who have been sentenced to community service work. It deals with the following matters:	18
	19
(a) the general obligations of offenders, the administration of community service orders and other miscellaneous matters (Division 1),	20
	21
	22
(b) general provisions about community service work and other work performed by offenders (Division 2).	23
	24
[10] Part 6 Parole	25
Insert after the heading:	26
Introductory note. This Part applies to the granting of parole to those offenders who are subject to sentences of imprisonment. It deals with the following matters:	27
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(a) eligibility for release on parole, the conditions to which parole is subject, the general obligations of offenders who are on release on parole and other provisions applying generally to parole (Division 1),	30
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(b) procedures for parole orders for sentences of more than 3 years (Division 2),	34
	35
(c) procedures for parole orders for sentences of 3 years or less (Division 3),	36
	37
(d) procedures for parole orders in exceptional circumstances (Division 4),	38
	39
(e) other miscellaneous matters (Division 5).	40

[11] Section 155 Application to Supreme Court by offender	1
Insert after section 155 (3):	2
(4) This section does not give the Supreme Court jurisdiction to consider the merits of the Parole Authority's decision otherwise than on the grounds referred to in subsection (1).	3 4 5
[12] Section 156 Application to Supreme Court by State	6
Insert after section 156 (2):	7
(3) This section does not give the Supreme Court jurisdiction to consider the merits of the Parole Authority's decision otherwise than on the grounds referred to in subsection (1).	8 9 10
[13] Section 160AA	11
Insert after section 160:	12
160AA Submissions by Commissioner	13
(1) The Commissioner may at any time make submissions to the Parole Authority concerning the release on parole of an offender.	14 15
(2) If the Commissioner makes any such submission before the Parole Authority makes a final decision concerning the release of the offender, the Parole Authority must not make such a decision without taking the submission into account.	16 17 18 19
(3) If the Commissioner makes any such submission after the Parole Authority makes a final decision concerning the release of the offender, but before the offender is released, the Parole Authority must consider whether or not it should exercise its power under section 130 to revoke the relevant parole order.	20 21 22 23 24
(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 Division in connection with any such submission.	25 26 27 28
[14] Part 7 Revocation and reinstatement by Parole Authority of certain orders	29 30
Insert after the heading:	31
Introductory note. This Part applies to the revocation and reinstatement of various kinds of orders. It deals with the following matters:	32 33 34
(a) the revocation and reinstatement of periodic detention orders (Division 1),	35 36
(b) the revocation and reinstatement of home detention orders (Division 2),	37 38

	(c) the revocation of parole orders (Division 3),	1
	(d) post-revocation procedures and rights of appeal (Division 4),	2
	(e) the giving of certain directions by the Supreme Court and rights of appearance in related proceedings (Division 5),	3 4
	(f) other miscellaneous matters (Division 6).	5
[15]	Section 176 Application to Supreme Court by offender	6
	Insert after section 176 (3):	7
	(4) This section does not give the Supreme Court jurisdiction to consider the merits of the Parole Authority's decision otherwise than on the grounds referred to in subsection (1).	8 9 10
[16]	Section 177 Application to Supreme Court by State	11
	Insert at the end of the section:	12
	(2) This section does not give the Supreme Court jurisdiction to consider the merits of the Parole Authority's decision otherwise than on the grounds referred to in subsection (1).	13 14 15
[17]	Part 8 The Parole Authority	16
	Insert after the heading:	17
	Introductory note. This Part establishes the State Parole Authority. It deals with the following matters:	18 19
	(a) the constitution and functions of the Parole Authority (Division 1),	20
	(b) the powers of the Parole Authority in relation to inquiries conducted by it (Division 2),	21 22
	(c) other miscellaneous matters (Division 3).	23
[18]	Part 9 The Serious Offenders Review Council	24
	Insert after the heading:	25
	Introductory note. This Part establishes the Serious Offenders Review Council. It deals with the following matters:	26 27
	(a) the constitution and functions of the Review Council (Division 1),	28
	(b) the powers of the Review Council in relation to inquiries conducted by it (Division 2),	29 30
	(c) the establishment of the Serious Offenders Management Committee and its subcommittees (Division 3),	31 32
	(d) other miscellaneous matters (Division 4).	33
[19]	Part 10 The Inspector-General	34
	Omit the Part.	35

