



New South Wales

# Crimes (Administration of Sentences) Amendment Bill 2024

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Crimes (Administration of Sentences) Act 1999* (the *principal Act*) to consolidate processes and procedures for the operation of correctional centres and to ensure the validity of regulations made under the principal Act.

## 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 a day or days to be appointed by proclamation.

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

**Schedule 1[1]** amends the definition of *community service work* to clarify that community service work must be approved by Ministerial order and published—

- (a) in the Gazette, and
- (b) on the website of Corrective Services NSW.

**Schedule 1[2] and [5]** remove redundant cross-references. The term *convicted inmate* is defined in the principal Act, section 3(1) for the principal Act.

**Schedule 1[3]** inserts definitions for the purposes of other amendments to the principal Act.

**Schedule 1[4]** inserts a definition of *correspondence* for the principal Act, Part 2.

**Schedule 1[6]** amends the principal Act, section 7 to make clear that the Commissioner of Corrective Services (the *Commissioner*) may determine the way an inmate is paid, including by setting conditions on payments.

**Schedule 1[8]** inserts a definition of *correctional centre offence* for the principal Act, Part 2, Division 6. **Schedule 1[7]** makes a consequential amendment to insert a signpost definition.

**Schedule 1[9]** amends the principal Act, section 54 to make clear that in certain proceedings before a Visiting Magistrate, the governor of a correctional centre may act as the informant.

**Schedule 1[10] and [11]** amend the principal Act, section 57 to clarify that the governor of the correctional centre or a Visiting Magistrate may order that an inmate be deprived of certain privileges for up to 6 months if satisfied that the inmate is guilty of a correctional centre offence arising out of—

- (a) a drug test that—
  - (i) shows the presence of a drug in the inmate's body or urine, and
  - (ii) indicates the drug was self-administered by the inmate or administered to the inmate by another person, while the inmate was an inmate, or
- (b) an inmate refusing or failing to provide, or enable to be taken, from the inmate a non-invasive sample when required to do so by the Commissioner.

**Schedule 1[12]** inserts proposed Division 7A into the principal Act, Part 2. The following provisions are Henry VIII clauses—

- (a) proposed section 71A, which defines *directions* for the proposed division,
- (b) proposed section 71B, which provides for general regulation-making powers in relation to the opening of inmates' correspondence,
- (c) proposed section 71C, which provides for regulation-making powers in relation to the opening of the correspondence of particular inmates,
- (d) proposed section 71D, which provides for regulation-making powers to require correspondence to be in English or another approved language and for the translation of inmates' correspondence,
- (e) proposed section 71E, which provides for regulation-making powers relating to the opening of particular correspondence in the presence of the governor of a correctional centre or another nominated officer.

**Schedule 1[13]** amends the principal Act, section 72 to make clear that if the warrant for the commitment of an inmate does not identify the correctional centre the inmate must be conveyed to, the Commissioner may direct the inmate to be committed and conveyed to any correctional centre.

**Schedule 1[14]–[36], [38] and [39]** amend the principal Act, section 79 to clarify regulation-making powers in relation to the following matters—

- (a) the good order, security and discipline of a correctional centre (Schedule 1[14]),
- (b) the procedure to be followed when admitting an inmate into a correctional centre (Schedule 1[15]),
- (c) the preparation and implementation of plans of management for offenders (Schedule 1[16]),
- (d) the classification and separation of inmates by the Commissioner (Schedule 1[17]),
- (e) the designation of inmates by the Commissioner (Schedule 1[18]),
- (f) the physical, psychological and spiritual welfare of inmates (Schedule 1[19]),
- (g) the kind of work that a convicted inmate may not be directed to carry out (Schedule 1[20]),

