



New South Wales

Crimes (Administration of Sentences) Amendment Bill 2007

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Crimes (Administration of Sentences) Act 1999* (***the principal Act***) so as:
 - (i) to clarify the provisions with respect to the appointment and functions of compliance and monitoring officers, and
 - (ii) to enable the Commissioner to authorise persons who are not correctional officers to exercise specified correctional officer functions, and
 - (iii) to provide that an offender who is taken into custody while on release on parole (otherwise than following revocation of parole) does not become eligible for further parole until 12 months after he or she is taken into custody, and
 - (iv) to make further provision with respect to money that is held on behalf of offenders held in full-time imprisonment, and
 - (v) to make provision of a minor, consequential or ancillary nature, and
 - (vi) to make further provision of a savings or transitional nature, and

- (b) to amend the *Crimes (Administration of Sentences) Regulation 2001 (the principal Regulation)* so as:
- (i) to enable an exempt person (such as a Member of Parliament) or exempt body (such as the Ombudsman, the Judicial Commission or the Anti-Discrimination Board) to ask the Commissioner not to forward to them any mail from specified offenders, and
 - (ii) to enable an offender under a community service order to be tested for drugs and alcohol while in attendance to perform community service work, and
 - (iii) to make provision of a minor, consequential or ancillary nature, and
- (c) to make a consequential amendment to the *Crimes (Serious Sex Offenders) Act 2006*.

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 is a formal provision that gives effect to the amendment to the *Crimes (Serious Sex Offenders) Act 2006* set out in Schedule 3.

Clause 6 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 and 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**

Compliance and monitoring officers

Schedule 1 [10] substitutes section 235G of the principal Act. The proposed section differs from the existing section in that it extends the range of offenders with respect to whom a compliance and monitoring officer may exercise functions (proposed subsection (6)), extends the range of functions that a compliance and monitoring officer may exercise, but restricts their exercise to offenders who are of or above the age of 18 years (proposed subsection (2)) and expressly permits the use of reasonable force (proposed subsection (5)). **Schedule 1 [1]** inserts a definition of *compliance and monitoring officer* into section 3 (1).

Exercise of correctional officer functions by persons other than correctional officers

Schedule 1 [9] amends section 235 of the principal Act so as to enable the Commissioner to authorise a person who is not a correctional officer to exercise correctional officer functions. The amended section will provide that such a person is taken to be a correctional officer while exercising any such function, so giving the person the same immunities as a correctional officer and subjecting the person to the same accountabilities as a correctional officer.

Eligibility for parole of offenders returned to custody while on parole

An offender who is subject to imprisonment becomes eligible for parole on what is described as his or her “parole eligibility date”. That date is defined to be the date on which the offender first becomes eligible for release on parole (determined at the time the offender is sentenced) or, if the offender is returned to custody following revocation of parole, the date occurring 12 months after the date on which he or she is so returned. **Schedule 1 [2]** amends the definition of *parole eligibility date* in section 3 of the principal Act so as to ensure that the same 12-month waiting period applies if the offender is taken into custody otherwise than following revocation of parole (such as if the offender is imprisoned for a new offence).

Money held on behalf of offenders in full-time imprisonment

Schedule 1 [4] inserts a new section 76A into the principal Act. The proposed section requires money held on behalf of offenders subject to full-time imprisonment to be deposited into a bank or other authorised deposit-taking institution, allows it to be invested, and allows the proceeds of investment to be applied for the benefit of such offenders, and their families, in such manner as the Commissioner may determine.

Minor, consequential and ancillary amendments

Schedule 1 [3] amends sections 21, 41D, 52, 55, 190, 204 and 235A of the principal Act so as to replace references to “legal practitioner” with references to “Australian legal practitioner”. These amendments reflect changes in nomenclature brought in by the *Legal Profession Act 2004*.

Schedule 1 [5] and [6] amend sections 81 and 104 of the principal Act, dealing with the obligations of offenders under periodic detention orders and home detention orders, so as to make it clear that an offender must not only permit home visits by correctional officers and other members of staff of the Department of Corrective Services but must also permit them entry to the home.

Schedule 1 [7] replaces subsection (3) of section 141 of the principal Act with proposed subsections (3) and (3AA) so as to make it clear that the Parole Authority need only to specify a period during which an offender is to be released on parole (leaving the actual day to be determined administratively having regard to the need to ensure that arrangements are in place to enable the offender to make the transition from custody) rather than, as is presently the case, to fix the actual day of release. **Schedule 1 [8]** makes a consequential amendment to section 141 (3A).

