



New South Wales

Crimes (Administration of Sentences) Further Amendment Act 2002 No 79

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New South Wales

Crimes (Administration of Sentences) Further Amendment Act 2002 No 79

Act No 79, 2002

An Act to amend the *Crimes (Administration of Sentences) Act 1999* to make provision with respect to segregated and protective custody, the appointment of recognised interstate correctional officers and drug and alcohol testing of correctional staff; and for other purposes. [Assented to 25 October 2002]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes (Administration of Sentences) Further Amendment Act 2002*.

2 Commencement

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

3 Amendment of Crimes (Administration of Sentences) Act 1999 No 93

The *Crimes (Administration of Sentences) Act 1999* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Interpretation

Insert in alphabetical order in section 3 (1):

transitional centre means premises managed or approved by the Commissioner for the purpose of accommodating certain inmates prior to their release from custody.

[2] Section 7 Payments to inmates

Insert after section 7 (2):

- (3) The payment of an inmate by the Commissioner under this section for work done (whether or not at the direction of the Commissioner) does not constitute employment of, or a contract of service with, the inmate by the Crown or any other person, and accordingly an inmate who undertakes any such paid work is not:
- (a) a worker for the purposes of the *Workers Compensation Act 1987*, the *Workplace Injury Management and Workers Compensation Act 1998*, the *Annual Holidays Act 1944* or the *Long Service Leave Act 1955*, or
 - (b) an employee (however described) for the purposes of the *Industrial Relations Act 1996* or any Act or other law.

[3] Part 2, Division 2

Omit the Division. Insert instead:

Division 2 Segregated and protective custody

9 Definitions

In this Division:

protective custody direction means a direction referred to in section 11.

segregated custody direction means a direction referred to in section 10.

suspension direction means a direction referred to in section 20 (1) (a).

10 Segregated custody of inmates

- (1) The Commissioner may direct that an inmate be held in segregated custody if of the opinion that the association of the inmate with other inmates constitutes or is likely to constitute a threat to:
 - (a) the personal safety of any other person, or
 - (b) the security of a correctional centre, or
 - (c) good order and discipline within a correctional centre.
- (2) The governor of a correctional centre may exercise the Commissioner's functions under this section in relation to the correctional centre and, on each occasion he or she does so, must notify the Commissioner of that fact and of the grounds on which the segregated custody direction was given.
- (3) A segregated custody direction given by the governor of a correctional centre does not apply in relation to any other correctional centre.
- (4) Subsection (3) is subject to section 15.

11 Protective custody of inmates

- (1) The Commissioner may direct that an inmate be held in protective custody if of the opinion that the association of the inmate with other inmates constitutes or is likely to constitute a threat to the personal safety of the inmate.
- (2) The Commissioner may also direct that an inmate be held in protective custody if the inmate requests the Commissioner in writing to do so.
- (3) The governor of a correctional centre may exercise the Commissioner's functions under this section in relation to the correctional centre and, on each occasion he or she does so, must notify the Commissioner of that fact and of the grounds on which the protective custody direction was given.

- (4) A protective custody direction given by the governor of a correctional centre does not apply in relation to any other correctional centre.
- (5) Subsection (4) is subject to section 15.

12 Effect of segregated or protective custody direction

- (1) An inmate subject to a segregated or protective custody direction is to be detained:
 - (a) in isolation from all other inmates, or
 - (b) in association only with such other inmates as the Commissioner (or the governor of the correctional centre in the exercise of the Commissioner's functions under section 10 or 11) may determine.
- (2) An inmate who is held in segregated or protective custody:
 - (a) is not to suffer any reduction of diet, and
 - (b) is not to be deprived of any rights or privileges other than those determined by the Commissioner (or the governor in the exercise of the Commissioner's functions under section 10 or 11), either generally or in a particular case, and other than those the deprivation of which is necessarily incidental to the holding of the inmate in segregated or protective custody.

13 Form of direction

A segregated or protective custody direction must be in writing and must include the grounds on which it is given.

14 Information concerning review of segregated or protective custody direction

As soon as practicable after an inmate is directed:

- (a) to be held in segregated custody under section 10, or
- (b) to be held in protective custody under section 11 (other than at the inmate's request),

the governor of the correctional centre is to provide the inmate with information concerning the inmate's rights to a review of the segregated or protective custody direction.

