



Australian Capital Territory

# Rehabilitation of Offenders (Interim) Act 2001

No 82 of 2001

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Australian Capital Territory

# Rehabilitation of Offenders (Interim) Act 2001

No 82 of 2001

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An Act about home detention and the release of prisoners on parole, and for other purposes

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*[Notified in ACT Gazette S66: 10 September 2001]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Chapter 1 Preliminary

### 1 Name of Act

This Act is the *Rehabilitation of Offenders (Interim) Act 2001*.

### 2 Commencement

This Act commences on a day fixed by the Minister by notice in the Gazette.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see *Legislation Act 2001*, s 75).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Legislation Act 2001*, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see *Legislation Act 2001*, s 79).

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or in other legislation.

For example, the signpost definition ‘*domestic violence offence*—see the Crimes Act, dictionary’ means that the expression ‘domestic violence offence’ is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and 156 (1)).

#### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

#### 5 Meaning of *subject to imprisonment etc*

- (1) A sentenced offender is *subject* to a sentence of imprisonment if the sentence has been imposed, whether or not the offender has begun to serve the sentence.
- (2) A sentenced offender is *subject* to a home detention order if a home detention order has been made for the offender, whether or not the offender has begun to serve the relevant sentence, or relevant part of the sentence, of imprisonment by way of home detention.
- (3) A remandee is *subject* to a home detention order if a home detention order has been made for the remandee, whether or not the remandee has begun to serve the remand by way of home detention.
- (4) A sentenced offender is *subject* to a parole order if a parole order has been made for the offender, whether or not the offender has been released on parole under the order.

## Chapter 2 Home detention orders

### Part 2.1 Making home detention orders

#### 6 Imprisonment by way of home detention

- (1) A court that has sentenced a person (the *offender*) to imprisonment for not longer than 18 months for an offence may make a home detention order directing that the sentence, or part of the sentence, for the offence be served by way of home detention.
- (2) A home detention order may not be made in relation to a sentence of imprisonment (a *new sentence*) to be served concurrently or consecutively (or partly concurrently and partly consecutively) with any existing sentence of imprisonment if the date when the new sentence will end is more than 18 months after the date when the existing sentence was imposed.
- (3) For this section, if a sentence of imprisonment is completely suspended, the sentence is to be disregarded.
- (4) For this section, if a sentence of imprisonment is partly suspended, the period for which it is suspended is to be disregarded.
- (5) This section is subject to part 2.2 (Procedures for making home detention orders), but does not affect part 3.2 (Nonparole periods).
- (6) This Act applies in relation to a young offender who is committed to a State institution or another institution—
  - (a) as if—
    - (i) the committal were a sentence of imprisonment; and
    - (ii) a period during which the young offender were subject to a home detention order were a period for which the young offender were committed to an institution; and

(b) with all other necessary changes and any changes prescribed under the regulations.

(7) In this section:

*sentenced*, for a young offender, means dealt with under the *Children and Young People Act 1999*, section 96 (Disposition of young offenders).

## 7 Remand by way of home detention

(1) This section applies if a person (the *remandee*)—

- (a) has been charged with an offence but has not been convicted or found guilty of the offence; or
- (b) has been convicted or found guilty of an offence but has not been sentenced for the offence.

(2) If the court remands the person in custody in relation to the offence, the court may make a home detention order directing that the remand be served by way of home detention.

(3) This section is subject to part 2.2 (Procedures for making home detention orders).

(4) If the remandee is a young offender, this Act applies—

- (a) as if—
  - (i) a reference to remand in custody were a reference to the ordering of the detention of the young offender under the *Children and Young People Act 1999*; and
  - (ii) a period during which the young offender were detained under that Act subject to a home detention order were a period for which a young offender were detained in a shelter; and
- (b) with all other necessary changes and any changes prescribed under the regulations.

- (5) This section comes into operation 2 years after the commencement of section 6.
- (6) Subsection (5) and this subsection expire immediately after this section comes into operation.

## **Part 2.2**                      **Procedures for making home detention orders**

### **Division 2.2.1**            **General**

#### **8**            **Application of pt 2.2**

This part applies where a court is considering making, or has made, a home detention order.

### **Division 2.2.2**            **Restrictions on making home detention orders**

#### **9**            **Home detention not available for offenders for certain offences**

- (1) This section applies only to a person who—
- (a) is sentenced to imprisonment for an offence; or
  - (b) is convicted or found guilty of an offence and is remanded in custody in relation to the offence.

*Note*            This section does not apply to a person who has been charged with an offence but has not been convicted or found guilty of the offence (see s 7 (1) (a)).

- (2) A home detention order may not be made in relation to the offence if it is—
- (a) an offence against the Crimes Act, section 12 (Murder) or section 15 (Manslaughter);
  - (b) an offence against the Crimes Act, section 19 (Intentionally inflicting grievous bodily harm) or section 20 (Recklessly inflicting grievous bodily harm);

- (c) an offence against the Crimes Act, section 24 (Assault occasioning actual bodily harm) or section 25 (Causing grievous bodily harm);
- (d) an offence against the Crimes Act, section 34A (Stalking);
- (e) an offence against the Crimes Act, part 3A (Sexual offences);
- (f) an offence against the Crimes Act, section 101 (Armed robbery);
- (g) an offence against the Crimes Act, section 103 (Aggravated burglary);
- (h) any other offence against the Crimes Act involving the use of a firearm;
- (i) a domestic violence offence consisting of behaviour directed at anyone with whom it is likely the person would live in the same household if the home detention order were made;
- (j) an offence against the *Drugs of Dependence Act 1989*, section 162 (3) (Cultivation of prohibited plants) in relation to the cultivation, or participation in the cultivation of, more than 20 prohibited plants (within the meaning of that section);
- (k) an offence against the *Drugs of Dependence Act 1989*, section 163 (1) or (2) (Wholesale);
- (l) an offence against the *Drugs of Dependence Act 1989*, section 164 (2) or (3) (Sale or supply);
- (m) an offence against the *Drugs of Dependence Act 1989*, section 165 (Sale or supply—cannabis) in relation to a commercial quantity or trafficable quantity of cannabis within the meaning of that Act;
- (n) an offence against the *Periodic Detention Act 1995*, section 57 (1) (Offences by persons other than detainees); or



- (o) an offence against the *Remand Centres Act 1976*, section 18 (Offences by persons other than detainees);
- (p) an offence against any other Territory law prescribed under the regulations.

