

2005

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

**CRIMES (SENTENCE ADMINISTRATION) BILL 2005
GOVERNMENT AMENDMENTS
EXPLANATORY STATEMENT**

**Circulated by the authority of
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Crimes (Sentence Administration) Bill 2005

Government Amendments — Explanatory Statement

Outline

The Crimes (Sentence Administration) Bill 2005 consolidates existing sentencing laws set out in a number of different statutes. The Bill also sets out the administration of the new sentencing options provided by the Crimes (Sentencing) Bill 2005.

The Bill creates a standard model for administering each sentencing option. The Bill sets out the obligations upon offenders for each type of sentence: full time detention; periodic detention; and good behaviour orders. Apart from full-time imprisonment, the Bill also sets out the consequences for any offender failing to meet their obligations. The Bill includes simplified procedures for dealing with breaches of good behaviour orders, periodic detention, parole and release on licence.

The Bill requires the Sentence Administration Board to supervise critical aspects of periodic detention, parole and release on licence, such as breaches and amendment of conditions. Consistent with these changes, the Bill includes modern provisions for the Board's proceedings and inquiries.

The Government amendments address matters raised by the Sentence Administration Board and the Supreme Court, having considered the detail of the Bill.

Government Amendments — Crimes (Sentence Administration) Bill 2005

Clauses

1: Amendment to clause 17(3)

Page 10, line 17.

This amendment addresses a mistake identified by the Standing Committee on Legal Affairs performing the function of a Scrutiny of Bills Committee in the Committee's report number 14 of 15 August 2005. The amendment corrects a mistaken reference in the examples to 17(3)(b). The examples should be in fact a reference to clause 17(3)(a).

2: Amendment to clause 43(1)(c)

Substitution

Page 28, line 15.

The Bill currently places a condition upon offenders to inform the corrections authority about changes in contact details after the details have changed. The provision should have been drafted to oblige the offender to seek permission for the contact details to change prior to any change, or immediately after any change that is outside of the offender's control.

Consistent with current practice, the amendment ensures the corrections authority approves any contact details of an offender on periodic detention.

Contact details are defined by the bill as: the offender's home address, phone number, work address, work phone number, and mobile phone number.

3: Amendment to clause 43

Proposed new clauses 43(1A) and 43(1B)

Page 29, line 4

Consistent with the amendment at clause 43(1)(c), this amendment ensures the corrections authority approves any contact details of an offender on periodic detention.

Clause 43(1A) authorises the chief executive to approve, or disapprove, any changes in an offender's contact details. The chief executive must notify the offender of the decision.

Clause 43(1B) requires an offender to oblige the offender to seek permission for their contact details to change, prior to any change, or immediately after any change that is outside of the offender's control.

4: Amendment to clause 66

Proposed new clause 66(3A)

Page 45, line 12.

Because periodic detention occurs on a weekly basis it is in the interests of offenders and the corrections system that any alleged breach of periodic detention should be addressed as soon as practicable. New clause 66(3A) ensures that breaches for periodic detention should be scheduled as a priority by the Sentence Administration Board.

5: Proposed new clause 68A

Page 46, line 28.

New clause 68A requires the Sentence Administration Board to cancel an offender's periodic detention if the Board determined that the offender has failed to perform periodic detention twice, or more than twice.

Failure to perform periodic detention is set out in clause 58 of the Bill. Failure to perform periodic detention is: not reporting for periodic detention; reporting more than four hours late; reporting less than four hours late without approval; failing to comply with reporting requirements; and testing positive to alcohol and drugs when reporting for periodic detention.

6: Amendment to clause 101(2) and (3)

Page 69, line 7.

The amendment to clause 101 removes any distinction between circumstances that require a corrections officer to report a breach and circumstances that give a corrections officer discretion to report a breach.

The amendment requires corrections officers to report all alleged breaches of good behaviour orders.

7: Amendment to clause 105

Page 71, line 1.

Clause 105 currently only refers to the Magistrates Court. The amendment to clause 105 contemplates both the Magistrates Court and the Supreme Court. The effect of the amendment is to enable the Supreme Court to issue a summons for any alleged breach of good behaviour orders if the Supreme Court imposed the good behaviour order.

8: Proposed new clause 120(7)

Page 85, line 8.

Clause 120(3) enables offenders to apply for special parole, prior to the expiry of their non-parole period if special or exceptional circumstances apply, such as a terminal illness etc. To ensure the provision is not abused, the inclusion of new clause 120(7)

enables the Executive to make regulations to further qualify eligibility to apply for special parole.

9: Amendment to clause 136(1)(c)

Page 97, line 24.

The Bill currently requires offenders to report changes to their contact details after the details have changed. The provision should have been drafted to oblige the offender to seek permission for their contact details to change prior to any change, or immediately after any change that is outside of the offender's control.

The amendment ensures the corrections authority approves any contact details of an offender on parole.

Contact details are defined by the bill as: the offender's home address, phone number, work address, work phone number, and mobile phone number.

10: Proposed new clause 136(1A) and (1B)

Page 98, line 9.

Consistent with the amendment at clause 136(1)(c), this amendment ensures the corrections authority approves any contact details of an offender on parole.