15 Transfer of inmate held in segregated or protective custody

- (1) If an inmate held in segregated or protective custody under a segregated or protective custody direction given by the governor of a correctional centre is transferred to another correctional centre, the segregated or protective custody direction applies:
 - (a) in relation to the correctional centre to which the inmate is transferred (*the receiving correctional centre*), and
 - (b) in relation to the conveyance of the inmate to the receiving correctional centre, including custody of the inmate in any correctional centre in which the inmate is held during the course of being conveyed to the receiving correctional centre.
- (2) Within 72 hours after the arrival of the inmate at the receiving correctional centre, the governor of the receiving correctional centre must review the segregated or protective custody direction, having regard to the grounds referred to in section 10 or 11, and give one of the following directions:
 - (a) a direction revoking the segregated or protective custody direction,
 - (b) a direction confirming the segregated or protective custody direction,
 - (c) a direction confirming the segregated or protective custody direction but amending its terms.
- (3) A direction given under subsection (2) has effect according to its terms.
- (4) A segregated or protective custody direction that is subject to a direction under subsection (2) (b) or (c) is, on and after the giving of that direction, taken to be a segregated or protective custody direction given by the governor of the receiving correctional centre.
- (5) A direction by the governor of a receiving correctional centre revoking, confirming or amending a segregated or protective custody direction has effect even though it is given outside the period during which it is required to be given under this section.

16 Review of segregated or protective custody direction by Commissioner

- (1) The governor of a correctional centre where an inmate is held in segregated or protective custody must submit a report about the segregated or protective custody direction to the Commissioner within 14 days after the date on which the direction is given (*the relevant date*), regardless of whether the segregated or protective custody direction was given by the Commissioner or by the governor of a correctional centre.
- (2) Within 7 days after receiving the report, the Commissioner must review the segregated or protective custody direction and give one of the following directions:
 - (a) a direction revoking the segregated or protective custody direction,
 - (b) a direction confirming the segregated or protective custody direction,
 - (c) a direction confirming the segregated or protective custody direction but amending its terms.
- (3) If the direction is confirmed, the governor of the correctional centre where the inmate is held in segregated or protective custody must submit a further report about the direction to the Commissioner within 3 months after the relevant date, and within each subsequent period of 3 months after that period.
- (4) Within 7 days after each occasion on which the Commissioner receives any such further report, the Commissioner must review the segregated or protective custody direction and give one of the directions referred to in subsection (2) (a)–(c).
- (5) The confirmation of a segregated or protective custody direction by the governor of a correctional centre under section 15, or by the Review Council under section 22, does not affect the requirements for reporting about and reviewing a segregated or protective custody direction under this section.
- (6) A direction by the Commissioner revoking, confirming or amending a segregated or protective custody direction has effect even though it is given outside the period during which it is required to be given under this section.

(7) In this section:

report, in relation to a segregated or protective custody direction, means a report recommending whether or not the segregated or protective custody direction should be revoked, confirmed or amended.

17 Revocation of segregated or protective custody direction

- (1) A segregated or protective custody direction remains in force until it is revoked.
- (2) The Commissioner may, at any time, revoke a segregated or protective custody direction or amend its terms.
- (3) The Commissioner must revoke a protective custody direction given at the request of an inmate if the inmate requests the Commissioner in writing to revoke it.
- (4) The governor of a correctional centre may exercise the Commissioner's functions under this section in relation to the correctional centre.

18 Report to Minister on segregated or protective custody direction

- (1) As soon as practicable after confirming a segregated or protective custody direction, the Commissioner must give written notice of that fact to the Minister, giving reasons for the confirmation direction, if:
 - (a) the confirmation direction will result in the inmate being subject to a total continuous period of segregated or protective custody exceeding 6 months, or
 - (b) the inmate has already been subject to a total continuous period of segregated or protective custody exceeding 6 months.
- (2) This section does not apply to a direction confirming a protective custody direction that was given at the request of an inmate.