**10 Home detention not available for sentenced offenders or remandees with certain history**

- (1) A home detention order may not be made for a sentenced offender or remandee in relation to an offence if—
  - (a) the sentenced offender has at any time been convicted, whether in or outside the ACT or Australia, of any of the following offences:
    - (i) murder, manslaughter or corresponding offence against a law outside the ACT or Australia;
    - (ii) sexual assault of an adult or child or a sexual offence involving a child; or
  - (b) the sentenced offender has at any time in the last 10 years been convicted, whether in or outside the ACT or Australia, of—
    - (i) an offence against the Crimes Act, section 34A (Stalking) or a corresponding offence against a law outside the ACT or Australia; or
    - (ii) a domestic violence offence, or a corresponding offence against a law outside the ACT or Australia, directed at anyone with whom it is likely the person would live in the same household if the home detention order were made; or
  - (c) the sentenced offender or remandee is, or has at any time during the last 5 years been, subject to a final order under the *Protection Orders Act 2001* (other than an order reversed or set aside on appeal) that restrains the offender or remandee from engaging in behaviour in relation to a person with whom it is

likely the offender or remandee would live in the same household if the home detention order were made; or

- (d) the sentenced offender or remandee has at any time been convicted of an offence prescribed under the regulations; or
  - (e) a home detention order has previously been made for the sentenced offender or remandee in relation to the offence and the order has been revoked under part 2.4 (Revocation of home detention orders).
- (2) Subsection (1) (e) does not apply if the home detention order is revoked for a reason other than a breach of the person's obligations under the order.
- (3) An offence prescribed under the regulations for subsection (1) (d) may include an offence against a law of the Commonwealth, a State, another Territory or a foreign country.
- (4) In subsection (1) (c), a reference to a final order under the *Protection Orders Act 2001* includes a protection order under the *Domestic Violence Act 1986* and a restraining order under the *Magistrates Court Act 1930*.
- (5) Subsection (4) and this subsection expire 5 years after the *Protection Orders Act 2001* commences.

## **11 Suitability of sentenced offenders and remandees for home detention**

- (1) A court may make a home detention order for a person under section 6 (Imprisonment by way of home detention) or section 7 (Remand by way of home detention) only if satisfied that—
- (a) the person is a suitable person to serve the relevant sentence, or part of the sentence, of imprisonment or remand by way of home detention; and

- (b) it is appropriate in the circumstances that the sentence, part of the sentence or remand be served by way of home detention; and
  - (c) the people with whom it is likely the person would live in the same household (other than as a tenant or boarder) during the person's home detention have consented in writing to the making of the order; and
  - (d) the person has signed an undertaking to comply with the person's obligations under the order.
- (2) In deciding whether or not to make a home detention order, the court must consider—
- (a) the assessment report about the person; and
  - (b) any evidence given by a corrections officer about the person.
- (3) A court may make a home detention order only if the assessment report about the person states that, in the opinion of the person making the assessment, the person is suitable to serve the relevant sentence, or part of the sentence, of imprisonment or remand by way of home detention.
- (4) However, a home detention order must not be made if the court considers it likely that the person will commit a sexual offence or an offence involving violence while the order is in force, even if the person has no history of committing offences of that kind.
- (5) A court may, for any reason it considers sufficient, decide not to make a home detention order despite the contents of the assessment report, and any evidence given by a corrections officer, about the person.
- (6) For subsection (1) (c), the consent of a child, or a person with a mental disability—
- (a) may be given on behalf of the child or the person with a mental disability in accordance with the regulations; or

(b) may be dispensed with in accordance with the regulations if the regulations allow the consent to be dispensed with.

(7) In subsection (6):

*person with a mental disability*, in relation to a consent under subsection (1) (c), means a person (other than a child) who is not legally competent to give the consent, and includes such a person even if a guardian or manager has not been appointed for the person under the *Guardianship and Management of Property Act 1991*.

## **Division 2.2.3      Assessment reports**

### **12      Referral of sentenced offender or remandee for assessment**

- (1) If a court sentences a person to a term of imprisonment as mentioned in section 6 (Imprisonment by way of home detention) or remands a person in custody as mentioned in section 7 (Remand by way of home detention), the court may, at the time of sentencing or a later time, ask the chief executive for an assessment report about the person.
- (2) A request under subsection (1)—
  - (a) for a sentenced offender—does not stay the execution of the sentence; or
  - (b) for a remandee—does not affect the order for remand.

### **13      Assessment of suitability for home detention**

- (1) If a court asks the chief executive for an assessment report about a person, the chief executive must investigate and report to the court on the matters mentioned in section 11 (1) (Suitability of sentenced offenders and remandees for home detention).
- (2) The report must deal with the following matters:
  - (a) the potential for the order to help in the rehabilitation of the person;
  - (b) any criminal record of the person, and the likelihood that the person will reoffend;
  - (c) any cultural issues in relation to the person or to the household in which the person would live;
  - (d) any dependency of the person on illegal drugs;

- (e) the likelihood that the person will commit a domestic violence offence;
  - (f) the likelihood that the person will commit a sexual offence or an offence involving violence, even if the person has no history of committing offences of that kind;
  - (g) whether any circumstances of the person's residence, employment, study or other activities would inhibit effective monitoring of a home detention order;
  - (h) whether the people with whom it is likely the person would live in the same household (other than as a tenant or boarder) during any home detention understand the likely obligations of the person under a home detention order and are prepared to live in accordance with them so far as may be necessary;
  - (i) whether the making of the order would place at risk of harm the person or anyone who would be living with the person or nearby;
  - (j) anything else prescribed under the regulations.
- (3) The report may indicate the kind of additional conditions that would be appropriate for the court to impose on a home detention order if the court were to make an order.
- (4) Subsections (2) and (3) do not limit the matters that may be dealt with in the report.
- (5) The regulations may make provision in relation to the conduct of investigations and the preparation of reports under this section.

#### **14 Obtaining information etc for assessment report**

- (1) For an assessment report about a person, the chief executive may ask an administrative unit, Territory authority, statutory office holder or any other entity to provide information or documents relevant to the person.

- (2) An administrative unit, Territory authority or statutory office holder must promptly comply with a request under subsection (1).
- (3) If information or a document is given honestly and with reasonable care to the chief executive under subsection (2), the giving of the information or document is not—
  - (a) a breach of confidence, professional etiquette or ethics or a rule of professional conduct; or
  - (b) the publication of an actionable libel; or
  - (c) a ground for civil proceedings for malicious prosecution or conspiracy.
- (4) This section does not limit any other power to obtain information or documents.

## **Division 2.2.4            Explanation of home detention orders**

### **15    Explanation of home detention orders to be given**

- (1) If a court makes a home detention order in relation to a person's sentence of imprisonment or remand, the court must ensure that all reasonable steps are taken to explain to the person (in language that the person can readily understand)—
  - (a) the person's obligations under the order; and
  - (b) the consequences that may follow if the person fails to comply with the obligations.
- (2) A home detention order made by a court is not invalid only because the court does not comply with this section.

## **Part 2.3**

# **Operation of home detention orders**

### **16 Effect of home detention order for sentenced offender**

- (1) If a court makes a home detention order directing that a sentence, or a part of a sentence, of imprisonment of a sentenced offender for an offence be served by way of home detention, a period during which the offender is subject to the home detention order is taken to be a period of imprisonment served by the offender for the offence.
- (2) To remove any doubt, if the home detention order is revoked, any time after the revocation takes effect is to be disregarded for subsection (1).

### **17 Effect of home detention order for remandee**

- (1) For the Crimes Act, section 451 (Time held in custody to count), time during which remand is served by a remandee by way of home detention in relation to an offence is taken to be time during which the remandee was held in custody in relation to proceedings for the offence.
- (2) To remove any doubt, if the home detention order is revoked, any time after the revocation takes effect is to be disregarded for subsection (1).

