

Passed by both Houses



New South Wales

Crimes (Administration of Sentences) Amendment Bill 2008

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Crimes (Administration of Sentences) Act 1999 No 93	2
4 Amendment of other Acts	2
5 Repeal of Act	2
Schedule 1 Amendment of Crimes (Administration of Sentences) Act 1999	3
Schedule 2 Amendment of other Acts	13

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2008

Clerk of the Parliaments



New South Wales

Crimes (Administration of Sentences) Amendment Bill 2008

Act No , 2008

An Act to amend the *Crimes (Administration of Sentences) Act 1999* and certain other Acts to make further provision for the establishment, control and management of correctional centres and other residential facilities for offenders, the detention of offenders and the administration of sentences.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes (Administration of Sentences) Amendment Act 2008*.

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.

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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

(Section 3)

[1] Section 3 Interpretation

Omit “or (c1)” from the definition of *convicted inmate* in section 3 (1).

Insert instead “, (c1), (d1) or (d2)”.

[2] Section 3 (1)

Insert in alphabetical order:

residential facility means any premises declared to be a residential facility by a proclamation in force under section 236L.

[3] Section 4 Application of Part

Insert after section 4 (1) (d1):

(d2) any person who is the subject of a warrant under section 170 (1) (a) of the *Defence Force Discipline Act 1982* of the Commonwealth by which an authorised officer under that Act has committed the person to a correctional centre pursuant to a punishment of imprisonment imposed under that Act, and

(d3) any person who is a detainee within the meaning of the *Migration Act 1958* of the Commonwealth and who is held in a correctional centre as referred to in paragraph (b) (ii) of the definition of *immigration detention* in section 5 of that Act, and

[4] Section 4 (3)

Omit “or (c1)”. Insert instead “, (c1), (d1) or (d2)”.

[5] Section 6 Work performed by inmates

Omit section 6 (2). Insert instead:

(2) The general manager may direct a convicted inmate, or such classes or groups of convicted inmates as the Commissioner may from time to time determine, to carry out community service work, or any work for the Department or a public or local authority:

(a) within the correctional centre in which the inmate is imprisoned, or

- (b) within the correctional complex in which the inmate is imprisoned but outside the correctional centre, or
- (c) outside the correctional complex in which the inmate is imprisoned.

[6] Section 75 Confiscation of property

Insert “destroyed or otherwise” after “to be” in section 75 (2).

[7] Section 76A Inmates’ money

Insert “(other than money that it is unlawful for the inmate to acquire or retain possession of while in custody)” after “behalf” in section 76A (1) (c).

[8] Section 79 Regulations

Insert “(including money)” after “property” in section 79 (h).

[9] Section 79 (h2) and (h3)

Omit section 79 (h2). Insert instead:

- (h2) the seizure, forfeiture and destruction or other disposal of any property (including money):
 - (i) brought into a correctional centre or correctional complex by any person in contravention of this Act, the regulations or any other law, or
 - (ii) found within, sent to or delivered to a correctional centre or correctional complex and that it is unlawful for an inmate to acquire or retain possession of under this Act, the regulations or any other law,
- (h3) the seizure, forfeiture and destruction or other disposal of any drug, or any thing reasonably suspected of being a drug:
 - (i) in the possession of an inmate, or
 - (ii) in the possession of any other person in a correctional centre or correctional complex, or
 - (iii) found within a correctional centre or correctional complex, or
 - (iv) sent to or delivered to a correctional centre or correctional complex,

[10] Section 110 Duration of community service order

Insert after section 110 (a):

- (b) until the expiry of the relevant maximum period, or

[11] Section 110 (2)

Insert at the end of section 110:

- (2) This section is subject to section 114.

[12] Section 114 Extension of period of community service order

Insert after section 114 (1):

- (2) Such an application may be made even if the relevant maximum period for the community service order has expired.

[13] Section 114 (4)

Insert after section 114 (3):

- (4) If an application to the Local Court for an extension of the relevant maximum period is made:
- (a) by the offender's assigned officer, or by the offender with the written consent of the offender's assigned officer, and
- (b) before the expiry of the relevant maximum period,
- the community service order is taken to remain in force, even if the relevant maximum period expires, until the application is determined by the Local Court.

[14] Section 115 Revocation of community service orders

Insert after section 115 (2A):

- (2B) For the purpose only of determining an application under this section, a community service order is taken to be in force even if the relevant maximum period has expired.

[15] Section 137A Consideration of parole in subsequent years

Omit "the anniversary of an offender's parole eligibility date" from section 137A (1).

Insert instead "an offender's annual review date".

[16] Section 137A (1A)

Insert after section 137A (1):

- (1A) For the purposes of this section, an *offender's annual review date* occurs on each anniversary of the offender's parole eligibility date.

[17] Section 137A (2)

Omit “the anniversary of the offender’s parole eligibility date”.

Insert instead “the offender’s annual review date”.