19 Review of segregated or protective custody direction by Review Council

- (1) An inmate whose total continuous period of segregated or protective custody exceeds 14 days may apply to the Review Council for a review of the segregated or protective custody direction under which the inmate is held in segregated or protective custody.
- (2) The application is to be in writing and is to include the inmate's reasons for making the application.
- (3) The Review Council must review the direction unless subsection (4) applies.
- (4) The Review Council may refuse to review the direction if:
 - (a) the application does not, in the opinion of the Review Council, disclose substantial grounds for a review, or
 - (b) the Review Council has previously determined a review of the same direction under this Division and the application does not, in the opinion of the Review Council, disclose substantially different grounds for review.
- (5) The Review Council may not refuse to review a direction under subsection (4) if a period of more than 3 months has elapsed since the Review Council determined a review of the segregated or protective custody direction.
- (6) This section applies regardless of whether the relevant segregated or protective custody direction was given by the Commissioner or by the governor of a correctional centre.

20 Suspension directions by Review Council

- (1) The Chairperson of the Review Council may give a direction for:
 - (a) the suspension of an inmate's segregated or protective custody direction, or
 - (b) the transfer of an inmate to a different correctional centre.
- (2) A suspension direction may be given at any time after an application for a review is made and before it is determined.

- (3) While a suspension direction is in force, the inmate is not to be held in segregated or protective custody unless a new segregated or protective custody direction is given.
- (4) The Chairperson may at any time vary or revoke a suspension direction.
- (5) A suspension direction does not revoke a segregated or protective custody direction.
- (6) A direction for the transfer of an inmate to a different correctional centre may be given:
 - (a) if the Chairperson considers that the inmate's removal would facilitate the review of the segregated or protective custody direction, or
 - (b) for any other reason that the Chairperson thinks fit.
- (7) The determination of a review of a segregated or protective custody direction by the Review Council under section 22 revokes any suspension direction applying to the segregated or protective custody direction.

21 Procedure for review of segregated or protective custody direction by Review Council

- (1) In determining any matter relating to the segregated or protective custody of an inmate, the Review Council is not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate.
- (2) The Review Council must cause notice of any hearing in relation to a review to be given to the inmate who applied for the review.
- (3) If the inmate so wishes, the Review Council must allow the inmate to be present, and to be heard, at the hearing.
- (4) The inmate may be represented by a legal practitioner chosen by the inmate or, if the Review Council so approves, by some other person chosen by the inmate.
- (5) The Commissioner or the governor of a correctional centre (or both) may be represented by a legal practitioner or by some other person.
- (6) Division 2 of Part 9 applies to the conduct of a review by the Review Council under this Division.

22 Determination of review by Review Council

- (1) In reviewing a segregated or protective custody direction, the Review Council must take the following matters into account:
 - (a) whether the direction was given or reviewed in accordance with this Division,
 - (b) whether the direction was reasonable in the circumstances,
 - (c) whether the direction was necessary to secure the personal safety of the inmate or any other person,
 - (d) the security of, and the preservation of good order and discipline within, the relevant correctional centre,
 - (e) the interests of the public.
- (2) In determining an application for review, the Review Council may revoke, confirm or amend the segregated or protective custody direction to which the application relates.

[4] Section 26 Local leave permits

Omit “(that is, premises managed or approved by the Commissioner for the purpose of accommodating inmates prior to their release from custody)” from section 26 (2) (j).

[5] Section 38 Absent inmates taken to be in custody

Omit the definition of *designated officer* from section 38 (4).
Insert instead:

designated officer means the person for the time being holding or acting in the position within the Department designated by the Commissioner for the purposes of this section.

[6] Section 76 Sale of unclaimed property

Insert “or otherwise disposed of as the Commissioner may direct” after “sold” in section 76 (1).

[7] Section 107 Definitions

Insert “from the date on which the order was made” after “months” wherever occurring in the definition of *relevant maximum period*.

[8] Section 197 Functions of Review Council

Omit section 197 (2) (d). Insert instead:

- (d) to review segregated and protective custody directions under Division 2 of Part 2,

[9] Section 197 (3)

Insert “nominated by the Chairperson” after “judicial member”.

[10] Section 228 Official Visitors

Omit section 228 (4) (a) (i). Insert instead:

- (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
- (ia) for the purpose of giving interviews to offenders held in custody at the complex or centre, and

[11] Section 232 Commissioner

Omit section 232 (4). Insert instead:

- (4) Sections 10 (2), 11 (3), 12 and 17 (4) do not limit the power of the Commissioner to delegate functions under those sections.

[12] Sections 235C and 235D

Insert after section 235B:

235C Transitional centre officers

- (1) In this section:

transitional centre officer means a person who is employed at a transitional centre for the purpose of supervising inmates residing at the transitional centre (including supervising such inmates while they are outside the transitional centre).