### **18 Conditions of home detention orders**

- (1) A home detention order for a person is subject to the following conditions:
  - (a) the standard conditions prescribed under the regulations;
  - (b) any additional conditions imposed by the relevant court.



- (2) A court may impose the conditions it considers appropriate on a home detention order made by it, other than conditions requiring the person to whom the order relates to make any payment, whether in the nature of a fine, compensation or otherwise.
- (3) However, the court may not—
  - (a) revoke or amend any standard conditions prescribed under the regulations; or
  - (b) impose any additional conditions, or amend any additional conditions imposed by it, so as to impose any limits on, or otherwise be inconsistent with, the standard conditions prescribed under the regulations.

## **19 Obligations under home detention orders**

A person serving a sentence, or a part of a sentence, of imprisonment or remand by way of home detention must comply with this Act and any conditions to which the person's home detention order is subject.

*Note* The *Legislation Act 2001*, s 104 provides that a reference to an Act includes a reference to the statutory instruments made under or in force under the Act.

## **20 Duration of home detention orders**

- (1) If a person is subject to a home detention order, the order ends—
  - (a) when the term of the sentence or the remand to which the order relates ends; or
  - (b) if the person is released on parole.
- (2) The home detention order also ends if it is revoked under part 2.4 (Revocation of home detention orders).

## Part 2.4                      Revocation of home detention orders

### 21      **Arrest without warrant of person subject to home detention order**

- (1) If a police officer believes, on reasonable grounds, that a person who is subject to a home detention order has breached the person's obligations under the order, the police officer may arrest the person without a warrant.
- (2) If the police officer arrests the person under this section, the police officer must bring the person before the relevant court as soon as is practicable.

*Note*      *Relevant court* is defined in the dict.

### 22      **Arrest with warrant of person subject to home detention order**

- (1) If a judicial officer is satisfied by information on oath that there are reasonable grounds for believing that a person who is subject to a home detention order has breached, or will breach, the person's obligations under the order, the judicial officer may issue a warrant for the apprehension of the person and for bringing the person before the relevant court.
- (2) The warrant must—
  - (a) be in writing signed by the judicial officer; and
  - (b) be directed to all police officers or a named police officer; and
  - (c) state shortly the matter of the information on which it is based; and
  - (d) order the apprehension of the person and the bringing of the person before the relevant court.

(3) A person who is apprehended under a warrant under this section must be brought before the relevant court as soon as is practicable.

(4) In this section:

*judicial officer* means a judge of the Supreme Court or a magistrate.

### **23 Duty of corrections officers relating to breaches of home detention orders**

If a corrections officer believes, on reasonable grounds, that a person subject to a home detention order has committed a breach of the person's obligations under the order, the officer must tell the relevant court about the breach.

### **24 Revocation of home detention order**

(1) The relevant court may make an order (a *revocation order*) revoking a home detention order for a person if—

(a) the court is satisfied that the person has breached the person's obligations under the order; or

(b) the court is satisfied that, because of a change in the person's circumstances, it is no longer appropriate that the relevant sentence, or part of the sentence, of imprisonment or remand be served by way of home detention; or

(c) the court is satisfied that it is no longer appropriate that the relevant sentence, or part of the sentence, of imprisonment or remand be served by way of home detention because the continuation of the home detention order may cause harm (including mental harm) to anyone; or

(d) a person who consented under section 11 (1) (c) (Suitability of sentenced offenders and remandees for home detention) to the making of the order withdraws the consent by written notice given to the court; or

(e) the person applies to the court for the order to be revoked.

- (2) Subsection (1) (d) applies despite any continuing consent under section 11 (1) (c) of any person to the making of the order.
- (3) This section does not limit the relevant court's powers in relation to the person.

## **25 Date of effect of revocation of home detention orders**

- (1) An order revoking a home detention order for a person takes effect on the date stated in the order.
- (2) The date stated in the order must be—
  - (a) the date the order is made; or
  - (b) if the relevant court is satisfied that the person breached the person's obligations under the order—the date when it appears to the court that the person breached the obligations; or
  - (c) if the relevant court is satisfied that the person breached the person's obligations under the order on 2 or more separate days—the date when it appears to the court that the person first breached the obligations.

## **26 Consequential revocation of other home detention orders**

- (1) If a home detention order (the *principal order*) to which a sentenced offender is subject is revoked under this part, any other home detention order to which the offender is subject is also automatically revoked.
- (2) The date of effect of a home detention order revoked under subsection (1) is—
  - (a) if the order is in force—the date of effect of the revocation of the principal order under this part; or
  - (b) if the order is not in force—the date the principal order is revoked under this part.

## **Part 2.5**                      **Other provisions about home detention orders**

### **27**    **Regulations about home detention**

The regulations may make provision in relation to—

- (a) blood testing, breath testing, urinalysis and other test procedures for detecting alcohol or drug use by sentenced offenders or remandees subject to home detention orders; and
- (b) the standard conditions to which home detention orders are subject, including, for example, conditions about—
  - (i) the employment of a sentenced offender or remandee subject to a home detention order while the order is in force; and
  - (ii) performing community service work; and
  - (iii) attending personal development activities or counselling or treatment programs as directed by a corrections officer.

### **28**    **Exercise of functions by court after home detention order has ended**

A court may exercise a function in relation to a home detention order made by it (including a function under part 2.4 (Revocation of home detention orders)) even though the order has ended.

## Chapter 3                      Nonparole periods and parole

### Part 3.1                      Preliminary

#### 29      Definitions for ch 3

In this chapter:

*harm* includes—

- (a) physical injury; and
- (b) mental injury or emotional suffering (including grief); and
- (c) pregnancy; and
- (d) economic loss; and
- (e) substantial impairment of rights accorded by law.

*relevant offence*, in relation to a sentenced offender who is serving a sentence of imprisonment, means—

- (a) an offence for which the offender is serving the sentence; or
- (b) an offence taken into account by the relevant court in imposing the sentence.

*victim*, in relation to a sentenced offender who is serving a sentence of imprisonment, means—

- (a) a person (the *primary victim*) who suffers harm—
  - (i) during, or as the result of, the commission of a relevant offence; or

- (ii) while assisting a police officer in the exercise of the officer's power to arrest the offender or to take action to prevent the commission of an offence by the offender; or
- (b) if the primary victim dies as a result of the commission of a relevant offence—anyone who was financially or psychologically dependent on the primary victim immediately before the victim's death; or
- (c) a person who witnessed the commission of a relevant offence in circumstances in which it is probable that the person would suffer harm.

### **30 Application of ch 3 to victim who is a child**

- (1) If a victim of a sentenced offender is a child under 15 years old, this chapter applies in relation to the victim as if a reference to the victim were a reference to the person who has parental responsibility for the victim.
- (2) In this section:  
*parental responsibility*—see the *Children and Young People Act 1999*, section 17.

## Part 3.2 Nonparole periods

### 31 Court to set nonparole period

- (1) If a court sentences a person to a term of imprisonment of 1 year or longer, or 2 or more terms of imprisonment that total 1 year or longer, the court must set a period (a *nonparole period*) during which the person is not eligible to be released on parole.

