



New South Wales

# Crimes (Administration of Sentences) Amendment Act 2016 No 47

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New South Wales

# **Crimes (Administration of Sentences) Amendment Act 2016 No 47**

Act No 47, 2016

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An Act to amend the *Crimes (Administration of Sentences) Act 1999*, the *Summary Offences Act 1988* and the regulations under those Acts in relation to Visiting Magistrates, the powers of correctional officers in places of detention and the disclosure and sharing of information; and for other purposes. [Assented to 18 October 2016]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Crimes (Administration of Sentences) Amendment Act 2016*.

**2 Commencement**

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

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

**[1] Whole Act (except section 3 (1) and Schedule 5)**

Omit “general manager”, “general managers” and “general manager’s” wherever occurring.

Insert instead “governor”, “governors” and “governor’s”, respectively.

**[2] Whole Act (except section 3 (1) and Schedule 5)**

Omit “the Probation and Parole Service” and “The Probation and Parole Service” wherever occurring.

Insert instead “Community Corrections”.

**[3] Whole Act (except section 3 (1))**

Omit “probation and parole officer” and “probation and parole officers” wherever occurring.

Insert instead “community corrections officer” and “community corrections officers”, respectively.

**[4] Section 3 Interpretation**

Omit the definitions of *general manager*, *probation and parole officer*, *Probation and Parole Service* and *Visiting Magistrate* from section 3 (1).

**[5] Section 3 (1)**

Insert in alphabetical order:

*Community Corrections* means the Community Corrections Division, Department of Justice.

*community corrections officer* means a person who is employed within Corrective Services NSW as a community corrections officer, as referred to in section 231.

*governor*, in relation to a correctional centre, means the governor of the correctional centre and includes any person who is for the time being in charge of the correctional centre.

*Visiting Magistrate* means a Magistrate exercising the functions of a Visiting Magistrate, as referred to in section 227.

**[6] Section 55 Hearing of charges by Visiting Magistrate**

Omit “the Visiting Magistrate” where secondly occurring in section 55 (6).

Insert instead “a Visiting Magistrate”.

**[7] Section 65 Offences may be dealt with by governor of any correctional centre**

Omit “, or by the Visiting Magistrate for a correctional centre,”.

**[8] Sections 107 and 235E (1)**

Omit the definition of *community offender services field officer* wherever occurring.

Insert in alphabetical order:

*community corrections field officer* means a person who is employed for the purpose of supervising offenders subject to community service orders while the offenders are performing community service work.

**[9] Sections 112 (1) (b), 117 (g) and 235E (2) and (3)**

Omit “community offender services field officers” and “Community offender services field officers” wherever occurring.

Insert instead “community corrections field officers” and “Community corrections field officers”, respectively.

**[10] Section 227**

Omit the section. Insert instead:

**227 Visiting Magistrates**

- (1) A Magistrate has, by virtue of his or her office as a Magistrate, all of the functions that are conferred or imposed on a Visiting Magistrate by or under this or any other Act or law and, in the exercise of those functions, is referred to as a Visiting Magistrate.
- (2) A Visiting Magistrate may at any time visit a correctional complex or correctional centre.

**[11] Section 230 Special inquiries**

Omit “the Visiting Magistrate for the correctional complex or correctional centre” from section 230 (2).

Insert instead “a Visiting Magistrate,”.

**[12] Section 235G Functions of Departmental compliance and monitoring officers**

Omit “Part 4A of the *Summary Offences Act 1988*” from section 235G (2) (c).

Insert instead “Part 13A”.

**[13] Section 236M Accommodation of offenders in residential facilities**

Omit section 236M (3) (c).

**[14] Part 13A**

Insert after Part 13:

**Part 13A Offences relating to places of detention**

**253A Definitions**

In this Part:

***adult*** means a person who is of or above the age of 18 years.

***child*** means a person who is under the age of 18 years.

***correctional officer*** includes a person holding an authority under section 240 to perform custodial duties.

***impaired intellectual functioning*** means:

- (a) total or partial loss of a person’s mental functions, or
- (b) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction, or
- (c) a disorder, illness or disease that affects a person’s thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.

***non-correctional member of staff*** means:

- (a) a person employed within Corrective Services NSW, or
  - (b) a person employed at a managed correctional centre,
- but does not include a correctional officer.

***place of detention*** means a correctional centre, correctional complex or residential facility.

***search observation staff member*** means a non-correctional member of staff (or member of a class of such persons) prescribed by the regulations for the purposes of this definition.