Savings and transitional provisions

Schedule 1 [11] amends clause 1 of Schedule 5 to the principal Act so as to enable savings and transitional regulations to be made in connection with the enactment of the proposed Act.

Schedule 1 [12] inserts a new Part 12 into Schedule 5 to the principal Act. The proposed Part contains savings and transitional provisions with respect to the proposed section 76A (see Schedule 1 [4]) and the substituted section 235G (see Schedule 1 [10]).

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

Stop orders on forwarding of mail to exempt persons and exempt bodies

Schedule 2 [1] amends clause 110 of the principal Regulation so as to enable an exempt body or exempt person (that is, a body or person to whom an offender is ordinarily entitled to send, and from whom an offender is ordinarily entitled to receive, unopened mail) to ask the Commissioner not to forward mail from a particular offender (perhaps because previous mail from that offender has been abusive or threatening). Mail that is from any such offender that is addressed to a body or person from whom such a request has been made may be confiscated and dealt with as the Commissioner directs.

Drug and alcohol testing of offenders attending to perform community service work

Schedule 2 [2] inserts a new clause 205A into the principal Regulation. The proposed clause requires an offender under a community service order who is in attendance at a work site or attendance site to undergo testing for alcohol and drugs if required to do so by an authorised officer. These requirements parallel similar requirements that apply under clauses 146 and 148 to offenders who are in full-time or periodic detention.

Minor, consequential and ancillary amendments

Schedule 2 [3] amends clause 217 of the principal Regulation so as to bring it into line with the provisions to be amended by Schedule 1 [5] and [6] and Schedule 3.

Schedule 2 [4] substitutes clause 281 of the principal Regulation so as to update provisions that prescribe the order of ranking of correctional officers and of certain Departmental officers.

Schedule 2 [5] substitutes the definition of *legal practitioner* in the Dictionary to the principal Regulation so as to reflect changes in nomenclature brought in by the *Legal Profession Act 2004*. The amendment reflects the amendments to be made to the principal Act by Schedule 1 [3].

Schedule 3 Amendment of Crimes (Serious Sex Offenders) Act 2006

Schedule 3 substitutes section 11 (a) of the *Crimes (Serious Sex Offenders) Act 2006* so as to bring it into line with the provisions to be amended by Schedule 1 [5] and [6] and Schedule 2 [3].



New South Wales

Crimes (Administration of Sentences) Amendment Bill 2007

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New South Wales

Crimes (Administration of Sentences) Amendment Bill 2007

No. , 2007

A Bill for

An Act to amend the *Crimes (Administration of Sentences) Act 1999* and the regulations under that Act in relation to the management of correctional centres; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes (Administration of Sentences) Amendment Act 2007</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 Amendment of Crimes (Serious Sex Offenders) Act 2006 No 7	13
The <i>Crimes (Serious Sex Offenders) Act 2006</i> is amended as set out in Schedule 3.	14 15
6 Repeal of Act	16
(1) This Act is repealed on the day following the day on which this Act commences.	17 18
(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.	19 20

Schedule 1	Amendment of Crimes (Administration of Sentences) Act 1999	1
		2
	(Section 3)	3
[1]	Section 3 Interpretation	4
	Insert in alphabetical order in section 3 (1):	5
	<i>compliance and monitoring officer</i> means a member of staff of the Department who is appointed as a compliance and monitoring officer under section 235G.	6 7 8
[2]	Section 3 (1), definition of “parole eligibility date”	9
	Insert “while on release on parole or” after “custody” in paragraph (b) of the definition.	10 11
[3]	Sections 21 (4) and (5), 41D (5), (6) and (7) (b), 52 (2) (d) and (e), 55 (4), 190 (1) (a), 204 (a) and 235A (f)	12 13
	Omit “a legal practitioner” wherever occurring.	14
	Insert instead “an Australian legal practitioner”.	15
[4]	Section 76A	16
	Insert after section 76:	17
76A	Inmates’ money	18
(1)	Any money:	19
(a)	that is surrendered by an inmate on being taken into custody at a correctional centre, or	20 21
(b)	that is paid to an inmate pursuant to section 7, or	22
(c)	that is received by a correctional officer or other member of staff of the Department on an inmate’s behalf,	23 24
	is to be deposited in an authorised deposit-taking institution.	25
(2)	Until repaid, money so deposited may be invested by the Treasurer in any form of investment approved by the Treasurer.	26 27
(3)	Interest from any such investment may be applied for the benefit of inmates and their families in such manner as the Commissioner may determine.	28 29 30