Clause 136(1A) authorises the chief executive to approve, or disapprove, any changes in an offender's contact details. The chief executive must notify the offender of the decision.

Clause 136(1B) requires an offender to oblige the offender to seek permission for their contact details to change prior to any change, or immediately after any change that is outside of the offender's control.

11: Amendment to clause 142(2) and (3)

Page 101, line 11.

The amendment to clause 142 removes any distinction between circumstances that require a corrections officer to report a breach and circumstances that give a corrections officer discretion to report a breach.

The amendment requires corrections officers to report all alleged breaches of parole orders.

12: Proposed new clause 155(1)(ab)

Page 108, line 18.

Clause 152 of the Bill enables the Sentence Administration Board to review an offender's parole without any allegation of a breach of parole. Clause 155 of the Bill enables the Board to take certain actions if the Board believes it is necessary, having reviewed an offender's parole under clause 152. In some circumstances the Board may have to conduct a hearing if the action the Board wishes to take warrants a hearing.

The amendment to clause 155 clarifies that the Board may have a parolee before them to only counsel, or warn, a parolee about complying with the obligations of parole, without a statutory obligation to conduct a hearing.

13: Amendment to clause 160(2)

Page 112, line 14.

This amendment to clause 160(2) corrects an inaccurate reference to ‘offender’s release date’. The correct reference is an ‘offender’s parole release date’, being the specific date the offender was released on parole.

14: Amendment to clause 177(2)(a)

Page 126, line 14.

The amendments to clause 177 clarify the requirement for Board member’s to attend meetings relevant to their duties.

The intention of the amendment to 177(2)(a) is to ensure that the requirement to attend non-supervisory meetings of the Board is not regarded as a requirement for all Board members to attend all meetings of the Board’s divisions.

Board members are not required to attend meetings of divisions of the Board if the Board member is not assigned to that division.

In combination with the new clause 177(2)(ab) — discussed below — the amendment ensures that Board members are required to attend non-supervisory meetings of the Board and supervisory meetings of the division if the Board member is assigned to a division. If a division is meeting, and a Board member is not part of the division, the Board member is not required to attend.

15: Proposed new clause 177(2)(ab)

Page 126, line 15.

The intention of the new clause is to clarify that Board members are required to attend meetings of divisions of the Board if the Board member is assigned to that division.

In combination with the amendment to clause 177(2)(a) — discussed above — the new clause ensures that Board members are required to attend non-supervisory meetings of the Board and supervisory meetings of the division if the Board member is assigned to a division. If a division is meeting, and a Board member is not part of the division, the Board member is not required to attend.

16: Amendment to clause 179

Page 128, line 2.

Chapter 8 of the Bill creates two streams of functions for the Board: supervisory functions and advisory or non-supervisory functions. If the Board is engaging in a supervisory function the Board must abide by the procedures set out in the Bill to conduct inquiries and hearings etc. To enable any other functions assigned to the

Board to be treated as a supervisory function, the amendment enables the Executive to prescribe a function to be supervisory by way of a regulation.

17: Amendment to Clause 209(3)(a)

Page 143, line 12.

The current *Rehabilitation of Offenders (Interim) Act 2001* authorises the Sentence Administration Board to remand a parolee during an adjournment of a hearing for up to 30 days without reference to a court. This lengthy period of remand without judicial scrutiny confronts section 18(6) of the *Human Rights Act 2004*, which requires people the right to judicial scrutiny if arrested or detained.

The Crimes (Sentence Administration) Bill 2005 reduced this time to four days on the grounds that administrative detention longer than two sets of two days should require automatic judicial scrutiny. On advice from the Sentence Administration Board the Government is prepared to amend this time to a maximum of 14 days, being two sets of seven days, on the basis that the Board meets once per week and that the adjournments and remand time would be aligned.

The amendment does not oust, or hinder, a parolee who is remanded from seeking a review of their detention under the terms of the *Bail Act 1992* at any time.

18: Amendment to Clause 210(1)

Page 144, line 2.

The Bill currently requires the judicial officer of the Sentence Administration Board to ensure a sound or audiovisual record of hearings is made. The amendment changes this responsibility to the chief executive of corrections.

19: Amendment to clause 300(1)(c)

Page 215, line 5.

The Bill currently requires offenders to report changes to their contact details after the details have changed. The provision should have been drafted to oblige the offender to seek permission for their contact details to change prior to any change, or immediately after any change that is outside of the offender's control.

The amendment ensures the corrections authority approves any contact details of an offender on release on licence.

Contact details are defined by the bill as: the offender's home address, phone number, work address, work phone number, and mobile phone number.

20: Proposed new clause 300(1A) and (1B)

Page 215, line 17.

Consistent with the amendment at clause 300(1)(c), this amendment ensures the corrections authority approves any contact details of an offender on release on licence.

Clause 300(1A) authorises the chief executive to approve, or disapprove, any changes in an offender's contact details. The chief executive must notify the offender of the decision.

Clause 300(1B) requires an offender to oblige the offender to seek permission for their contact details to change prior to any change, or immediately after any change that is outside of the offender's control.