- (2) The functions of transitional centre officers are to be as determined from time to time by the Commissioner.
- (3) Those functions may include functions of a correctional officer.

- (4) To the extent that the functions of a transitional centre officer include the functions of a correctional officer, the transitional centre officer has all the immunities of a correctional officer.
- (5) A transitional centre officer may exercise a function of a correctional officer only in respect of an inmate who resides at the transitional centre where the transitional centre officer is employed.
- (6) Transitional centre officers must at all times exercise their functions in such manner as the Commissioner, having regard to current circumstances, may from time to time direct.

235D Functions of periodic detention field officers

- (1) In this section:
periodic detention field officer means 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.
- (2) The functions of periodic detention field officers are to be as determined from time to time by the Commissioner.
- (3) Those functions may include functions of a correctional officer.
- (4) To the extent that the functions of a periodic detention field officer include the functions of a correctional officer, the periodic detention field officer has all the immunities of a correctional officer.
- (5) A periodic detention field officer may exercise a function of a correctional officer only:
 - (a) in respect of an offender who is subject to a periodic detention order, and
 - (b) during any detention period for that offender.
- (6) Periodic detention field officers must at all times exercise their functions in such manner as the Commissioner, having regard to current circumstances, may from time to time direct.

[13] Section 236D

Insert after section 236C:

236D Delegation of functions of CEO, Corrections Health Service

- (1) The Chief Executive Officer, Corrections Health Service, may delegate to any person any of the Chief Executive Officer's functions under this Act, other than this power of delegation.
- (2) Subsection (1) does not enable the Chief Executive Officer, Corrections Health Service to delegate the right of free and unfettered access conferred on the Chief Executive Officer by sections 236B and 244.

[14] Part 11, Division 5

Insert after Division 4 of Part 11:

Division 5 Testing of correctional staff for alcohol and prohibited drugs

236E Definitions

In this Part:

authorised person means a person authorised in accordance with the regulations to conduct breath tests, breath analyses or other tests for the purposes of this Division and the regulations.

breath analysing instrument means any instrument approved by the Governor by order under the *Road Transport (Safety and Traffic Management) Act 1999* as such an instrument, that is, an instrument designed to ascertain, by analysis of a person's breath, the concentration of alcohol present in the person's blood.

breath analysis means a test carried out by a breath analysing instrument for the purpose of ascertaining, by analysis of a person's breath, the concentration of alcohol present in that person's blood.

breath test means a test:

- (a) that is designed to indicate the concentration of alcohol in a person's blood, or whether a particular

concentration of alcohol is or may be present in a person's blood, and

- (b) that is carried out on the person's breath by means of a device (not being a breath analysing instrument) of a type approved by the Governor for the conduct of breath tests under the *Road Transport (Safety and Traffic Management) Act 1999*.

hospital means a public or private hospital, and includes any premises, institution or establishment prescribed by the regulations as a hospital for the purposes of this Division.

member of correctional staff means a correctional officer or any other person who is employed in the Department.

prohibited drug has the same meaning as in the *Drug Misuse and Trafficking Act 1985*.

236F Testing of staff for alcohol and prohibited drugs

- (1) An authorised person may require any member of correctional staff who is on duty, or who is present at the staff member's place of work and about to go on duty:
- (a) to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence or concentration of alcohol, or
- (b) to provide a sample of the staff member's urine or hair for the purpose of testing for the presence of prohibited drugs,

in accordance with the directions of the authorised person and the regulations.

- (2) The selection of a member of correctional staff for testing under subsection (1) may be conducted on a random or targeted basis.
- (3) Without limiting the generality of subsection (1), if an incident occurs in which a person dies or is injured while in the custody of a member of correctional staff, or as the result of the discharge of a firearm by a member of correctional staff, an authorised person may require any member of correctional staff involved in the incident:

- (a) to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence or concentration of alcohol, or
- (b) to provide a sample of the member of staff's urine or hair for the purpose of testing for the presence of prohibited drugs,

in accordance with the directions of the authorised person and the regulations.

- (4) An authorised person may require the staff member to remain on the premises where the test is to be conducted until the test is completed.
- (5) A requirement pursuant to subsection (3) to undergo a test or to provide a sample is to be made by the authorised person as soon as practicable after the incident concerned.