*Note* Section 43 provides that, if the person is released on parole, the sentence is not discharged unless the parole is completed without the parole order being revoked.

- (2) When the court sets the nonparole period, the court must specify—
- (a) the date the nonparole period begins; and
  - (b) the date the nonparole period ends.
- (3) The date specified under subsection (2) (a) may be a date before the sentence of imprisonment is imposed.

*Note* The *Crimes Act 1900*, s 451 requires time held in custody to count as a period of imprisonment already served under the sentence.

- (4) Subsection (1) does not apply if—
- (a) the court, having regard to the nature of the offence or offences and the antecedents of the person, considers that setting a nonparole period would be inappropriate; or
  - (b) the person is or has been sentenced to imprisonment for life.
- (5) For this section, if a sentence of imprisonment is completely suspended, the sentence is to be disregarded.
- (6) For this section, a sentence of imprisonment is partly suspended, the period for which it is suspended is to be disregarded.
- (7) If a court sentences a person to imprisonment but fails to set, or fails properly to set, a nonparole period, the court may set a nonparole



period on the application of the Attorney-General, the director of public prosecutions, the secretary, or the person sentenced.

- (8) This section applies to an offence whether the offence was committed, a person was convicted of the offence, or a person was sentenced for the offence, before or after the commencement of this Act.

### **32 Setting of nonparole period for person serving 1 or more previous sentences**

- (1) If a person who is serving a sentence of imprisonment (the *existing sentence*) is sentenced to a further term of imprisonment (the *new sentence*), section 31 (Court to set nonparole period) applies as if the court by which the new sentence is imposed had sentenced the person to imprisonment for a term equal to the total of the terms of the existing sentence and the new sentence.
- (2) The imposition of the new sentence automatically revokes any nonparole period set in relation to the existing sentence.
- (3) The nonparole period set when the new sentence is imposed must not make the person eligible to be released on parole earlier than if the new sentence had not been imposed.
- (4) This section applies whether the existing sentence was imposed before, or is imposed after, the commencement of this Act.

### **33 Secretary to be told about setting of nonparole period etc**

- (1) This section applies if a court sentences a person to a term of imprisonment and sets a nonparole period for the person.
- (2) The court must give the secretary written notice of the following as soon as practicable:
- (a) the sentence;
  - (b) the nonparole period;
  - (c) the date the nonparole period begins;

- (d) the date the nonparole period ends;
- (e) if a victim consents to details of the victim being given to the board—those details.

### **34 Victims register**

- (1) This section applies if—
  - (a) the secretary receives details of a person under section 33 (2) (e); or
  - (b) a victim asks the secretary to enter details of the victim in a register kept by the secretary (the *victims register*).
- (2) The secretary must—
  - (a) enter the details in the victims register; and
  - (b) advise the person, orally or in writing, about—
    - (i) the role of the board; and
    - (ii) the rights of victims in relation to the granting of parole to sentenced offenders.

## **Part 3.3 Parole**

### **Division 3.3.1 General**

#### **35 Application of pt 3.3**

This part applies to a sentenced offender who is serving a sentence of imprisonment (including a sentence of imprisonment by way of home detention), whether or not a previous parole order in relation to the person has been revoked.

### **Division 3.3.2 Release on parole**

#### **36 Eligibility for release on parole**

- (1) A sentenced offender may be released on parole in accordance with this part.
- (2) A sentenced offender is eligible for release on parole only if—
  - (a) the offender is subject to 1 or more sentences for which a nonparole period has been set; and
  - (b) the offender has served the nonparole period.
- (3) This part does not authorise the release of a sentenced offender who is required to be kept in custody in relation to an offence against a law of the Commonwealth, a State or another Territory.

#### **37 Parole order necessary for release**

A sentenced offender who is eligible for release on parole may be released on parole only in accordance with a parole order directing the release of the offender.

*Note* **Parole order** is defined in the dict.

### **38 Conditions of parole**

- (1) A parole order for a sentenced offender is subject to the following conditions:
  - (a) the standard conditions for parole prescribed under the regulations;
  - (b) any additional conditions imposed by the board.
- (2) The board may, by written notice given to the sentenced offender, impose additional conditions on a parole order.

*Note* Power given under an Act to make a statutory instrument (including a notice imposing conditions) includes power to amend or revoke the instrument (see *Legislation Act 2001*, s 46 (1)).

- (3) The conditions of a parole order may include conditions requiring the sentenced offender to whom the order relates to be subject to supervision prescribed under the regulations during the period stated in the order or prescribed under the regulations.
- (4) However, the board may not—
  - (a) revoke or amend any standard conditions prescribed under the regulations; or
  - (b) impose any additional conditions, or amend any additional conditions imposed by it, so as to impose any limits on, or otherwise be inconsistent with, the standard conditions prescribed under the regulations.

### **39 Obligations under parole order**

While a sentenced offender is on release on parole, the offender must comply with this Act and any conditions to which the offender's parole order is subject.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

#### 40 Recission of parole order before release

- (1) The board may, by written order, rescind a parole order at any time before the sentenced offender to whom the order relates is released under the order.
- (2) The board may rescind a parole order under this section only if—
  - (a) since it made the order it has become aware of information about the sentenced offender; and
  - (b) it would not have made the order if it had been aware of the information when it decided to make the order.

#### 41 Release under parole order

- (1) A sentenced offender's parole order is sufficient authority for anyone having custody of the offender to release the offender in accordance with the order.
- (2) A sentenced offender who is to be released on parole must be released from custody on the offender's parole date.

*Note* **Parole date** is defined in the dict.

- (3) A sentenced offender who is a prisoner may be released from custody at any time on the parole date.
- (4) However, if the parole date is a non-working day, the sentenced offender may be released from custody at any time during the next day that is not a non-working day if the offender asks to be released on that day.
- (5) In this section:

***non-working day*** means—

- (a) a Saturday or Sunday; or
- (b) a public holiday at the place where the sentenced offender is being held in custody.

## **42 Victim to be told of decision to make parole order etc**

- (1) If the board decides to make a parole order for a sentenced offender and is aware of concerns expressed by or on behalf of a victim about the need for protection from violence or harassment by the offender, the board must take all reasonable steps to tell the victim, as soon as is practicable, of—
  - (a) the board's decision; and
  - (b) the date when the person is to be released on parole; and
  - (c) the offender's obligations under the parole order.
- (2) If the board decides not to make a parole order for a sentenced offender and is aware of concerns expressed by or on behalf of a victim about the need for protection from violence or harassment by the offender, the board must take all reasonable steps to tell the victim, as soon as practicable, of the board's decision.

## **43 Sentence not discharged unless parole completed**

- (1) If a sentenced offender is released on parole, the offender is taken to be under sentence of imprisonment, and not to have served any period of imprisonment that remained to be served on the parole date, unless—
  - (a) the parole ends without the parole order being revoked; or
  - (b) the offender is otherwise discharged from that imprisonment.
- (2) If the parole ends without the parole order being revoked, the sentenced offender is taken to have served the period of imprisonment that remained to be served on the parole date and to have been discharged from that imprisonment.
- (3) However, if the parole order is revoked after the end of the parole with effect from a date before the end of the parole, this section has effect as if the parole had not ended without the parole order being revoked.