- (h) the circumstances in which an inmate may lawfully acquire or retain possession of property (Schedule 1[21]),
- (i) the forfeiture and disposal of certain property kept by an inmate (Schedule 1[22]),
- (j) the seizure, forfeiture, destruction or other disposal of certain property (Schedule 1[23]),
- (k) the duration and frequency of visits to inmates (Schedule 1[24]),
- (l) the classes of persons permitted to visit a correctional centre or an inmate and record keeping in relation to visits (Schedule 1[25]),
- (m) the conditions to be observed by visitors to inmates, including providing personal information about the visitor (Schedule 1[26]),
- (n) the procedure relating to visits, including behaviour by visitors (Schedule 1[27]),
- (o) the requirements relating to the correspondence of certain classes of inmates (Schedule 1[27]),
- (p) visits to inmates, in relation to communications being conducted in a particular language or within the hearing of particular persons (Schedule 1[28]),
- (q) approving and refusing to approve persons as visitors to certain classes of inmates (Schedule 1[28]),
- (r) a permit scheme for visits to inmates to provide certain services (Schedule 1[29]),
- (s) the sending and receiving of correspondence by inmates (Schedule 1[30]),
- (t) the arrangements for the inspection or examination of documents taken into a correctional centre by an inmate's legal practitioner (Schedule 1[31]),
- (u) the procedures and facilities to enable inmates to make requests (Schedule 1[32]),
- (v) the punishment or treatment of inmates (Schedule 1[33]),
- (w) Official Visitors (Schedule 1[33]),
- (x) conducting body searches (Schedule 1[34]),
- (y) the use of firearms by correctional officers (Schedule 1[35]),
- (z) the testing of inmates for drugs or alcohol (Schedule 1[36]),
- (aa) the accreditation and authorisation of ministers of religion, and other spiritual advisors for correctional centres (Schedule 1[38]),
- (ab) the role, responsibilities and entitlements of ministers of religion including accredited chaplains and other spiritual advisors (Schedule 1[38]),
- (ac) the approval of the form of applications and documents (Schedule 1[39]),
- (ad) the records the Parole Authority must keep in relation to proceedings of the Parole Authority (Schedule 1[39]),
- (ae) the records the governor of a correctional centre may be required to keep (Schedule 1[39]),
- (af) the approval of biometric identification systems used for the purposes of identifying inmates, staff and visitors (Schedule 1[39]).

**Schedule 1[37]** updates an incorrect cross-reference.

**Schedule 1[40]** amends the principal Act, section 79 for the following purposes—

- (a) to provide for regulations to be made to authorise certain matters or things to be determined, applied, regulated or otherwise dealt with, from time to time, by a person or body specified in the regulations,
- (b) to permit the Commissioner, the governor of a correctional centre or a principal security officer to appoint, approve or authorise a person or class of persons to carry out functions under the principal Act,

- (c) to provide for the making of regulations in relation to the costs of services provided to inmates and the processing of certain confiscated material.

**Schedule 1[41] and [42]** amend the principal Act, section 82 to allow the regulations to provide for the following matters—

- (a) the administration of intensive correction orders, including conditions of orders that may be approved or directed by a community corrections officer or another specified person,
- (b) conditions of intensive correction orders relating to community service work, rehabilitation and treatment.

**Schedule 1[43]** amends the principal Act, section 82 to allow the obligations of an offender under an intensive correction order to be directed by a community corrections officer, or another person specified by the regulations, in the way prescribed by the regulations.

**Schedule 1[44]** amends the principal Act, section 82 to allow the regulations to provide that a community corrections officer may waive or vary an obligation of an offender under an intensive correction order specified in the regulations.

**Schedule 1[45]** amends the principal Act, section 106F to include, as conditions that may be imposed on an offender in a compulsory drug treatment personal plan, conditions that are the subject of the direction, instruction and approval of the Director of the Compulsory Drug Treatment Correctional Centre.

**Schedule 1[46]** applies the principal Act, Part 6 to offenders serving a sentence by compulsory drug treatment detention, subject to modifications of the part by regulations made under that part.

**Schedule 1[47]** amends the principal Act, section 106ZA to update the regulation-making powers in relation to the good order, security and discipline of the Compulsory Drug Treatment Correctional Centre. The amendment corresponds to the amendment of section 79 in Schedule 1[14].

**Schedule 1[48] and [49]** clarify a regulation-making power in relation to medical examinations in the Compulsory Drug Treatment Correctional Centre.

**Schedule 1[50]** amends the principal Act, section 106ZA to make clear that the regulations may provide for the Commissioner to determine further details in relation to drug testing of offenders in the Compulsory Drug Treatment Correctional Centre.

