

**2007**

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

**CORRECTIONS MANAGEMENT BILL 2006  
GOVERNMENT AMENDMENTS  
SUPPLEMENTARY EXPLANATORY STATEMENT**

**Circulated by the authority of  
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## Corrections Management Bill 2006

### Government Amendments — Explanatory Statement

#### Outline

The Corrections Management Bill 2006 (the Bill) provides the law that will govern the treatment and management of prisoners and other detainees in the Australian Capital Territory.

The Bill is informed by human rights principles and jurisprudence as it stands at the time of the Bill's introduction to the Assembly. Powers and decisions contemplated by the Bill are also crafted to reflect contemporary administrative law principles, which in many cases are also an expression of human rights jurisprudence.

It is the government's intention that this Bill would replace the *Remand Centres Act 1976*. The new Act would govern the new prison anticipated for the ACT, the Alexander Maconochie Centre (AMC), as well as any present and future corrections facilities.

A Government amendment to clause 21(1) will empower the Chief Executive of ACT Health to appoint the doctor contemplated by clause 21. The amendment aims to emphasise the doctor's role as a therapeutic practitioner. The amendment removes any doubt about the doctor's independence in relation to their statutory duties.

The remaining amendments enables the transitional provisions in chapter 17 of the *Crimes (Sentence Administration) Act 2005*, known as the *interim custody period* to continue until the foreshadowed Corrections Management Act commences. The amendments also retain the chapter for a further two years to assist interpretation, or clarification, of what law applied during the *interim custody period*.

The Government amendments also correct clauses that were mistakenly missing words.

## Government Amendments — Corrections Management Bill 2007

### Clauses

#### 1: Amendment to clause 21(1)

##### Page 15, line 2

This amendment enables the Chief Executive responsible for the *Public Health Act 1997* to appoint a doctor for the purposes of clause 21.

The statutory functions of the doctor in clause 21 are explained in the Explanatory Statement to the Bill on pages 13 and 14.

International instruments setting out the role of prison administrators and health professionals in the health care of detainees dictate two clear principles:

1. Those accountable for administering prisons are responsible for ensuring that detainees receive health care equivalent to health care available to the community as a whole;
2. Doctors and other people providing therapeutic services cannot be involved in any custodial matters that are not directly therapeutic. [*Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN General Assembly resolution 37/194 of 18 December 1982.]

Decisions that involve a custodial matter cannot be made by a doctor. Conversely, those responsible for custody must make arrangements that ensure detainees receive health care equivalent to that available in the community. The Corrections Management Bill 2006 is intended to minimise interference with therapeutic decisions: it is intended to enable doctors, nurses and other health professionals to act as they normally would in any other setting.

To further emphasise this intention and to leave no doubt as to the doctor's independence, the amendment shifts the responsibility of appointing a therapeutic doctor from the Chief Executive of the Department of Justice and Community Safety to the Chief Executive of ACT Health.

## **2: Amendment to clause 506(4)**

### **Page 174, line 16.**

Chapter 17 of the *Crimes (Sentence Administration) Act 2005* provides transitional arrangements to enable existing custodial laws to apply until the Corrections Management Act commences. The *Crimes (Sentencing) Act 2005*, the *Crimes (Sentence Administration) Act 2005* and the Corrections Management Bill 2006 have been drafted using common terms, methods and connections. The three are designed to work together and make sense of a sentence from judgement to the completion of a prison term.

To ensure the ACT's custodial laws continue to operate in harmony with the new Sentencing Acts until the Corrections Management Bill 2006 is enacted, chapter 17 provides transitional methods and powers to resolve any legal conflicts should they arise. This is labelled as the *interim custody period*.

The transitional provisions are linked to the commencement of this Bill.

Clause 506 stipulates that it is the Corrections Management Bill that is referred to in section 603 of the transitional provisions in the *Crimes (Sentence Administration) Act 2005*.

The Government amendment extends the existence of this transitional provision to two years.

This will assist in any future interpretation or clarification of the law that applied during this period.

## **3: Amendment to clause 507(4)**

### **Page 175, line 1**

Clause 507(4) currently recites that section 88 of the *Legislation Act 2001* applies. Section 88 ensures that any transitional laws that have been made and are later repealed, can still be used in circumstances relevant to the transitional laws.

Clause 507 provides for transitional regulations and expires after two years. After that time any further transitional amendments would need to be legislations. Consequently, 507(4) is redundant and this amendment would omit it.

## **4: Schedule 1**

### **Amendment 1.17**

### **Proposed new section 75(3)**

### **Page 184, line 22**

Clause 1.17 provides a means for the Sentence Administration Board to grant an extended period of leave, or refer a matter back to the sentencing court, if

a periodic detainee cannot serve periodic detention due to exceptional circumstances or serious health reasons.

The amendment corrects the example in the clause. The example should refer to table 79 in the *Crimes (Sentencing) Act 2005*.

## **5: Schedule 1**

### **Amendment 1.18**

#### **Proposed new section 82A(2)**

##### **Page 185, line 13**

Clauses 1.18 is intended to enable a sentencing court to cancel periodic detention or re-sentence an offender, following a referral back to the sentencing court by the Sentence Administration Board.

The amendment completes the wording of new 82A(2) as an incomplete version was inadvertently cast in the Bill.

## **6: Schedule 1**

### **Proposed new amendment 1.18A**

##### **Page 185, line 21**

Schedule 1, part 1.3 of the Bill amends the *Crimes (Sentence Administration) Act 2005*.

New 1.18A to Schedule 1 qualifies the definition of *interim custody period* in section 603(1) of the *Crimes (Sentence Administration) Act 2005*. The amendment means that the interim custody period lasts until the commencement of chapter 3 of the foreshadowed Corrections Management Act, rather than the Act as a whole. This will allow certain parts of the foreshadowed Act to be commenced ahead of other parts. The Government envisages, for example, that schedule 1 itself will commence ahead of other parts of the foreshadowed Act.

## **7: Schedule 1**

### **Amendment 1.20**

##### **Page 187, line 4.**

Schedule 1, part 1.3 of the Bill amends the *Crimes (Sentence Administration) Act 2005*.

Amendment 1.20 in the Bill is an amendment to section 612 of the *Crimes (Sentence Administration) Act 2005*. Section 612 is part of chapter 17 of that Act, which ensures the ACT's custodial laws continue to operate in harmony with the new Sentencing Acts until the Corrections Management Bill 2006 is enacted. This is labelled as the *interim custody period* (discussed under amendment 2 above).

In order that the statute book should continue to make it clear what arrangements applied during the period after 2 June 2006 and before the commencement of the foreshadowed Corrections Management Act, the amendment enables the transitional provisions to appear on the statute book for a conservative period of two years.