[18] Section 138 Release of offender on parole

Insert after section 138 (1AA) (a):

- (a1) if the order is made following an application by the offender referred to in section 137A, and is made before the offender’s annual review date (within the meaning of that section), a period beginning no earlier than the offender’s annual review date and ending no later than 35 days after that date, and

[19] Section 143A Consideration of parole in subsequent years

Omit “the anniversary of a serious offender’s parole eligibility date” from section 143A (1).

Insert instead “an offender’s annual review date”.

[20] Section 143A (1A)

Insert after section 143A (1):

- (1A) For the purposes of this section, an *offender’s annual review date* occurs on each anniversary of the offender’s parole eligibility date.

[21] Section 143A (2)

Omit “the anniversary of the offender’s parole eligibility date”.

Insert instead “the offender’s annual review date”.

[22] Section 151 Release of serious offender on parole

Insert after section 151 (1) (a):

- (a1) if the order is made following an application by the offender referred to in section 143A, and is made before the offender’s annual review date (within the meaning of that section), a period beginning no earlier than the offender’s annual review date and ending no later than 35 days after that date, and

[23] Section 193A Access to documents held by Parole Authority

Insert “, or a victim’s authorised agent,” after “serious offender” in section 193A (2).

[24] Section 193A (3) and (4)

Insert after section 193A (2):

- (3) In this section, *authorised agent* means a person who is authorised in writing by a victim and by the Commissioner to act as agent for that victim.
- (4) A victim may revoke an authorisation under this section at any time by notice in writing to the Commissioner.

[25] Section 197 Functions of Review Council

Omit section 197 (3).

[26] Section 197A

Insert after section 197:

197A Review Council constituted by Chairperson alone in certain circumstances

- (1) The regulations may require any of the Review Council's functions under Division 2 (Segregated and protective custody) of Part 2, in relation to a specified class of inmate, to be exercised by the Chairperson.
- (2) Accordingly, in such a case, the Review Council is taken to be constituted by the Chairperson alone.
- (3) Any functions of the Review Council under Division 2 of Part 2 that are not required by the regulations to be exercised by the Chairperson may be delegated by the Review Council to the Chairperson or a judicial member nominated by the Chairperson.

[27] Section 232 Commissioner

Omit "and periodic detention centres" from section 232 (1) (a).

Insert instead ", periodic detention centres and residential facilities".

[28] Section 236E Definitions

Insert in alphabetical order in section 236E (1):

steroid means anabolic and androgenic steroidal agents included in Schedule 4 of the Poisons List under the *Poisons and Therapeutic Goods Act 1966*.

[29] Section 236F Testing of staff for alcohol, prohibited drugs and steroids

Insert "or steroids" after "drugs" wherever occurring in section 236F (1) (b) and (3) (b).

[30] Section 236H Protection from liability

Insert “or steroid” after “drug” in section 236H (1).

[31] Section 236I Regulations

Insert “or steroids” after “drugs” wherever occurring in section 236I (e), (g) and (k).

[32] Part 11, Division 7

Insert after Division 6:

Division 7 Residential facilities

236L Residential facilities

- (1) The Governor may, by proclamation, declare any premises specified or described in the proclamation to be a residential facility for the purposes of this Act.
- (2) The Governor may, by the proclamation by which any premises are declared to be a residential facility or by a subsequent proclamation, give a name to the residential facility.
- (3) The Governor may, by proclamation, vary or revoke any proclamation under this section.

236M Accommodation of offenders in residential facilities

- (1) The Commissioner may approve the use of a residential facility for any of the following purposes:
 - (a) accommodating inmates (or an approved class of inmates) prior to release from custody,
 - (b) accommodating other persons who are the subject of non-custodial orders (referred to as *non-custodial residents*).
- (2) Part 2, and the regulations relating to that Part, apply to a residential facility in the same way as they apply to a correctional centre, subject to this section and any modifications prescribed by the regulations.
- (3) For the purposes of the application of Part 2 to a residential facility:
 - (a) a reference in that Part to an inmate includes an inmate residing in a residential facility, but does not include a non-custodial resident, and

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- (b) a reference in that Part to the general manager of a correctional centre is taken to be a reference to the manager of the residential facility, and
 - (c) the functions of a Visiting Magistrate under that Part with respect to a residential facility may be exercised by any Visiting Magistrate appointed under section 227.
- (4) The regulations may provide for the application to residential facilities of other provisions of this Act that apply in respect of correctional centres.
 - (5) In this section, a *non-custodial order* means an order under Division 3 of Part 2 of the *Crimes (Sentencing Procedure) Act 1999* or a parole order.

236N Managers of residential facilities

- (1) A manager of each residential facility is to be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002*.
- (2) The manager of a residential facility:
 - (a) has the care, direction, control and management of the residential facility, and
 - (b) has all other functions conferred or imposed on the manager by or under this or any other Act or law.
- (3) In the exercise of the functions referred to in subsection (2) (a) and (b), the manager is subject to the direction and control of the Commissioner.
- (4) The manager of a residential facility may delegate to any person any of the manager's functions, other than this power of delegation and other than any function delegated to the manager by the Commissioner.