**253B Onus of proof regarding lawful authority or reasonable excuse**

In any proceedings for an offence against a provision of this Part, the onus of proving that a person had lawful authority or a reasonable excuse (as referred to in the provision) lies with the defendant.

**253C Trafficking**

- (1) A person must not, without lawful authority, bring or attempt by any means whatever to introduce into any place of detention any spirituous or fermented liquor.  
Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.
- (2) A person must not, without lawful authority, bring or attempt by any means whatever to introduce into any place of detention any poison listed in Appendix D of Schedule Four, or in Schedule Eight, of the Poisons List in force under the *Poisons and Therapeutic Goods Act 1966*.  
Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.
- (3) Section 40 of the *Poisons and Therapeutic Goods Act 1966* applies to proceedings for an offence under subsection (2) in the same way as it applies to legal proceedings under that Act.
- (4) A person must not, without lawful authority, bring or attempt by any means whatever to introduce into any place of detention a quantity of any prohibited drug or prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985* that constitutes a small quantity (or constitutes less than a small quantity) of the drug or plant concerned within the meaning of that Act.  
Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.
- (5) Section 43 of the *Drug Misuse and Trafficking Act 1985* applies to proceedings for an offence under subsection (4) in the same way as it applies to legal proceedings under that Act.

**253D Introduction or supply of syringes**

- (1) A person:
  - (a) who brings or attempts by any means whatever to introduce a syringe into a place of detention, or
  - (b) who supplies or attempts by any means whatever to supply a syringe to an inmate who is in lawful custody,is guilty of an offence.  
Maximum penalty: imprisonment for 2 years.
- (2) A person is not guilty of an offence of bringing or attempting to introduce a syringe into a place of detention if the person satisfies the court that the officer

- in charge of the place of detention had consented to the person's bringing or introducing the syringe into the place of detention.
- (3) A person is not guilty of an offence of supplying or attempting to supply a syringe to an inmate in lawful custody if the person satisfies the court:
    - (a) that the supply was authorised on medical grounds by a registered medical practitioner, and
    - (b) if the inmate is in lawful custody in a place of detention, that the officer in charge of the place of detention had consented in writing to the supply.
  - (4) While absent from a place of detention in any of the circumstances referred to in section 38 (1), an inmate is taken to be in lawful custody for the purposes of an offence under this section only if the inmate is being escorted by a correctional officer (within the meaning of that section) or a police officer.
  - (5) In this section, **syringe** means a hypodermic syringe, and includes:
    - (a) anything designed for use or intended to be used as part of such a syringe, and
    - (b) a needle designed for use or intended to be used in connection with such a syringe.

**253E Unlawful possession of offensive weapons or instruments**

- (1) A person must not, without reasonable excuse, have in his or her possession an offensive weapon or instrument in a place of detention.  
Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.
- (2) If a person is convicted of an offence under this section, the court may, in addition to any penalty it may impose, make an order that the offensive weapon or instrument be forfeited to the Crown, and the weapon or instrument is forfeited accordingly.
- (3) In this section, **offensive weapon or instrument** has the same meaning as it has in the *Crimes Act 1900*.

**253F Inmate use or possession of a mobile phone**

- (1) An inmate must not, without reasonable excuse, use or have in his or her possession in a place of detention a mobile phone or any part of it, a mobile phone SIM card or any part of it, or a mobile phone charger or any part of it.  
Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.
- (2) In this section, **mobile phone** includes any device that may be used, in whole or in part, for the purpose of sending or receiving voice or other data over a mobile telephone network, whether or not it may be used for any other purpose.

**253G Miscellaneous offences**

- (1) Any person who, without lawful authority:
  - (a) loiters about or near any place of detention, or
  - (b) enters or attempts by any means whatever to enter any place of detention, or

(c) communicates, or attempts by any means whatever to communicate, with any inmate,  
is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

(2) Any person who, without lawful authority:

- (a) delivers or attempts to deliver anything to an inmate, or
- (b) brings or attempts to bring anything into a place of detention, or
- (c) conveys or attempts to convey anything out of a place of detention, or
- (d) receives or attempts to receive anything for conveyance out of a place of detention, or
- (e) secretes or leaves anything at any place (whether inside or outside a place of detention) for the purpose of its being found or received by an inmate,

is guilty of an offence.

Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.

#### **253H Visitors must leave possessions in storage facilities**

(1) Except as otherwise provided by this Act or as permitted by a correctional officer, a visitor must, while the visit is taking place, leave anything that the visitor has brought into a place of detention in storage facilities provided for the purpose at the place.