236G Testing where member of correctional staff attends hospital

- (1) If a member of correctional staff attends or is admitted to a hospital for examination or treatment because of an incident referred to in section 236F (3), an authorised person may require the member of staff to provide a sample of the member of staff's blood, urine or hair in accordance with the directions of a medical practitioner who attends the member of staff at the hospital.
- (2) Any such medical practitioner must take the sample if informed by an authorised person that the sample is required to be taken by the practitioner, but not a sample of blood if such a sample is taken under Division 4 of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999* instead.
- (3) If there is no medical practitioner present to attend the staff member at the hospital, the sample is to be taken by a registered nurse who is attending the staff member and who is accredited by a hospital to perform the sampling procedures.
- (4) Sections 21 and 22 of the *Road Transport (Safety and Traffic Management) Act 1999* apply to any taking of a sample of blood, urine or hair under subsection (1) as if the sample were a sample of blood taken under Division 4 of Part 2 of that Act.

- (5) Any sample taken under subsection (1) is to be dealt with, and a report on the analysis of the sample is to be provided, in accordance with the regulations.
- (6) Nothing in this section or the regulations derogates from the operation of Division 4 of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999*.

236H Protection from liability

- (1) A medical practitioner does not incur any civil or criminal liability in respect of anything properly and necessarily done by the practitioner in the course of taking a sample of blood, urine or hair from a member of correctional staff for the purpose of its being used by an analyst to detect the presence of alcohol or any prohibited drug if the practitioner:
 - (a) believed on reasonable grounds that he or she was required under this Act to take the sample of blood, urine or hair from the person, or
 - (b) was informed by an authorised officer that the staff member was a person from whom the practitioner was required under this Act to take the sample of blood, urine or hair.
- (2) Subsection (1) extends to a registered nurse, or any person acting under the supervision of the medical practitioner, who performs the functions of a medical practitioner under this Division in accordance with this Division or the regulations.

236I Regulations

The regulations may make provision for or with respect to the following:

- (a) the appointment of authorised officers and the authorisation of persons:
 - (i) to administer breath tests, breath analyses or other tests for the purposes of detecting the presence or concentration of alcohol or prohibited drugs, and
 - (ii) to operate equipment for that purpose,
- (b) the conduct of testing,
- (c) the taking of samples of urine, hair or blood,

- (d) the taking of a sample of blood at the choice of a member of correctional staff for the staff member to retain or arrange to be analysed (or both),
- (e) the provision of a sample of the staff member's urine or hair for the purpose of testing for the presence of prohibited drugs,
- (f) the devices used in carrying out the breath tests, breath analyses and other tests, including the calibration, inspection and testing of those devices,
- (g) the accreditation of persons conducting analyses for the presence of prohibited drugs,
- (h) the procedure for the handling and analysis of samples of urine, hair or blood,
- (i) offences relating to interference with test results or the testing procedure,
- (j) the consequences of refusing to comply with a requirement of or under this Division,
- (k) the consequences for members of correctional staff of testing positive for alcohol or prohibited drugs,
- (l) the evidentiary value and use of certificates relating to the analysis of a sample or the authorisation of persons,
- (m) the confidentiality of test results.

[15] Part 11, Division 6

Insert at the end of Part 11:

Division 6 Recognised interstate correctional officers

236J Appointment of recognised interstate correctional officers

- (1) The Commissioner may, by instrument in writing, appoint any of the following persons, or each person in a group of such persons, as a recognised interstate correctional officer:
 - (a) any person who is employed as a correctional officer (other than a probationary correctional officer) within the public service of another State or Territory,

- (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.
- (2) The Commissioner may not appoint a person, or each person in a group of persons, as a recognised interstate correctional officer unless, in the Commissioner's opinion, the person or each person in the group of persons:
 - (a) has undergone appropriate training in respect of the exercise of his or her functions as a recognised interstate correctional officer, and
 - (b) is to be subject to an appropriate disciplinary system in respect of the exercise of those functions.
- (3) An appointment as a recognised interstate correctional officer may be made subject to conditions. The kinds of conditions to which an appointment may be subject include (but are not limited to) conditions as to the kinds of functions conferred and the purposes for and circumstances in which such functions may be exercised.
- (4) The Commissioner may, at any time, revoke the appointment of any person, or of each person in a group of persons, as a recognised interstate correctional officer and may, at any time, impose, vary or revoke any conditions of appointment.
- (5) A person who is a recognised interstate correctional officer because he or she is employed as a correctional officer in the public service of another State or Territory, or because he or she is a member of a police force, ceases to be a recognised interstate correctional officer on ceasing to be so employed as a correctional officer or on ceasing to be such a member.
- (6) Without limiting subsection (4), the Commissioner may at any time revoke the appointment of a person as a recognised interstate correctional officer if of the opinion that the person is not a suitable person to be a recognised interstate correctional officer.
- (7) In this section, a reference to a correctional officer or to the public service of another State or Territory means a correctional officer however described, or a public service however described.