**Schedule 1[51]** inserts proposed section 106ZB into the principal Act in relation to evidence of drug testing of offenders serving sentences by compulsory drug treatment detention.

**Schedule 1[52] and [53]** amend the principal Act, section 107B to allow the regulations to provide for the following matters—

- (a) the administration of community correction orders, including conditions of orders that may be approved or directed by a community corrections officer or another specified person,
- (b) conditions of community correction orders relating to community service work, rehabilitation and treatment.

**Schedule 1[54]** amends the principal Act, section 107B to allow the regulations to provide that a community corrections officer may waive or vary an obligation of an offender under a community correction order specified in the regulations.

**Schedule 1[55]** amends the principal Act, section 108B to allow the regulations to provide for the administration of conditional release orders, including conditions of orders that may be approved or directed by a community corrections officer or another specified person.

**Schedule 1[56]** amends the principal Act, section 108B to allow the regulations to provide that a community corrections officer may waive or vary an obligation of an offender under a conditional release order specified in the regulations.

**Schedule 1[57] and [58]** amend the principal Act, section 124C to include regulation-making powers in relation to the matters to be included in, and the preparation and giving of, assessment reports as to the suitability of offenders for home detention for the purposes of re-integration into the community. **Schedule 1[60]** makes a consequential amendment to existing regulation-making powers.

**Schedule 1[59]** amends the principal Act, section 124H to allow the regulations to provide for the standard conditions of re-integration home detention orders to be subject to matters approved, or directions given, by a person specified by the regulations.

**Schedule 1[61]** amends the principal Act, section 128B to require the Commissioner to comply with prescribed administrative requirements in relation to obligations imposed on the supervision of an offender under a re-integration home detention order. **Schedule 1[62]** makes a consequential amendment to a cross-reference.

**Schedule 1[63]** amends the principal Act, section 128C to clarify that, in accordance with the regulations, the Parole Authority may extend the period of supervision or impose a further period of supervision on a serious offender while a parole order is in force.

**Schedule 1[64]** amends the principal Act, section 135 to require a report prepared by a community corrections officer in relation to the release of an offender to address matters required by the Parole Authority as specified in the regulations.

**Schedule 1[65]** amends the principal Act, section 197 to include providing reports to the Commissioner in relation to serious offenders as a function of the Serious Offenders Review Council.

**Schedule 1[66]** amends the principal Act, section 197 to include, as a function of the Serious Offenders Review Council, providing advice and reports and making recommendations in relation to other matters specified by the Commissioner.

**Schedule 1[67]** amends the principal Act, section 197 to include other functions prescribed by the regulations as a function of the Serious Offenders Review Council.

**Schedule 1[68]** inserts proposed section 233A into the principal Act to—

- (a) permit the governor of a correctional centre to give directions, not inconsistent with Commissioner's instructions, with respect to the administration of the principal Act in relation to the correctional centre, and
- (b) require correctional officers, while employed within a correctional centre, to comply with directions given by the governor of the centre, and
- (c) require departmental officers, while on the premises of a correctional centre, to comply with directions given by the governor of the centre.

**Schedule 1[69] and [70]** clarify that regulations may be made for the ranking of departmental officers and the awarding of medals to departmental officers.

**Schedule 1[71]** inserts proposed section 235B into the principal Act to—

- (a) permit the Commissioner to issue instructions to the staff of Corrective Services NSW in relation to the management and control of Corrective Services NSW, and
- (b) require correctional officers and departmental officers to comply with the Commissioner's instructions, and
- (c) permit the Commissioner to amend or revoke instructions.

**Schedule 1[72]** amends the principal Act, section 235E to clarify the following matters in relation to community corrections field officers—

- (a) the Commissioner may appoint a person who, in the Commissioner's opinion, is suitably qualified and of suitable character to exercise the functions of a community corrections field officer,

- (b) a person appointed under the proposed section, except for a Public Service employee, is entitled to be paid the remuneration, including travelling and subsistence allowances, determined by the Commissioner.

