

2007

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

**CRIMES (SENTENCE ADMINISTRATION)
AMENDMENT REGULATION 2007 (No 2)**

SL2007-34

EXPLANATORY STATEMENT

Circulated by authority of the
Attorney General
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Crimes (Sentence Administration) Amendment Regulation 2007 (No 2)

Outline

This regulation is made to resolve a potential legal contradiction identified by the Human Rights Commission in its report on ACT corrections facilities: *Human Rights Audit on the Operation of ACT Correctional Facilities under Corrections Legislation* (the Human Rights Report).

The context of the issue is the Territory's sentencing and custodial laws.

The *Crimes (Sentencing) Act 2005* consolidated the Territory's sentencing laws and introduced a number of new sentencing dispositions. The *Crimes (Sentence Administration) Act 2005* provides for administration of sentencing dispositions and created a standard model for managing each sentencing option. The *Crimes (Sentence Administration) Act 2005* also authorises the Chief Executive to take custody of remandees and prisoners following criminal proceedings.

The *Corrections Management Act 2007* provides the law that will govern the treatment and management of prisoners and other detainees in the Australian Capital Territory. The *Corrections Management Act 2007* will replace the *Remand Centres Act 1976*. The *Corrections Management Act 2007* will govern the new prison anticipated for the ACT, the Alexander Maconochie Centre (AMC), as well as any present and future corrections facilities.

The *Crimes (Sentencing) Act 2005*, the *Crimes (Sentence Administration) Act 2005* and the *Corrections Management Act 2007* were drafted using common terms, methods and connections. The three are designed to work together to provide a cohesive framework for all criminal dispositions — from the time of remand through to sentencing and the completion of a prison term.

The *Sentencing Legislation Amendment Act 2006* provided consequential amendments for the *Crimes (Sentencing) Act 2005*, the *Crimes (Sentence Administration) Act 2005*, and the *Corrections Management Act 2007*. The *Sentencing Legislation Amendment Act 2006* repealed old sentencing and sentence administration laws and established transitional provisions.

Chapter 17 of the *Crimes (Sentence Administration) Act 2005* now provides transitional arrangements to enable the existing custodial laws to apply until the *Corrections Management Act 2007* commences. Chapter 17 also provides transitional methods and powers to resolve any legal conflicts should they arise.

The Human Rights Report noted that section 20 of the *Remand Centres Act 1976* entitles remandees to wear their own clothing. However, Standing Order 3.1.1 made under the *Remand Centres Act 1976* purports to limit this entitlement at the Superintendent's discretion. The Human Rights Report notes that: "It appears that

this discretion has not been exercised recently, perhaps making it arguable that s.20 of the *Remand Centres Act 1976* is not routinely complied with”. [p.53]

Section 19(3) of the *Human Rights Act 2004* recognises that “an accused person must be treated in a way that is appropriate for a person who has not been convicted”.

The *Human Rights Act 2004* does not specifically provide for remandees clothing. However, section 31 of the *Human Rights Act 2004* enables the consideration of international law in the interpretation of a human right. International law includes declarations and standards adopted by the United Nations General Assembly. Consequently, the United Nations *Standard Minimum Rules for the Treatment of Prisoners (1957)* (SMRs) apply in the interpretation of the rights of remandees contemplated by section 19 of the *Human Rights Act 2004*.

Rule 88 of the SMRs entitles remandees to wear their own clothing “if it is clean and suitable” and if prison dress is worn it should be “different from that supplied to convicted prisoners”. In the ACT the practice of providing uniform clothing to remandees has evolved to ensure detainees’ safety, for example minimising opportunities for self-harm, intimidation and theft.

Section 8 (Treatment of remandees) and part 3.2 (Remand) of the *Crimes (Sentence Administration) Act 2005* provides that the effect of a remand order is that the chief executive responsible for the administration of the Act must take custody of remandees. Section 8 also requires the management of remandees to be conducted in a manner consistent with human rights.

Given the differing obligations between the rule of section 20 of the *Remand Centres Act 1976* and the Territory’s duty to ensure remandees are safe in custody, the Government has decided that an exercise of the transitional powers in chapter 17 is justified.

The regulation authorises the chief executive to decide that all remandees must wear clothing provided by the chief executive. The decision may be made if one or more of the following considerations make it necessary to exercise the power:

- The risk of harm to remandees, staff, visitors posed by types of clothing. For example clothing that contains drawstrings poses a risk that the drawstrings can be used for self harm. Metal in shoes, buttons and zippers that can be sharpened, can be used either for self-harm or fashioned into weapons.
- The protection of vulnerable remandees. One of the lamentable problems that occurs in custody are incidents of intimidation or stand-over tactics used by some hostile remandees to steal attractive items, or name brands, from vulnerable remandees.
- Maintaining good order of the centre. Clothing is often used as a means of identifying as part of group or affiliation with the intention of intimidation or gaining favoured status. It is often the perception that the group or affiliation may be prepared to use violence that enables the intimidation to occur. Clothing is also used as currency for trade or gambling purposes.

- Maintaining the safety of visitors and staff. Certain types of clothing can be used to conceal identity or unlawful activity from closed circuit TV. Jackets with hoods, baggy clothes, beanies etc are able to conceal a person's identity or blend in with visitors for purposes of receiving contraband or escape.

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Detail

Clause 1 — Name of regulation

This is a technical clause which names the regulation. The name of the regulation would be the *Crimes (Sentence Administration) Amendment Regulation 2007 (No 2)*.

Clause 2 — Commencement

The regulation commences on the day following the day the regulation is notified on the legislation register.

Clause 3— Legislation amended

This clause identifies the regulation to be amended, namely the *Crimes (Sentence Administration) Regulation 2006*.

Clause 4 — New section 6

Clause 4 inserts new section 6 into the *Crimes (Sentence Administration) Regulation 2006*. New section 6 invokes the regulation making power in chapter 17, section 611 of the *Crimes (Sentence Administration) Act 2005* to modify the transitional arrangements in the *Crimes (Sentence Administration) Act 2005*. The modifications are set out in schedule 2 of clause 5 (discussed below).

New section 6(2) of the regulation expires the section and schedule 2 of the regulation on the day the *Corrections Management Act 2007* commences. At that time the *Remand Centres Act 1976* will be fully repealed and chief executive will have the authority to make provision for remandees' clothing without the need for the regulation.

Clause 5 — New Schedule 2

Schedule 2 of the regulation amends the *Crimes (Sentence Administration) Act 2005* by introducing a modification to chapter 17.

Section 610A authorises the chief executive to decide that all remandees must wear clothing provided by the chief executive. The decision may be made if one or more of the considerations stipulated in (1)(a) to (d) make it necessary to exercise the power. The considerations are discussed in the outline above.

Section 610A does not oblige the chief executive to make a decision for each remandee on a case by case basis. A decision may apply to all remandees. Conversely, the provision does not prevent the chief executive from deciding that all, some or particular remandees may wear their own clothing, or allowing certain types of remandees' own clothing to be worn in correctional facilities or when travelling from correctional facilities to court.

Section 610A(2) invokes section 88 of the *Legislation Act 2001*. Under section 88 the effect of a transitional law, or validating law, continues after the law is repealed. However, section 88 does not oust the effect of legislation that modifies or replaces the transitional law.