236O Residential facility officers

- (1) The Commissioner may appoint any member of staff of the Department to supervise persons residing at a residential facility or to exercise other functions in relation to a residential facility (referred to as a *residential facility officer*).
- (2) The functions of residential facility 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 residential facility officer include the functions of a correctional officer, the residential facility officer has all the immunities of a correctional officer.
- (5) A residential facility officer may exercise a function of a correctional officer only in respect of the residential facility where the residential facility officer is employed.
- (6) Residential facility 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.
- (7) A residential facility officer may be appointed as a compliance and monitoring officer under section 235G in relation to any offenders (within the meaning of that section) who are residing in the residential facility.

[33] Section 252 Places where persons in custody may be kept during transfer

Insert at the end of the section:

- (2) If a person being transferred is under the age of 18 years, the person may also be accommodated in a detention centre (within the meaning of the *Children (Detention Centres) Act 1987*) if it is necessary or convenient to do so.
- (3) A person detained in a detention centre under this section is taken to be a detainee (within the meaning of the *Children (Detention Centres) Act 1987*), as if the person were a person on remand, for the period during which the person is detained in a detention centre under this section.

[34] Section 260 Evidentiary certificates

Insert “, or in the custody of the manager of a residential facility” after “periodic detention centre” in section 260 (a).

[35] Section 261 Address of warrant

Insert after section 261 (5):

- (6) This section applies in respect of a residential facility and a manager of a residential facility in the same way as it applies to a correctional centre and a general manager of a correctional centre.

[36] Schedule 1 Parole Authority

Omit “3 years” from clause 4.

Insert instead “a period (not exceeding 3 years) specified in the member’s instrument of appointment”.

[37] Schedule 1, clause 14

Omit “4” wherever occurring in clause 14 (1) and (2). Insert instead “2”.

[38] Schedule 5 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes (Administration of Sentences) Amendment Act 2008

[39] Schedule 5

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

**Part Provisions consequent on enactment of
Crimes (Administration of Sentences)
Amendment Act 2008**

Definition

In this Part, *amending Act* means the *Crimes (Administration of Sentences) Amendment Act 2008*.

Community service orders

An amendment made to Subdivision 1 or 3 of Division 1 of Part 5 of this Act by the amending Act extends to a community service order made before the commencement of the amendment but does not extend to an application for an extension of the relevant maximum period made before the commencement of the amendment.

Parole orders

An amendment made to Subdivision 2 or 3 of Division 2 of Part 6 of this Act by the amending Act applies only to an order made by the Parole Authority on or after the commencement of the amendment.

Term of office for appointed members of Parole Authority

An appointed member who was appointed before, and who held office immediately before, the commencement of the amendment made to clause 4 of Schedule 1 by the amending Act, is taken to have been appointed for a period of 3 years from the date of the member's original appointment (or most recent re-appointment, if applicable).

Delegation of Review Council functions

Any delegation made under section 197 (3) that was in force immediately before the repeal of that subsection by the amending Act, is taken, on that repeal, to be a delegation made under section 197A (3), as inserted by the amending Act.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Children (Detention Centres) Act 1987 No 57

[1] Section 9A Certain persons not to be detained in detention centres

Insert “or order” after “arrest warrant” in section 9A (2).

[2] Section 9A (2) (d)

Omit “his or her arrest”. Insert instead “a warrant issued”.

[3] Section 9A (2) (f) and (g)

Insert at the end of section 9A (2) (e):

, or

(f) a warrant issued under section 172A (1) (b), 180 (1) (b) or 181 (1) (a) of the *Crimes (Administration of Sentences) Act 1999*, or

(g) an order or warrant issued under section 38.

[4] Section 29 Application of Crimes (Administration of Sentences) Act 1999 to detainees

Insert at the end of the section:

- (2) If a detainee who is being detained as a result of the revocation or suspension of a parole order by the Children’s Court is transferred to a correctional centre, this section (subsection (1) (a) excluded) continues to apply in relation to the parole order as if the transferred detainee were still a detainee. Accordingly, the Children’s Court is to continue to exercise the functions of the Parole Authority under Division 4 of Part 7 of the *Crimes (Administration of Sentences) Act 1999* with respect to the detainee’s parole order.

[5] Section 38 Arrest of escapees etc

Insert after section 38 (6):

- (7) This section is subject to section 9A.

Note. Under section 9A, a person who is of or above the age of 18 years who is arrested under this section is not to be detained in a detention centre. Part 13 of the *Crimes (Administration of Sentences) Act 1999* provides that such a person may be detained in a correctional centre.

2.2 Summary Offences Act 1988 No 25

Section 27A Definitions

Omit “or periodic detention centre” from the definition of *place of detention*.

Insert instead “, periodic detention centre or residential facility”.