Maximum penalty: 5 penalty units.

(2) A correctional officer may confiscate, for the duration of the visit, anything that a visitor has brought into the place of detention but not left in storage facilities as required by subsection (1).

(3) Subsection (2) does not limit any other power that a correctional officer may have apart from this section to seize or detain anything of the kind referred to in that subsection, including a power to seize a thing from a person following the person's lawful arrest.

(4) In this section, *place of detention* does not include a residential facility.

#### **253I Powers of correctional officers**

(1) **Power to stop, detain and search persons and vehicles in place of detention**

A correctional officer may stop, detain and search:

- (a) a person in a place of detention, and anything in the possession of or under the control of the person, or
- (b) a vehicle in a place of detention.

In this subsection, *place of detention* does not include a residential facility.

(2) **Power to stop, detain and search persons and vehicles in immediate vicinity of place of detention**

A correctional officer may stop, detain and search:

- (a) a person in a residential facility or in the immediate vicinity of a place of detention, and anything in the possession of or under the control of the person, if the correctional officer suspects on reasonable grounds that the person has in his or her possession or under his or her control anything that has been used, is being used or is intended to be used in or in connection with the commission of an offence under this Part, or

- (b) a vehicle in a residential facility or in the immediate vicinity of a place of detention, if the correctional officer suspects on reasonable grounds that:
  - (i) the vehicle contains anything that has been used, is being used or is intended to be used in or in connection with the commission of an offence under this Part, or
  - (ii) the vehicle has been used, is being used or is intended to be used in or in connection with the commission of an offence under this Part.

(3) **Power to detain for purpose of search by police**

A correctional officer who stops and detains a person or a vehicle under this section (whether or not the correctional officer searches the person or vehicle), and who suspects on reasonable grounds that:

- (a) the person has in his or her possession or under his or her control anything that has been used, is being used or is intended to be used in or in connection with the commission of an offence under this Part, or
- (b) the vehicle:
  - (i) contains anything that has been used, is being used or is intended to be used in or in connection with the commission of an offence under this Part, or
  - (ii) has been used, is being used or is intended to be used in or in connection with the commission of an offence under this Part,

may request a police officer to conduct a search or a further search of the person or vehicle, and may detain the person or vehicle while waiting for the arrival of a police officer at the place where the person or vehicle is being detained for the police officer to conduct the search.

(4) **Request to police to be made as soon as practicable**

A request to a police officer under subsection (3) must be made as soon as practicable after the correctional officer stops and detains the person or vehicle, or searches the person or vehicle.

(5) **Power of correctional officer to seize things**

A correctional officer may seize all or part of a thing that the correctional officer suspects on reasonable grounds may provide evidence of the commission of an offence under this Part found as a result of a search under this section.

(6) **Power to arrest**

In respect of any offence under this Part, the powers of arrest of a police officer may be exercised by a correctional officer.

(7) **Arrested person to be taken to police or to authorised officer (within the meaning of the Law Enforcement (Powers and Responsibilities) Act 2002)**

A correctional officer who arrests a person under this section must, as soon as practicable, take the person, and any property found on the person:

- (a) to a police officer, or
- (b) before an authorised officer (within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*) to be dealt with according to law.

- (8) Nothing in this section prevents the powers that may be exercised in relation to a person from being exercised in relation to a correctional officer.

**253J Conduct of search**

- (1) A correctional officer, in conducting a search under section 253I, may direct a person to do any or all of the following:
  - (a) to submit to scanning by means of an electronic scanning device,
  - (b) to empty the pockets of the person's clothing,
  - (c) to remove any hat, gloves, coat, jacket or shoes worn by the person,
  - (d) to empty the contents of any bag or other thing, or to open any thing, that the person has with him or her, or has left in a vehicle,
  - (e) in the case of a visitor to the place of detention—to make available for inspection and search any item stored in a storage facility allocated to the visitor,
  - (f) in the case of a correctional officer or a non-correctional member of staff—to make available for inspection and search any room or locker that is under the officer's or member of staff's control at the place of detention,
  - (g) in the case of an adult accompanying a child or a person who has impaired intellectual functioning—to assist the child or person to co-operate with a search.
- (2) A correctional officer, in conducting a search under section 253I, may direct a person to produce:
  - (a) anything that the correctional officer has detected or seen during the search on or with the person, or in a vehicle in which the person is or was present, and has reasonable grounds to suspect may provide evidence of the commission of an offence under this Part, or
  - (b) anything detected during the search by an electronic detection device, or
  - (c) anything indicated by a dog reacting positively to its presence.
- (3) In conducting a search of a person under section 253I, a correctional officer:
  - (a) must conduct the search with due regard to dignity and self-respect and in as seemly a manner as is consistent with the conduct of an effective search, and
  - (b) must not direct a person to remove any item of clothing being worn by the person, other than a hat, gloves, coat, jacket or shoes, and
  - (c) must not search a person by running the officer's hands over the person's clothing.
- (4) A search of a person conducted by a correctional officer under section 253I must, if practicable, be conducted by a correctional officer of the same sex as the person being searched or by a person of the same sex (being a non-correctional member of staff) under the direction of the correctional officer concerned.
- (5) A search of a child or of a person who has impaired intellectual functioning must be conducted in the presence of:
  - (a) an adult who accompanied the child or the person to the place of detention (or its immediate vicinity), or
  - (b) if there is no such adult—a search observation staff member.
- (6) Regulations may be made for or with respect to the manner in which correctional officers are to conduct searches under section 253I.