[5] Section 81 Obligations of offender	1
Omit section 81 (d). Insert instead:	2
(d) to permit any correctional officer or other member of staff of the Department to visit the offender at the offender's residential address at any time and, for that purpose, to enter the premises at that address.	3 4 5 6
[6] Section 104 Obligations of offender	7
Omit section 104 (c). Insert instead:	8
(c) to permit any correctional officer or other member of staff of the Department to visit the offender at the offender's residential address at any time and, for that purpose, to enter the premises at that address.	9 10 11 12
[7] Section 141 Decision following review	13
Omit section 141 (3). Insert instead:	14
(3) If the Parole Authority decides that the offender should be released on parole, the Parole Authority must make an order directing the release of the offender on a day occurring during a period specified in accordance with subsection (3AA).	15 16 17 18
(3AA) The period to be specified in a parole order under this section is to be:	19
(a) if the order is made earlier than the offender's parole eligibility date, a period beginning no earlier than the offender's parole eligibility date and ending no later than 35 days after that date, and	20 21 22 23 24
(b) in any other case, a period beginning no earlier than the date on which the order is made and ending no later than 35 days after that date.	25 26 27
[8] Section 141 (3A)	28
Omit "a day on which to release a violent offender under subsection (3)".	29
Insert instead "when a violent offender should be released".	30
[9] Section 235 Functions of correctional officers	31
Insert after section 235 (2):	32
(3) The Commissioner may, by order in writing, authorise any person to exercise such functions of a correctional officer as are specified in the order, subject to such conditions as are so specified.	33 34 35 36

(4)	The functions so specified may include not only functions under this Act but also functions under any other Act or law.	1 2
(5)	In the exercise of any such function, a person so authorised is taken to be, for all purposes, a correctional officer.	3 4
[10] Section 235G		5
	Omit the section. Insert instead:	6
235G	Functions of Departmental compliance and monitoring officers	7
(1)	The Commissioner may appoint any member of staff of the Department (including any correctional officer or probation and parole officer) as a compliance and monitoring officer to exercise such of the functions referred to in subsections (2) and (3) as are specified in the instrument of his or her appointment or in a subsequent instrument executed by the Commissioner.	8 9 10 11 12 13
(2)	The functions exercisable by a compliance and monitoring officer may include any of the following:	14 15
(a)	functions associated with the conduct of an intervention program under Part 4 of Chapter 7 of the <i>Criminal Procedure Act 1986</i> ,	16 17 18
(b)	functions associated with the administration of an extended supervision order or interim supervision order under Part 2 of the <i>Crimes (Serious Sex Offenders) Act 2006</i> ,	19 20 21 22
(c)	functions of a correctional officer under Part 4A of the <i>Summary Offences Act 1988</i> in relation to offences relating to places of detention,	23 24 25
(d)	functions of a probation and parole officer, or of any other person within the Probation and Parole Service, under this or any other Act,	26 27 28
(e)	functions of a correctional officer under section 39 in relation to the arrest of inmates unlawfully absent from custody,	29 30 31
(f)	functions of a correctional officer under the regulations in relation to the testing of offenders (including offenders who are on release on parole) for the presence of alcohol or drugs,	32 33 34 35

(g) such other functions as are ancillary to the functions referred to in the foregoing paragraphs,	1 2
but only in relation to offenders who are outside a correctional centre and only in relation to offenders who are of or above the age of 18 years.	3 4 5
(3) The functions referred to in subsection (2) may be exercised in relation to an offender, in accordance with the legislative provisions under which they arise, wherever the offender may be.	6 7 8
(4) Subsection (3) is not to be construed as conferring on a compliance and monitoring officer any power to enter premises otherwise than with the consent of the occupier of those premises.	9 10 11
(5) Subject to subsection (4), a compliance and monitoring officer may use such force as is reasonably necessary in the exercise of his or her functions under this section.	12 13 14
(6) In this section, <i>offender</i> means:	15
(a) an inmate referred to in Part 2 who is absent from a correctional centre, or	16 17
(b) an offender referred to in Part 3, 4, 5 or 6, or	18
(c) an offender referred to in Part 8 of the <i>Crimes (Sentencing Procedure) Act 1999</i> , or	19 20
(d) an offender or accused person the subject of an intervention program under Part 4 of Chapter 7 of the <i>Criminal Procedure Act 1986</i> , or	21 22 23
(e) a sex offender the subject of an extended supervision order or interim supervision order under Part 2 of the <i>Crimes (Serious Sex Offenders) Act 2006</i> .	24 25 26
[11] Schedule 5 Savings, transitional and other provisions	27
Insert at the end of clause 1 (1):	28
<i>Crimes (Administration of Sentences) Amendment Act 2007</i>	29