[20] Part 11 Administration	1
Insert after the heading:	2
Introductory note. This Part provides for means by which the Act is to be administered. It deals with the following matters:	3 4
(a) the establishment of correctional complexes, correctional centres, juvenile correctional centres and periodic detention centres (Division 1),	5 6 7
(b) the supervision of correctional centres by external officials (Division 2),	8 9
(c) the employment of staff in the administration of the Act (Division 3),	10 11
(d) the provision of health care (Division 4),	12
(e) the testing of correctional staff for alcohol and prohibited drugs (Division 5),	13 14
(f) the recognition of interstate correctional officers (Division 6).	15
[21] Section 228	16
Omit the section. Insert instead:	17
228 Official Visitors	18
(1) The Minister may appoint Official Visitors for the purposes of this Act.	19 20
(2) Notice of any such appointment must be published in the Gazette.	21
(3) The following persons are not eligible to be Official Visitors:	22
(a) any person who is employed as a member of staff of the Department,	23 24
(b) any person who is to any extent responsible for the management of, or who is employed at or in connection with, a correctional centre or periodic detention centre,	25 26 27
(c) any person who has an interest in a management agreement,	28 29
(d) any person who has not made a declaration under clause 4 of Schedule 4.	30 31
(4) Official Visitors are to be assigned to specific correctional complexes, correctional centres and periodic detention centres by the Minister, or in accordance with arrangements approved by the Minister, and are to be assigned in such a way as to ensure that there is at all times at least one Official Visitor for each correctional complex, correctional centre and periodic detention centre.	32 33 34 35 36 37 38

(5)	An Official Visitor for a correctional complex, correctional centre or periodic detention centre:	1
	(a) unless prevented by illness or other sufficient cause, must visit the complex or centre at least once each month:	2
	(i) for the purpose of giving interviews to correctional officers and other members of staff employed in the Department at the complex or centre, and	3
	(ii) for the purpose of giving interviews to offenders held in custody at the complex or centre, and	4
	(iii) for the purpose of examining the complex or centre, and	5
	(b) may visit the complex or centre at any other time unless, in the opinion of the Commissioner, a visit would be undesirable for reasons of order or security, and	6
	(c) must, in accordance with the regulations, receive and deal with complaints, and	7
	(d) must, in accordance with the regulations, report to the Minister at least once every 6 months, and	8
	(e) has and may exercise such other functions as may be prescribed by the regulations.	9
(6)	An Official Visitor's power to give interviews referred to in subsection (5) (a) may only be exercised with the consent of the interviewee, and does not include the power to conduct any investigation or carry out any audit.	10
(7)	Schedule 4 has effect with respect to Official Visitors.	11
[22]	Part 12 Engagement of contractors	12
	Insert after the heading:	13
	Introductory note. This Part provides for the engagement of private contractors to manage certain correctional centres (or parts of them), gives appropriate powers and immunities to staff employed for that purpose and provides for the establishment of minimum standards of management.	14
[23]	Section 242 Monitoring	15
	Omit section 242 (5).	16
[24]	Section 243 Community advisory councils	17
	Omit section 243 (4).	18

[25] Part 13 Custody of persons during proceedings	1
Insert after the heading:	2
Introductory note. This Part provides for the transport of offenders between correctional centres, and between correctional centres and courts, and for the custody of offenders while in transit.	3 4 5
[26] Part 14 General	6
Insert after the heading:	7
Introductory note. This Part contains miscellaneous provisions in connection with the operation of this Act, including a power to make regulations.	8 9 10
[27] Schedule 3 Inspector-General	11
Omit the Schedule.	12
[28] Schedule 5 Savings, transitional and other provisions	13
Insert at the end of clause 1 (1):	14
<i>Crimes (Administration of Sentences) Legislation Amendment Act 2008</i>	15 16
[29] Schedule 5, Part 13	17
Insert after Part 12:	18
Part 13 Provisions consequent on enactment of Crimes (Administration of Sentences) Legislation Amendment Act 2008	19 20 21
99 Definition	22
In this Part:	23
<i>the 2008 amending Act</i> means the <i>Crimes (Administration of Sentences) Legislation Amendment Act 2008</i> .	24 25
100 Official Visitors	26
Any person who was an Official Visitor immediately before the commencement of the 2008 amending Act is taken to have been appointed as such under section 228, as substituted by that Act.	27 28 29

Schedule 2	Amendment of Crimes (Administration of Sentences) Regulation 2001	1
		2
	(Section 4)	3
[1]	Clause 77 Visits by Commissioner and other officials	4
	Omit “, the Inspector-General” from clause 77 (2) (b).	5
[2]	Clause 113 Cost of telephone calls and facsimile messages	6
	Omit “, the Legal Aid Commission or the Inspector-General” from clause 113 (2) (c).	7
	Insert instead “or the Legal Aid Commission”.	8
[3]	Clause 152 Definition of “withdrawable privilege”	10
	Insert “and exempt bodies” after “legal practitioners” in clause 152 (k).	11
[4]	Clause 237 Suspected offences by inmates	12
	Insert after clause 237 (2):	13
	(3) An inmate in respect of whom one or more offences have been reported may be confined under this clause, whether for one or more periods of confinement, for no more than 48 hours in total in respect of those offences.	14
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		16
		17
[5]	Clause 255	18
	Omit the clause. Insert instead:	19
255	Provision of medical care to inmates confined to cell	20
	An inmate who is confined to cell for the purposes of punishment, or under a segregated or protective custody direction, must be kept under daily observation by a prescribed Justice Health officer and have access to essential medical care.	21
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		24

[6] Dictionary

Omit “, the Legal Services Tribunal or the Inspector-General” from paragraph (a) of the definition of *exempt body*.

Insert instead “or the Legal Services Tribunal”.

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