**Schedule 1[73]** inserts proposed section 236AA into the principal Act to make clear that, for the purposes of taking action under certain provisions of the *Government Sector Employment Act 2013*, correctional officers and departmental officers are presumed to be aware of obligations under the principal Act and the regulations.

**Schedule 1[74]** amends the principal Act, section 236B to provide for—

- (a) regulations to be made in relation to—
  - (i) the way medical records are to be kept at a correctional centre, and
  - (ii) the persons who may have access to medical records at a correctional centre, and
- (b) the Chief Executive, Justice Health and Forensic Mental Health Network to make guidelines in relation to the matters specified in paragraph (a) and for regulations to provide for the effect of the guidelines, including exceptions to the guidelines.

**Schedule 1[75]** amends the principal Act, section 236I to make clear that, in relation to the testing of correctional staff for alcohol and prohibited drugs, the regulations may provide for the approval by the Commissioner of analytical laboratories.

**Schedule 1[76]** clarifies that regulations made under the principal Act, section 236I(h), providing for the procedure for the handling and analysis of samples of blood or non-invasive samples, may provide for analysis to be carried out and a report to be provided in accordance with procedures directed by the Commissioner.

**Schedule 1[78]** inserts a new definition of *pre-existing relationship as a couple* into the principal Act, section 236P.

**Schedule 1[80]–[82]** amend the principal Act, section 236Q to establish the following as misconduct offences—

- (a) a correctional employee is guilty of an offence if the correctional employee engages in sexual conduct or an intimate relationship with an inmate,
- (b) a correctional employee who is in a pre-existing relationship as a couple with an inmate is guilty of an offence if the correctional employee—
  - (i) engages in sexual conduct with the inmate, or
  - (ii) continues to engage in an intimate relationship with the inmate and the relationship—
    - (A) causes a risk or potential risk to the safety or security of a correctional centre or correctional complex or to good order and discipline within a correctional centre or correctional complex, or
    - (B) compromises the proper administration of a sentence,
- (c) a correctional employee, other than an employee referred to in section 236Q(2), is guilty of an offence if—
  - (i) the correctional employee and another person engage—
    - (A) in sexual conduct, or
    - (B) an intimate relationship, and
  - (ii) the other person is subject to a community-based order, and
  - (iii) the conduct or relationship compromises the proper administration of a community-based order.

Proposed section 236Q(1C) makes clear that it is not relevant for the purposes of proposed section 236Q(1B) whether or not the correctional employee is in a pre-existing relationship as a couple with the other person.

Proposed section 236Q(2) makes clear that a correctional employee does not commit an offence under section 236Q if the employee did not know, while the employee engaged in sexual conduct or an intimate relationship with a person subject to a community-based order, that the other person was subject to the order.

**Schedule 1[77] and [79]** make consequential amendments to the definitions of *intimate relationship* and *sexual conduct* in the principal Act, section 236P.

**Schedule 1[83]** amends the principal Act, section 267 to clarify that in determining an application for approval to conduct certain research, the Commissioner may have regard to recommendations made by an ethics committee established by the Commissioner in accordance with, and having the functions prescribed by, the regulations.

**Schedule 1[84]** amends the principal Act, section 283 to make clear that regulations may provide for the identification of persons who are victims or interested persons for the purposes of the principal Act, the *Crimes (High Risk Offenders) Act 2006* or the *Terrorism (High Risk Offenders) Act 2017*, including the provision, by a person claiming to be a victim or a member of the family of a victim, of—

- (a) evidence of the person's identity, and
- (b) the circumstances by which the person claims to be a victim, including as required by the Minister.

**Schedule 1[85]** inserts a transitional provision consequential on the amendment made by Schedule 1[13].

## **Schedule 2      Amendment of other Acts**

**Schedule 2.1** amends the *Law Enforcement Conduct Commission Act 2016* to substitute a note that cross-references the principal Act in relation to the way a prisoner may send a letter of complaint.

**Schedule 2.2** amends the *Police Act 1990* to substitute a note that cross-references the principal Act in relation to the way a prisoner may send a letter of complaint.

**Schedule 2.3** amends the *Terrorism (Police Powers) Act 2002* to omit a reference to repealed legislation.