[12] Schedule 5, Part 12	1
Insert after Part 11:	2
Part 12 Provisions consequent on enactment of Crimes (Administration of Sentences) Amendment Act 2007	3 4 5
96 Definition	6
In this Part:	7
<i>the 2007 amending Act</i> means the <i>Crimes (Administration of Sentences) Amendment Act 2007</i> .	8 9
97 Inmates' money	10
Section 76A, as inserted by the 2007 amending Act, extends to any money that, before the commencement of that section, had been surrendered, paid or received as referred to in subsection (1) of that section.	11 12 13 14
98 Compliance and monitoring officers	15
Any appointment as a compliance and monitoring officer that was in force under section 235G immediately before its substitution by the 2007 amending Act is taken to have been made under the new section 235G.	16 17 18 19

Schedule 2	Amendment of Crimes (Administration of Sentences) Regulation 2001	1
		2
	(Section 4)	3
[1] Clause 110	Certain letters and parcels privileged	4
	Insert after clause 110 (1):	5
	(1A) An exempt body or exempt person may, by written notice sent to the Commissioner, direct that letters or parcels from a specified inmate, or from inmates of a specified class, are not to be posted to that body or person.	6 7 8 9
	(1B) Subclause (1) does not apply to any letter or parcel from an inmate the subject of a notice under subclause (1A), and any such letter or parcel may instead be confiscated.	10 11 12
	(1C) A letter or parcel that has been confiscated under subclause (1B) may, together with its contents, be dealt with in accordance with the directions of the Commissioner.	13 14 15
[2] Clause 205A		16
	Insert after clause 205:	17
205A	Testing for alcohol and drugs	18
	(1) On forming a suspicion that an offender who is in attendance at a work site or attendance site has recently consumed or is under the influence of alcohol or any other intoxicating substance, an authorised testing officer may require the offender to undergo a breath test.	19 20 21 22 23
	(2) On forming a suspicion that an offender who is in attendance at a work site or attendance site:	24 25
	(a) has been administered (whether by himself or herself or otherwise) with a drug, or	26 27
	(b) is under the influence of a drug,	28
	an authorised testing officer may require the offender to supply a sample of urine for testing or analysis and give directions as to how the sample is to be supplied.	29 30 31
	(3) An offender must not refuse or fail to comply with a requirement under this clause.	32 33
	Maximum penalty: 5 penalty units.	34

(4)	In this clause, <i>authorised testing officer</i> means a person who is authorised by the Commissioner to exercise the functions of an authorised testing officer for the purposes of this clause.	1 2 3
[3]	Clause 217 Supervision conditions generally	4
	Omit clause 217 (2) (d). Insert instead:	5
	(d) to reside at an address approved by the officer,	6
	(d1) to permit the officer to visit the offender at the offender's residential address at any time and, for that purpose, to enter the premises at that address,	7 8 9
[4]	Clause 281	10
	Omit the clause. Insert instead:	11
281	Order of ranking of correctional and other officers	12
(1)	The order of ranking of correctional officers, in descending order, is as follows:	13 14
	Deputy Commissioner	15
	Assistant Commissioner	16
	Chief Superintendent	17
	General Manager	18
	Superintendent	19
	Manager of Security	20
	Deputy Superintendent	21
	Senior Assistant Superintendent	22
	Principal Correctional Officer	23
	Assistant Superintendent	24
	Chief Correctional Officer	25
	Senior Correctional Officer	26
	Correctional Officer	27
	Probationary Correctional Officer	28

- (2) The order of ranking of Departmental officers employed in the Corrective Services Industries Branch of the Department, in descending order, is as follows:
- Manager of Industries (Level 1) 4
 - Manager of Industries (Level 2) 5
 - Manager, Centre Services and Employment 6
 - Manager, Business Unit 7
 - Senior Overseer 8
 - Overseer 9

[5] Dictionary 10

Omit the definition of *legal practitioner*. Insert instead: 11

legal practitioner means an Australian legal practitioner within the meaning of the *Legal Profession Act 2004*. 12
13

**Schedule 3 Amendment of Crimes (Serious Sex
Offenders) Act 2006**

1
2

(Section 5)

3

Section 11 Conditions that may be imposed on supervision order

4

Omit section 11 (a). Insert instead:

5

- (a) to permit any corrective services officer to visit the
offender at the offender's residential address at any time
and, for that purpose, to enter the premises at that address,
or

6
7
8
9