**44 Parole order not invalidated by failure to comply with procedural requirements**

A parole order is not invalid only because the board failed to comply with any procedural requirement of this Act.

**Division 3.3.3 Making decisions about release on parole**

**45 Consideration of release on parole**

- (1) The board must consider whether or not a sentenced offender should be released on parole—
  - (a) a reasonable time before the offender's eligibility date; and
  - (b) if the offender is not released on parole on or after the eligibility date—within each successive year after the eligibility date (unless the offender is no longer eligible for release on parole); and
  - (c) if the offender is released on parole on or after the eligibility date but the parole order is revoked and a further parole order is not subsequently made—within each successive year after the revocation (unless the offender is no longer eligible for release on parole).

*Note* **Eligibility date** is defined in the dict.

- (2) However, the board may decline to consider the case of a sentenced offender for not longer than 3 years at a time after it last considered releasing the offender on parole.

**46 Board to seek views of victims**

- (1) Before considering whether or not a sentenced offender should be released on parole, the board must contact each victim of the offender whose details are entered in the victims register.

- (2) The board may also contact any other victim of whom the board is aware if the board is satisfied the circumstances justify it doing so.
- (3) The board must—
  - (a) give each victim contacted under this section information about the sentenced offender necessary for the victim to exercise the victim's rights under this section (for example, the offender's conduct to date while serving the offender's sentence and the standard conditions for parole prescribed under the regulations); and
  - (b) ask the victim whether the victim wishes to—
    - (i) make a written submission to the board about the release of the offender on parole, including the likely effect on the victim, or on the victim's family, if the offender were to be released on parole; or
    - (ii) tell the board, in writing, about any concern of the victim or the victim's family about the need to be protected from violence or harassment by the offender; and
  - (c) tell the victim that any submission or concerns made in writing to the board within a reasonable stated time will be considered in deciding whether the offender should be released on parole and, if so, whether the offender's parole order should be subject to additional conditions imposed by the board; and
  - (d) allow the victim a reasonable time (not less than 7 days) within which to make a written submission or tell the board, in writing, about any concerns.

#### **47 Initial consideration of parole by board**

Immediately after considering whether a sentenced offender should be released on parole, the board must either—



- (a) make a written order directing the release of the offender on parole on the offender's eligibility date or on a stated date within a reasonable time after the order is made; or
- (b) give the offender notice that the board is of the opinion that the information currently before it does not justify the board releasing the person on parole (a *notice of a parole hearing*).

*Note* Power given under an Act to make a statutory instrument (including an order) includes power to amend or revoke the instrument (see *Legislation Act 2001*, s 46 (1)).

#### **48 Notice of a parole hearing**

A notice of a parole hearing must—

- (a) be in writing; and
- (b) require the offender to tell the secretary, within 7 days after the day the offender receives the notice, if the offender wishes to make submissions to the board about being released on parole; and
- (c) be accompanied by a copy of every report and other document intended to be used by the board in deciding whether the sentenced offender should be released on parole.

*Note* Section 95 (Security of certain information) provides that copies of certain reports and documents need not be provided.

#### **49 Further consideration by board of release of offender on parole**

- (1) If a sentenced offender who has been given a notice of a parole hearing tells the secretary that the offender wishes to make submissions to the board, the chairperson must, as soon as practicable, call a meeting of the board to conduct a hearing to decide whether the offender should be released on parole.

- (2) At the hearing, or at a hearing conducted at a subsequent meeting, the sentenced offender is entitled to make submissions to the board about being released on parole.

*Note* Section 90 (Rights of sentenced offenders making submissions to board) deals with the offender's rights at the hearing.

- (3) If the sentenced offender's eligibility date has not passed, any subsequent meeting must, if practicable, be held before that date.

## **50 Decision of board about parole after further consideration**

- (1) After considering all the reports, documents and other information before it about a sentenced offender, the board must decide—
- (a) whether the offender should be released on parole; or
  - (b) whether, for reasons stated in the board's minutes, the question whether the offender should be released on parole should be deferred.
- (2) The question whether the sentenced offender should be released on parole—
- (a) may be deferred only once; and
  - (b) may not be deferred for longer than 2 months.
- (3) If the board decides that the sentenced offender should be released on parole, the board must make a written order directing the release of the offender on parole on the offender's eligibility date or on a stated date within a reasonable time after the order is made.
- (4) If the board decides that the sentenced offender should not be released on parole, the board must—
- (a) record its reasons in the minutes of the board; and
  - (b) tell the offender that it has decided that the offender should not be released on parole; and
  - (c) give the offender a copy of its reasons.

## **51 General duty of board in making parole decisions**

- (1) The board may make a parole order for a sentenced offender only if it has decided that the release of the offender is appropriate, having regard to the principle that the public interest is of primary importance.
- (2) In deciding whether to make a parole order, the board must have regard to the following matters:
  - (a) any relevant recommendations, observations and comments made by the sentencing court;
  - (b) the offender's antecedents;
  - (c) the likely effect on any victim of the offender, and on the victim's family, of the offender being released on parole and, in particular, any concern, of which it is aware, expressed by or on behalf of a victim of the offender, or the victim's family, about the need for protection from violence or harassment by the offender;
  - (d) any report required under the regulations in relation to the granting of parole to the offender;
  - (e) any other report prepared by or for the Territory in relation to the granting of parole to the offender;
  - (f) the offender's conduct to date while serving the offender's sentence;
  - (g) the likelihood that, if granted parole, the offender will comply with any conditions to which the parole order would be subject;
  - (h) whether release on parole is likely to assist the offender to adjust to lawful community life;
  - (i) any special circumstances of the case;
  - (j) any other matter prescribed under the regulations.

- (3) Subsection (2) does not limit the matters to which the board may have regard.
- (4) In having regard to the matters mentioned in subsection (2), the board must consider any submission made to it by a victim of the sentenced offender, and any concern expressed to it by a victim of the offender, under section 46 (Board to seek views of victims).

### **Division 3.3.4 Parole orders in exceptional circumstances**

#### **52 Making of parole orders in exceptional circumstances**

- (1) If the board is satisfied that there are exceptional circumstances justifying the release on parole of a sentenced offender under this section, the board may make a written order directing the release of the offender on parole.
- (2) The board may, in the order, state a parole date that is earlier than the offender's eligibility date only if satisfied that—
  - (a) there are exceptional circumstances justifying the release of the offender on parole before the eligibility date; and
  - (b) the number of days before the eligibility date does not exceed the number worked out at the rate of 4 days for every month, or part of a month, of imprisonment actually served by the offender.
- (3) The board may decide not to release a sentenced offender on parole under this section without conducting a hearing.
- (4) Division 3.3.3 (Making decisions about release on parole), other than section 46 (Board to seek views of victims) and section 51 (2) to (4) (General duty of board in making parole decisions), does not apply to a parole order under this section.