236K Recognised interstate correctional officer to have correctional officer functions

- (1) A recognised interstate correctional officer has all the functions and immunities that a correctional officer has under this or any other Act.
- (2) The conferral of functions by this section on a recognised interstate correctional officer is subject to any applicable conditions of the person's appointment as a recognised interstate correctional officer.
- (3) The regulations may make provision for or with respect to identification requirements for, or the wearing of uniforms by, recognised interstate correctional officers.

[16] Section 249 Definitions

Omit the definition of *designated officer* from the section.

Insert instead:

designated officer means the person for the time being holding or acting in the position within the Department designated by the Commissioner for the purposes of this Part.

[17] Section 260 Evidentiary certificates

Insert after section 260 (a):

- (a1) a specified person was in the custody of the designated officer within the meaning of section 38 or 249.

[18] Section 267

Omit the section. Insert instead:

267 Research

- (1) In this section:

research means research in connection with:

- (a) the administration or management of correctional centres or any other facilities administered or managed by the Department or a management company, or
- (b) services provided to offenders by or on behalf of the Department or a management company, or

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- (c) the circumstances relating to offenders, or
 - (d) workplace or industrial relations matters relating to correctional centres or any other facilities administered or managed by the Department or a management company, or
 - (e) some other aspect of penology.
- (2) A person must apply to the Commissioner for approval to conduct research that involves the person (or persons acting under the direction of that person) obtaining access to:
- (a) information held by the Department or a management company, or
 - (b) facilities administered or managed by the Department or a management company, or
 - (c) persons employed in, or engaged by contract to, the Department or a management company, or
 - (d) persons in the custody of, or supervised by, the Department or a management company.
- (3) In determining such an application, the Commissioner may have regard to any recommendations made by an ethics committee established by the Commissioner in accordance with the regulations.
- (4) The Commissioner may approve an application subject to conditions or unconditionally, and may give access to such information, facilities or persons, or give access in such manner, as the Commissioner considers appropriate.
- (5) If the Commissioner refuses to approve an application, the Commissioner must give the applicant reasons in writing for the refusal.
- (6) A person to whom any such access is given must not use any information obtained in connection with that access, or created as a result of that access, in a manner:
- (a) that contravenes any conditions imposed by the Commissioner as to its use, or
 - (b) that enables the identity of any person to whom the information relates to be ascertained.

Maximum penalty: 2 penalty units.

- (7) The Department may, either alone or in conjunction with a university body or another person or organisation, undertake research in connection with matters referred to in subsection (1).

[19] Schedule 1 Parole Board

Insert after clause 11 (5):

- (6) The Parole Board may, if it thinks fit, hold a meeting at which some members participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members and by members of the public (if the meeting is open to the public).

[20] Schedule 1, clause 16

Insert at the end of clause 16:

- (2) Despite subclause (1), if the Chairperson and the Alternate Chairperson or Deputy Chairperson, or both, are present at a meeting of the Parole Board at which all community members may attend, the Alternate Chairperson and Deputy Chairperson are each entitled to vote with respect to any decision.

[21] Schedule 1, clause 17

Omit the clause. Insert instead:

17 Decisions

- (1) A decision supported by a majority of the votes cast at a meeting of the Parole Board at which a quorum is present (being votes cast by persons entitled to vote at the meeting) is the decision of the Parole Board.
- (2) In the case of an equality of votes, the judicial member presiding at a meeting of the Parole Board is to have the casting vote.

[22] Schedule 1, clause 22A

Insert after clause 22:

22A Rulings on points of law

If either of the following questions arises at a meeting of the Parole Board, it is to be decided by the person presiding at the meeting alone:

- (a) whether a question is a question of fact or law, or a question of mixed law and fact,
- (b) any question determined to be a question of law alone or a question of mixed law and fact.