**253K Use of dogs**

- (1) A correctional officer is authorised to use a dog to conduct any search under section 253I.
- (2) A correctional officer using a dog to conduct such a search is to take all reasonable precautions to prevent the dog touching a person.
- (3) A correctional officer is required to keep a dog under control when the officer is using the dog to conduct such a search.

**253L Use of reasonable force**

In exercising a function under this Part, a correctional officer may use such force as is reasonably necessary to exercise the function.

**253M Safeguards**

- (1) A correctional officer who detains a person in the exercise of a power under section 253I must not detain the person any longer than is reasonably necessary for the purpose, and in any event for no longer than 4 hours.
- (2) A correctional officer must, before exercising a power to detain, search or arrest a person under section 253I, or as soon as is reasonably practicable after exercising the power, provide the person subject to the exercise of the power with the following:
  - (a) evidence that the correctional officer is a correctional officer (unless the correctional officer is in uniform),
  - (b) the name of the correctional officer,
  - (c) the reason for the exercise of the power,
  - (d) a warning that failure or refusal to comply with a request or direction of the correctional officer, in the exercise of the power, is an offence.
- (3) Subsection (2) extends to a direction given by a correctional officer to a person in the exercise of a power to stop, detain and search a vehicle.
- (4) A correctional officer is not required to comply with subsection (2) if the correctional officer believes on reasonable grounds that:
  - (a) the circumstances are of such urgency that complying with subsection (2) would render a search ineffective, or
  - (b) it is not reasonably possible to comply with subsection (2).
- (5) Subsections (2) and (3) do not apply in relation to the exercise of powers under section 253I (1).

**253N Failure to comply with search**

A person must not, without reasonable excuse:

- (a) fail or refuse to comply with a request made, or a direction given, by a correctional officer under this Part, or
- (b) fail or refuse to produce anything detected or seen on or with the person, or in a vehicle in which the person was present at the time the thing was detected or seen, in a search when requested to do so by a correctional officer, or
- (c) resist or impede a search of a person or vehicle under this Part.

Maximum penalty: 10 penalty units.

**253O Part does not derogate from other powers**

- (1) Nothing in this Part limits any powers, authorities, duties or functions that correctional officers or police officers may have apart from this Part.
- (2) In particular, the fact that a police officer or correctional officer conducts a search of a person under this Part does not prevent the police officer or correctional officer from exercising, whether during or after the search, any other powers of search or seizure that the police officer or correctional officer may have.
- (3) Nothing in this Part limits any power under this Act or any other law for a person to conduct a search of an inmate, a correctional officer, a non-correctional member of staff or any other person, or a vehicle.

**253P Admissibility of search evidence**

Evidence of a thing discovered during or as a result of a search carried out in accordance with this Part is not inadmissible merely because the thing is different in nature from a thing referred to in the reason given under section 253M (2) (c).

**253Q No personal liability for person conducting search under direction of correctional officer**

A search conducted by a person under and in accordance with the direction of a correctional officer as referred to in section 253J (4) does not, if the search would be lawful if conducted by a correctional officer, subject the person making the search personally to any action, liability, claim or demand.

**253R Time within which proceedings must be taken**

Proceedings for an offence under this Part that are taken by the Commissioner may be commenced at any time within 6 months from the time when the facts first come to the knowledge of the Commissioner.