## **Part 3.4                      Revocation of parole orders**

### **53      Arrest of parolee without warrant**

- (1) If a police officer believes, on reasonable grounds, that a sentenced offender who is subject to a parole order has breached the offender's obligations under the order, the police officer may arrest the offender without a warrant.
- (2) If the police officer arrests the sentenced offender under this section, the police officer must bring the offender before the board as soon as is practicable.

### **54      Arrest of parolee with warrant**

- (1) If a judicial officer is satisfied by information on oath that there are reasonable grounds for believing that a sentenced offender who is subject to a parole order has breached the offender's obligations under the order, the judicial officer may issue a warrant for the apprehension of the offender and for bringing the offender before the board.
- (2) The warrant must—
  - (a) be in writing signed by the judicial officer; and
  - (b) be directed to all police officers or a named police officer; and
  - (c) state shortly the matter of the information on which it is based; and
  - (d) order the apprehension of the sentenced offender and the bringing of the offender before the board.
- (3) A sentenced offender who is apprehended under a warrant under this section must be brought before the board as soon as is practicable.
- (4) In this section:

*judicial officer* means a judge of the Supreme Court or a magistrate.

**55 Duty of corrections officers relating to breaches of parole orders**

If a corrections officer believes, on reasonable grounds, that a sentenced offender subject to a parole order has committed a breach of the offender's obligations under the order, the officer must tell the board about the breach.

**56 Warrant remanding parolee into custody**

- (1) If—
  - (a) a sentenced offender who is subject to a parole order appears before the board in an inquiry about whether the offender has breached the offender's obligations under the order; and
  - (b) the board adjourns (or again adjourns) the hearing of the inquiry;  
the board may, by warrant, remand the offender in custody to appear before the board at the adjourned hearing.
- (2) The warrant must be in writing signed by a judicial member or the secretary.
- (3) The board may remand the sentenced offender in custody under this section—
  - (a) only twice in relation to the same inquiry; and
  - (b) for no longer than 15 days each time the board adjourns the hearing of the inquiry; and
  - (c) if the offender has previously been remanded in custody in relation to the same inquiry—only if the hearing of the inquiry was adjourned on the second occasion because of circumstances beyond the board's control.

- (4) In working out a period for subsection (3) (b), the day when the board adjourns the hearing of the inquiry, and the day when the sentenced offender appears before the board at the adjourned hearing, are both counted.

### **57 Inquiry into suspected breaches of parole orders**

- (1) If the board has reason to suspect that a sentenced offender subject to a parole order has breached the offender's obligations under the order, the board may conduct an inquiry into the matter, whether or not the order has ended.
- (2) At any hearing held by the board for the inquiry, the sentenced offender is entitled to make submissions to the board about the matter under inquiry.

*Note* Section 90 (Rights of sentenced offenders making submissions to board) deals with the offender's rights at a hearing.

### **58 Revocation of parole orders**

- (1) The board may make an order (a *revocation order*) revoking a parole order for a sentenced offender if—
- (a) the board is satisfied that the offender has breached the offender's obligations under the order; or
  - (b) the offender has failed to appear before the board when called on to do so under section 84 (Sentenced offenders to appear before board).
- (2) A revocation order may be made only—
- (a) after the board has held an inquiry into the matter; and
  - (b) if the offender has appeared at a hearing held by the board for the inquiry.
- (3) If the board is satisfied that the sentenced offender has breached the offender's obligations under the parole order, but is not of the

opinion that the order should be revoked, the board may instead do any 1 or more of the following:

- (a) give the offender a formal warning;
  - (b) under section 38 (Conditions of parole), impose an additional condition on the order or amend an existing additional condition imposed by the board on the order;
  - (c) give directions to a corrections officer about the supervision of the offender;
  - (d) take no action.
- (4) If the board takes action under subsection (1) or (3), the board must—
- (a) record its reasons for taking the action in the minutes of the board; and
  - (b) give the offender a copy of its reasons.

### **59 Date of effect of revocation of parole order**

- (1) An order revoking a parole order for a sentenced offender takes effect on the date stated in the order.
- (2) The date stated in the order must be—
  - (a) the date the order is made; or
  - (b) if the board is satisfied that the sentenced offender breached the offender's obligations under the order—the date when it appears to the board that the offender breached the obligations; or
  - (c) if the board is satisfied that the sentenced offender breached the offender's obligation under the order on 2 or more separate days—the date when it appears to the board that the offender first breached the obligations.



**60 Warrant by board committing parolee to prison**

If the board revokes a parole order for a sentenced offender, a judicial member or the secretary must issue a warrant committing the offender to prison for the relevant period of imprisonment.

**61 Parole order revoked if parolee sentenced to imprisonment**

If a sentenced offender is subject to a parole order, the order is automatically revoked if the offender is—

- (a) convicted of an offence (including an offence against the law of the Commonwealth, a State or another Territory); and
- (b) sentenced to a term of imprisonment that is not completely suspended.

**62 Parole order revoked if former parolee sentenced to imprisonment for offence committed while order in force**

- (1) This section applies if a person who has been subject to a parole order is—
  - (a) convicted of an offence (including an offence against the law of the Commonwealth, a State or another Territory) committed while the parole order was in force; and
  - (b) sentenced to a term of imprisonment for the offence that is not completely suspended.
- (2) The parole order is automatically revoked with effect from the date the offence was committed.

## **Part 3.5**                      **Other provisions about parole**

### **63**      **Regulations about parole**

The regulations may make provision in relation to —

- (a) the management, control, administration and supervision of parole orders; and
- (b) blood testing, breath testing, urinalysis and other test procedures for detecting alcohol or drug use by parolees; and
- (c) the standard conditions to which parole orders are subject; and
- (d) the functions of correction officers for this part.

### **64**      **Exercise of functions by board after parole order has ended**

The board may exercise any function in relation to a parole order (including a function under part 3.4 (Revocation of parole orders)) even though the order has ended.

## **Chapter 4                      Sentence Administration Board**

### **Part 4.1                      Establishment and membership of board**

#### **65      Establishment of board**

The Sentence Administration Board is established.

#### **66      Functions of board**

The functions of the board are—

- (a) to consider the release on parole of sentenced offenders for whom a court has set a nonparole period; and
- (b) to decide additional conditions of parole orders; and
- (c) to monitor parole orders; and
- (d) to decide the consequences of sentenced offenders failing to comply with their obligations under parole orders; and
- (e) to provide advice to the Minister about sentenced offenders at the Minister's request; and
- (f) to exercise any other function given to the board under this Act or any other Territory law.

#### **67      Membership of board**

The board consists of the members appointed under section 68 (Appointment of members).

## 68 Appointment of members

- (1) The Minister must appoint the following members to the board:
  - (a) a chairperson;
  - (b) at least 1 deputy chairperson and not more than 2 deputy chairpersons;
  - (c) not more than 8 other members.

*Note 1* A person may be reappointed to a position if the person is eligible for appointment to the position (see *Legislation Act 2001*, s 208 (1) (c) and dict, pt 1, def of *appoint*).

*Note 2* The power to appoint a person to a position includes power to appoint a person to act in the position (see *Legislation Act 2001*, s 209).