[23] Schedule 2 Serious Offenders Review Council

Insert after clause 11 (5):

- (6) The Review Council may, if it thinks fit, hold a meeting at which some members participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members and by members of the public (if the meeting is open to the public).

[24] Schedule 2, clause 11A (4)

Omit “a party to the proceedings”.

Insert instead “involved in the proceedings”.

[25] Schedule 2, clause 11A (5) (c)

Omit “a party opposing the making of the direction that the direction would be unfair to the party”.

Insert instead “a person opposing the making of the direction that the direction would be unfair to the person”.

[26] Schedule 2, clause 11A (6)

Omit “a party to the proceedings”.

Insert instead “a person involved in the proceedings”.

[27] Schedule 2, clause 11A (7)

Omit “any party to the proceedings”.

Insert instead “any person involved in the proceedings”.

[28] Schedule 2, clause 15

Insert at the end of clause 15:

- (2) Despite subclause (1), if the Chairperson and the Alternate Chairperson or Deputy Chairperson, or both, are present at a meeting of the Review Council at which all community members may attend, the Alternate Chairperson and Deputy Chairperson are each entitled to vote with respect to any decision.

[29] Schedule 2, clause 16

Omit the clause. Insert instead:

16 Decisions

- (1) A decision supported by a majority of the votes cast at a meeting of the Review Council at which a quorum is present (being votes cast by persons entitled to vote at the meeting) is the decision of the Review Council.
- (2) In the case of an equality of votes, the judicial member presiding at a meeting of the Review Council is to have the casting vote.

[30] Schedule 2, clause 20A

Insert after clause 20:

20A Rulings on points of law

If either of the following questions arises at a meeting of the Review Council, it is to be decided by the person presiding at the meeting alone:

- (a) whether a question is a question of fact or law, or a question of mixed law and fact,
- (b) any question determined to be a question of law alone or a question of mixed law and fact.

[31] Schedule 5 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes (Administration of Sentences) Further Amendment Act 2002

[32] Schedule 5, Part 5

Insert after Part 4:

Part 5 Provisions consequent on enactment of Crimes (Administration of Sentences) Further Amendment Act 2002

64 Definition

In this Part:

2002 amending Act means the *Crimes (Administration of Sentences) Further Amendment Act 2002*.

65 Segregated custody directions and protective custody directions

(1) In this clause:

commencement date means the date on which Division 2 of Part 2 (as substituted by the 2002 amending Act) commences.

(2) A segregated or protective custody direction given under Division 2 of Part 2 before the commencement date is taken to be a segregated or protective custody direction given under Division 2 of Part 2 as substituted by the 2002 amending Act.

(3) For the purposes of the application of section 16 (as substituted by the 2002 amending Act) to a segregated or protective custody direction given before the commencement date, the following provisions have effect:

(a) if the segregated or protective custody direction was given less than 14 days before the commencement date, the governor of the correctional centre where the inmate the subject of the direction is held in segregated or protective custody must submit a report about the direction to the Commissioner within 14 days after the

direction was given, and that report is taken to be a report under section 16 (1),

- (b) if the segregated or protective custody direction was given not less than 14 days before the commencement date and was extended by the Commissioner less than 3 months before the commencement date, the governor of the correctional centre where the inmate the subject of the direction is held in segregated or protective custody is to prepare a report referred to in that section within 3 months after the direction was extended by the Commissioner, and that report is taken to be a report under section 16 (3),
- (c) if the segregated or protective custody direction was given not less than 14 days before the commencement date and was not extended by the Commissioner less than 3 months before the commencement date, the governor of the correctional centre where the inmate the subject of the direction is held in segregated or protective custody is to prepare a report referred to in that section as soon as possible after the commencement date, and that report is taken to be a report under section 16 (3).

66 Meetings of Parole Board and Review Council

- (1) Schedule 1, as in force before its amendment by the 2002 amending Act, continues to apply to any proceedings before the Parole Board that had been commenced but not concluded immediately before the commencement of that amendment, and such proceedings are to be determined in accordance with Schedule 1 as if it had not been so amended.

- (2) Schedule 2, as in force before its amendment by the 2002 amending Act, continues to apply to any proceedings before the Review Council that had been commenced but not concluded immediately before the commencement of that amendment, and such proceedings are to be determined in accordance with Schedule 2 as if it had not been so amended.

[Second reading speech made in—
Legislative Assembly on 18 September 2002
Legislative Council on 25 September 2002]