**[15] Section 257 Disclosure of information**

Omit the maximum penalty from section 257 (1). Insert instead:

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

**[16] Section 257 (3) and (4)**

Insert after section 257 (2):

- (3) Without limiting the disclosures that may fall within subsection (1) (e), a person makes a disclosure with lawful excuse for the purposes of that paragraph if the disclosure is:
  - (a) authorised by the Commissioner, or
  - (b) in accordance with an official policy made by the Commissioner for the purposes of this section.
- (4) Subsection (3) applies to a disclosure made by a member of the Parole Authority or the Review Council, as if a reference to the Commissioner were a reference to the Chairperson of the Authority or the Chairperson of the Review Council (as applicable).

**[17] Section 257A**

Omit the section. Insert instead:

**257A Authority to disclose and exchange certain information**

- (1) The Commissioner may disclose information obtained by the Commissioner in connection with the exercise of his or her official functions under this or any other Act for any purpose prescribed by the regulations for the purposes of this subsection.
- (2) The Commissioner may enter into an arrangement (an *information sharing arrangement*) with the head of a relevant agency for the purpose of sharing or exchanging information that is held by Corrective Services NSW or the relevant agency.
- (3) Under an information sharing arrangement, each party to the arrangement is authorised:
  - (a) to request and receive prescribed information that is held by the other party to the arrangement, and
  - (b) to disclose prescribed information that is held by the party to the other party to the arrangement.
- (4) In this section:

*prescribed information* means information of a kind prescribed by the regulations for the purposes of subsection (3) (a) or (b).

*relevant agency* means:

  - (a) a law enforcement agency, or
  - (b) a government agency of a State or Territory that corresponds with Corrective Services NSW, or
  - (c) a person or body,

that is prescribed by the regulations as a relevant agency.
- (5) A regulation made under this section extends to information obtained before the commencement of the regulation unless the regulation otherwise provides.
- (6) The power to prescribe a purpose for the purposes of subsection (1) does not imply that the Commissioner may disclose information only for a purpose so prescribed.
- (7) The authority to disclose, request or receive information under this section applies despite the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.
- (8) The Minister is to consult with the Minister for Health before recommending the making of a regulation under subsection (1) that may result in the disclosure or use of health information (within the meaning of the *Health Records and Information Privacy Act 2002*).
- (9) A failure to comply with subsection (8) does not affect the validity of a regulation.

**[18] Schedule 5 Savings, transitional and other provisions**

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

**Part Provisions consequent on enactment of Crimes  
(Administration of Sentences) Amendment Act  
2016**

**Definition**

In this Part:

*the amending Act* means the *Crimes (Administration of Sentences) Amendment Act 2016*.

**References to “general manager”**

On and from the date on which the amending Act replaces references in this Act to “general manager” with references to “governor”, a reference in any other Act or instrument to the general manager of a correctional centre is taken to be a reference to the governor of a correctional centre.

**Time within which proceedings may be taken**

Section 270 of the *Summary Offences Act 1988*, as in force immediately before the repeal of Part 4A of that Act by the amending Act, continues to have effect in relation to any offence under Part 4A of that Act, as then in force, as if it had not been repealed.

**Disclosure of information**

- (1) Section 257 as amended by the amending Act extends to information obtained before the commencement of those amendments.
- (2) Section 257A as substituted by the amending Act extends to information obtained before the commencement of section 257A as so substituted.

## **Schedule 2 Amendment of other legislation**

### **2.1 Crimes (Administration of Sentences) Regulation 2014**

#### **[1] Whole Regulation**

Omit “general manager”, “general managers” and “general manager’s” wherever occurring.

Insert instead “governor”, “governors” and “governor’s”, respectively.

#### **[2] Clauses 95 and 247**

Omit the clauses.

#### **[3] Clause 319A**

Insert after clause 319:

##### **319A Search observation staff members**

For the purposes of the definition of *search observation staff member* in section 253A of the Act, the following persons are prescribed:

- (a) if available at the place of detention or its immediate vicinity where the relevant search is to be conducted—a welfare officer, psychologist, clerk or alcohol and other drug worker (being a person who is a non-correctional member of staff),
- (b) if a person referred to in paragraph (a) is not so available—any other non-correctional member of staff.

### **2.2 Summary Offences Act 1988 No 25**

#### **Part 4A Offences relating to places of detention**

Omit the Part.

### **2.3 Summary Offences Regulation 2015**

#### **Clause 14 Search observation staff members**

Omit the clause.

[Second reading speech made in—

Legislative Council on 21 September 2016

Legislative Assembly on 12 October 2016]