- (2) The Minister may appoint a person to be chairperson or deputy chairperson only if the person is a judicially qualified person.
- (3) The members mentioned in subsection (1) (a) and (b) are the **judicial members** of the board, and the members mentioned in subsection (1) (c) are the **non-judicial members** of the board.
- (4) The *Supreme Court Act 1933*, section 16 (Holding other judicial offices) does not apply to the appointment of a judge of the Supreme Court as a judicial member.
- (5) The *Magistrates Court Act 1930*, section 10E (Magistrates not to undertake other work) does not apply to the appointment of a magistrate as a judicial member.
- (6) The appointment of a person who is a judge or magistrate as a judicial member does not affect the person's office of judge or magistrate.
- (7) A person who is a judge or magistrate may exercise the powers of his or her office as judge or magistrate even though the person is a judicial member.
- (8) In this section:

*judicially qualified person* means—

- (a) a judge or retired judge of the Supreme Court; or
- (b) a magistrate or retired magistrate; or
- (c) a person qualified to be appointed as a resident judge of the Supreme Court.

*Note* Under the *Supreme Court Act 1933*, s 4 (2) a person under 70 years old is eligible to be appointed as a resident judge if the person—

- (a) is or has been a judge of a superior court of record of the Commonwealth or a State or has been a judge of the Supreme Court; or
- (b) has been a legal practitioner for not less than 5 years.

## **69 Term of appointment of members etc**

- (1) A member of the board is to be appointed for a term not longer than 3 years.
- (2) The instrument appointing, or evidencing the appointment of, a member of the board must state—
  - (a) the term for which the member is appointed; and
  - (b) whether the person is appointed as chairperson, deputy chairperson or a non-judicial member.

## **70 Ending of appointment of members**

- (1) The Minister may end the appointment of a member of the board—
  - (a) for misbehaviour or physical or mental incapacity; or
  - (b) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit; or
  - (c) for contravening section 78 (Disclosure of interests by members of board); or

- (d) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the board; or
- (e) is convicted in the ACT of an indictable offence or is convicted elsewhere of an offence that, if committed in the ACT, would be an indictable offence; or
- (f) for a judicial member—is no longer a judicially qualified person.

*Note* A member's appointment also ends if the member resigns (see *Legislation Act 2001*, s 210).

- (2) In this section:

*judicially qualified person*—see section 68 (8) (Appointment of members).

## **71 Conditions of appointment of members generally**

A member of the board holds the position on the conditions not provided by this Act or another Territory law that are decided by the Minister.

## **72 Divisions of board**

- (1) The chairperson may, in writing, constitute divisions of the board.

*Note* Power given under an Act to make a statutory instrument includes power to amend or repeal the instrument (see *Legislation Act 2001*, s 46 (1)).

- (2) A division is to consist of—
- (a) at least 1, and not more than 2, judicial members; and
  - (b) at least 2, and not more than 4, non-judicial members.
- (3) The chairperson may delegate to a division all or any of the functions of the board.
- (4) For the exercise of a function of the board delegated to a division—

- (a) the division is taken to be the board; and
- (b) the judicial member of the division (or, if there are 2 judicial members of the division, the judicial member nominated by the chairperson) is taken to be the chairperson.

## **Part 4.2 Proceedings of board**

### **73 Time and place of board meetings**

- (1) The board may meet at the times and places it decides.
- (2) However, the chairperson may at any time call a meeting.
- (3) The board may adjourn a proceeding, for any reason it considers appropriate, to a time and place decided by it.

### **74 Presiding at board meetings**

At a meeting of the board, the chairperson or another judicial member nominated by the chairperson is to preside.

### **75 Conduct of board proceedings**

- (1) Business may be carried out at a meeting of the board only if 3 members are present, including at least 1 judicial member and at least 2 non-judicial members.
- (2) A question is decided by a majority of the votes of members present and voting but, if the votes are equal, the judicial member presiding has a casting vote.
- (3) The board may conduct its proceedings (including its meetings) as it considers appropriate.
- (4) The board may hold meetings, or allow members to take part in meetings, by telephone, closed-circuit television or another form of communication.
- (5) A member who takes part in a meeting conducted under subsection (4) is taken to be present at the meeting.
- (6) A resolution of the board is a valid resolution, even though it is not passed at a meeting of the board, if—



- (a) all members agree, in writing, to the proposed resolution; and
- (b) notice of the resolution is given under procedures decided by the board.

## **76 Board procedure**

- (1) The board is not bound by the rules of evidence and may inform itself of anything in any way it considers appropriate, but must observe natural justice.
- (2) Proceedings before the board—
  - (a) are not to be open to the public, unless the board decides in a particular case that the proceeding is to be conducted completely or partly in public; and
  - (b) are to be conducted with as little formality and technicality, and as quickly, as fairness to any affected person and the requirements of this Act allow.
- (3) Without limiting subsection (2) (a), a person (other than an eligible person) is not entitled to be present at a meeting (including a hearing) of the board, unless the presiding judicial member otherwise directs.
- (4) In subsection (3):  
*eligible person* means—
  - (a) a member, or
  - (b) the secretary; or
  - (c) the director of public prosecutions; or
  - (d) for a hearing of the board at which a sentenced offender is entitled under this Act to make submissions to the board—
    - (i) the offender; or
    - (ii) a lawyer representing the offender; or

- (iii) someone else representing the offender with the board's consent; or
  - (e) for any hearing of the board—a person who is required to appear before, or produce a document to, the board at the hearing.
- Note* Section 49 (Further consideration by board of intention to refuse parole) and section 57 (Inquiry into suspected breaches of parole orders) entitle sentenced offenders to make submissions to the board.
- (5) A decision of the board is not invalid only because of any informality or lack of form.

## **77 Board minutes**

The board must keep minutes of its proceedings.

## **78 Disclosure of interests by members of board**

- (1) This section applies to a member of the board if—
  - (a) the member has a direct or indirect interest in an issue being considered, or about to be considered, by the board; and
  - (b) the interest could conflict with the proper exercise of the member's functions in relation to the board's consideration of the issue.
- (2) As soon as is practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a meeting of the board.
- (3) The disclosure must be recorded in the board's minutes and, unless the board otherwise decides, the member must not—
  - (a) be present when the board considers the issue; or
  - (b) take part in a decision of the board on the issue.
- (4) Any other member who also has a direct or indirect interest in the issue must not—

- (a) be present when the board is considering its decision under subsection (3); or
  - (b) take part in making the decision.
- (5) Within 14 days after the end of each financial year, the chairperson must give the Minister a statement of any disclosure of interest made under this section during the financial year.

### **79 Authentication of board documents**

Any document requiring authentication by the board is sufficiently authenticated if it is signed by—

- (a) the judicial member who presided at the meeting of the board that dealt with the proceeding in relation to which the document was prepared; or
- (b) in the absence of that member, any other member who was present at that meeting or the secretary.

### **80 Evidentiary certificate about board decisions**

A certificate given by the secretary that records any decision of the board is admissible in any legal proceeding and is evidence of the matters recorded.

### **81 Proof of certain matters relating to board not required**

In any legal proceeding, proof is not required, until evidence is given to the contrary, of—

- (a) the constitution of the board; or
- (b) any decision or recommendation of the board; or
- (c) the appointment of, or holding of office by, any member; or
- (d) the presence or nature of a quorum at any meeting of the board.

