

The Legislative Assembly for the Australian Capital Territory

Corrections Management Amendment Bill 2021

**Explanatory Statement
and
Human Rights Compatibility Statement**

**Presented by
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Corrections Management Amendment Bill 2021

The Bill is **not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

Introduction to the Bill

This explanatory statement relates to the *Corrections Management Amendment Bill 2021*, as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

Overview of the Bill

The purpose of this Bill is to strengthen legislation against the delivery of prohibited items into a correctional centre, namely the Alexander Maconochie Centre (AMC). To do so, it seeks to amend section 145 of the *Corrections Management Act 2007*.

A rise in personal and recreational use of remotely piloted aircraft (RPAs) – commonly known as ‘drones’ – has been accompanied by a rapid increase in the usage of RPAs to deliver prohibited items to correctional centres. RPAs have the capability to be remotely piloted over security fences and drop payloads directly into places of detention.

This capability threatens the security of correctional centres throughout Australia and across the world. The ACT has not been immune to this security threat, with at least two incidents of attempted RPA delivery of prohibited things to the AMC in the public record.

The *Corrections Management Act 2007* already legislates against taking prohibited things into a correctional centre or giving prohibited things to a detainee. It could be argued that dropping a prohibited thing from an RPA onto a surface within the correctional centre is neither 'taking' nor 'giving'. By legislating against any means that 'causes' a prohibited thing to be taken into a correctional centre, the language used in the *Corrections Management Amendment Bill 2021* will further restrict the methods by which prohibited things reach a correctional centre. This includes the act of dropping a prohibited thing from an RPA that then 'causes' it to land in a correctional centre.

This language is very similar to the *Queensland Corrective Services Act 2006*, which is regarded by the Civil Aviation Safety Authority (CASA) to be an acceptable way to legislate against the threat of RPAs delivering prohibited items into correctional centres whilst avoiding any conflicts with the Commonwealth's power to regulate airspace.

New South Wales (NSW), Victoria (VIC) and South Australia (SA) have legislated or are in the process of legislating on this issue. NSW and VIC have opted to specifically legislate a ban on RPAs within a certain distance of a correctional centre. The legality of such legislation is in question as states do not have the power to legislate airspace – only the Commonwealth does. Geographic limitations potentially encroach on the Commonwealth's *Air Navigation Regulations Act 1998* whereas the QLD solution (replicated in this bill) does not.

Consultation on the Proposed Approach

Consultation was undertaken with individuals familiar with corrections who are concerned about the use of RPAs delivering prohibited things into correctional centres as well as with CASA.

Consultation was also conducted with multiple community groups. None of those consulted raised objections.

Federal Schemes

The federal government is taking measures to respond to the sharp growth in RPA usage across many aspects. There are plans to develop a Drone Rule Management System (DRMS) to coordinate and manage operating rules from RPAs across Commonwealth and State/Territory governments. These guidelines will include operating boundaries and/or rules related to security, noise, privacy, environmental impacts, and cultural sites.

A National Drone Detection Network (NDDN) consisting of scalable and modular infrastructure to facilitate the detection of RPAs is also currently being investigated.

The indicative timeline for the implementation of these and supporting initiatives spans from 2021 to 2024. It could be a considerable amount of time before federal legislation restricts the use of RPAs around correctional centres. In the meantime, the purpose of this Bill is to provide clarity and protections against RPA delivery of prohibited things whilst remaining in harmony with federal legislation and future policy.

Cost/Benefit Statement

There is no certain cost associated with this legislation. Potential benefits include deterring the act of causing prohibited things to be taken into a correctional centre, which would benefit operational and even healthcare costs.

Consistency with Human Rights

The Human Rights Commission has been consulted on this Bill. They have confirmed that in their view, the proposed amendments are consistent with the *Human Rights Act 2004*.

CLAUSE NOTES

Clause 1 Name of Act

This is a technical clause that sets out the name of the Act as the *Corrections Amendment Act 2021*.

Clause 2 Commencement

This clause states that the Act will commence 6 months after its notification date.

Clause 3 Legislation amended

This clause provides that the Act amends the *Corrections Management Act 2007*.

Clause 4 New section 145 (1) (aa)

This clause tightens current restrictions on taking prohibited things into a correctional centre by inserting a new prohibition against causing a prohibited thing to be taken into a correctional centre. This amendment makes it clear that the delivery of prohibited things via an RPA breaches the *Corrections Management Act 2007*. Currently, one could argue that the dropping of prohibited things via an RPA onto an unoccupied surface from many metres above the correctional centre does not directly breach section 145 (1) (a) as no person is directly engaged in the act of taking a prohibited thing into a correctional centre.

This amendment aligns with the *Queensland Corrective Services Act 2006*, upon which the amendment is based. It omits the 'attempt to' language in the Queensland legislation as the offence of attempting to commit a crime is already covered in section 44 of the ACT's *Criminal Code 2002*.

Clause 5 New section 145 (1) (ba)

This clause tightens current restrictions on giving a prohibited thing to a detainee by inserting a new prohibition against causing a prohibited thing to be given to a detainee. This amendment makes it clear that giving prohibited things to a detainee via an RPA breaches the *Corrections Management Act 2007*. Currently, one could argue that the dropping of prohibited things via an RPA onto an unoccupied surface from many metres above the correctional centre does not directly breach section 145 (1) (b) as no person is directly engaged in the act of giving a prohibited thing to a detainee.

This amendment aligns with the *Queensland Corrective Services Act 2006*, upon which the amendment is based. It likewise omits the 'attempt to' language in the Queensland legislation as the offence of attempting to commit a crime is already covered in section 44 of the ACT's *Criminal Code 2002*.