**82 Application of pt 4.2 and pt 4.3 to divisions of board**

This part and part 4.3 (Inquiries by board) apply to a division of the board in the same way as they apply to the board, except so far as they otherwise provide.

## **Part 4.3                      Inquiries by board**

### **83      Board may hold inquiries and hearings**

- (1) For the exercise of a function of the board, the board may hold an inquiry.
- (2) The board may hold hearings for an inquiry.

### **84      Sentenced offenders to appear before board**

- (1) This section applies to an inquiry in relation to a sentenced offender subject to a parole order.
- (2) A judicial member may call on the sentenced offender to appear before the board and, if the offender does not appear, may authorise the issue of a warrant for the offender's arrest.
- (3) However, if a judicial member is of the opinion that the sentenced offender will not appear if called on to do so or for any other reason a warrant should be immediately issued for the offender, the judicial member may, without calling on the offender to appear before the board, authorise the issue of a warrant for the offender's arrest.
- (4) A warrant under this section must—
  - (a) be signed by a judicial member or the secretary; and
  - (b) be directed to all police officers or a named police officer; and
  - (c) order the apprehension of the sentenced offender to whom the warrant relates and the bringing of the offender before the board.
- (5) If a sentenced offender is apprehended under a warrant under this section, the offender must be brought before the board as soon is practicable.

**85 Board may require attendance of people and production of documents**

- (1) A judicial member may, by written notice given to a person, require the person—
  - (a) to appear before the board, at a time and place stated in the notice, for the purpose of giving evidence; or
  - (b) to produce to the board, at a time and place stated in the notice, a stated document that is relevant to any proceeding of the board.
- (2) A person who is given a notice under subsection (1) (a) must not, without reasonable excuse, fail to—
  - (a) appear as required by the notice; and
  - (b) continue to attend as required by the judicial member presiding until excused from further attendance.

Maximum penalty: 5 penalty units.

- (3) A person who is given a notice under subsection (1) (b) must not fail, without reasonable excuse, to produce a document as required by the notice.

Maximum penalty: 5 penalty units.

- (4) If a document is produced to the board, the board may take possession of the document for the period that it considers necessary for the proceeding before it.
- (5) This section does not require a person to produce to the board any document the production of which the Minister certifies in writing may—
  - (a) endanger an offender or anyone else; or
  - (b) otherwise be contrary to the public interest.

## **86 Giving evidence and answering questions before board**

- (1) The judicial member presiding may require a person who appears before the board to be sworn for the purpose of giving evidence on oath and may administer an oath to the person.
- (2) The judicial member presiding may require a person who appears before the board to answer a question that is reasonably related to the proceeding before it.
- (3) The judicial member presiding may disallow a question put to a person if, in the judicial member's opinion, the question is unfair or unduly prejudicial.
- (4) A person is not excused from answering a question or producing a document when required to do so for an inquiry on the ground that answering the question or producing the document may tend to incriminate the person.
- (5) However—
  - (a) the answering of the question or the production of the document; or
  - (b) any other information, document or thing obtained as a direct or indirect consequence of the person answering the question or producing the document;is not admissible in evidence against the person in a criminal proceeding.
- (6) Subsection (5) does not apply to a proceeding for an offence against this Act or any other offence in relation to the falsity or misleading nature of an answer or document.

## **87 Offences relating to hearings by board**

- (1) A person must not at a hearing of the board—
  - (a) make an unsworn statement that the person knows is false or misleading in a material particular; or

- (b) produce a document to the board that the person knows is false or misleading in a material particular; or

Maximum penalty: 20 penalty units.

- (2) A person appearing before the board must not—

- (a) fail to take an oath or make an affirmation when required by the judicial member presiding; or

- (b) fail, without reasonable excuse, to answer a question the person is required to answer by the judicial member presiding.

Maximum penalty: 20 penalty units.

### **88 Misconduct before board**

- (1) A person must not, at a hearing of the board, insult any member or behave in a disorderly, abusive or threatening way.

Maximum penalty: 10 penalty units.

- (2) A person must not, at a hearing of the board, without reasonable excuse—

- (a) interrupt the hearing; or

- (b) disobey a reasonable direction of the judicial member presiding.

Maximum penalty: 10 penalty units.

### **89 Reports for board**

A corrections officer or an authority of New South Wales must, if asked by the board, give the secretary a report about a person who is serving a sentence of imprisonment or on parole.



**90 Rights of sentenced offenders making submissions to board**

At any hearing of the board at which a sentenced offender is entitled under this Act to make submissions to the board, the offender—

- (a) may be represented by a lawyer or, with the consent of the board, by anyone else; and
- (b) may make submissions to the board in relation to any evidence presented to the board; and
- (c) may produce documents and exhibits to the board; and
- (d) may give evidence on oath; and
- (e) may otherwise present evidence, orally or in writing, to the board, and address the board on, matters relevant to the hearing.

*Note* Section 49 (Further consideration by board of intention to refuse parole) and section 57 (Inquiry into suspected breaches of parole orders) entitle sentenced offenders to make submissions to the board.

**91 Allowances and expenses payable to board witnesses**

- (1) A person who is required to appear before, or produce a document to, the board at a hearing is entitled to be paid the reasonable allowances and expenses that the board decides.
- (2) This section does not apply to—
  - (a) the sentenced offender in relation to whom the hearing is being held; or
  - (b) a witness who is in prison or a remand centre.

## **Part 4.4**                      **Other provisions about the board**

### **92**      **Effect of board warrants**

- (1) A warrant issued by a judicial member or the secretary under this Act has the same effect as a warrant issued by a court.
- (2) All courts and persons acting judicially must take judicial notice of a warrant issued by a judicial member or the secretary under this Act.

### **93**      **Secretary and assistant secretaries**

- (1) The chief executive may appoint a public servant as secretary of the board.
- (2) The chief executive may appoint 1 or more public servants as assistant secretaries of the board.
- (3) Subject to any direction of the chief executive, an assistant secretary may exercise any of the functions of the secretary.

*Note*      The functions of an assistant secretary may be exercised by a person occupying the position of assistant secretary (see *Legislation Act 2001*, s 200).

## Chapter 5            Miscellaneous

### 94    **Chief Minister may make arrangements with NSW**

- (1) The Chief Minister may make arrangements with the Governor of New South Wales (the *State*)—
  - (a) for the exercise by State officers of functions in relation to ACT prisoners who are serving their sentences in the State; and
  - (b) for reports by State officers about ACT prisoners.
- (2) In this section:

*State officer* means an officer or employee of the State, of a State instrumentality or of a contractor of the State.

*ACT prisoner* means an offender sentenced in the ACT to imprisonment by way of full-time detention.

### 95    **Exercise of prerogative of mercy and other laws not affected**

This Act does not affect—

- (a) the prerogative of mercy; or
- (b) any other Act, or any other law in force in the Territory, relating to offenders or remandees.

### 96    **Security of certain information**

This Act does not require a person to be given a copy of a report or another document (or any part of the report or document) if giving it to the person may, in the opinion of a judicial member—

- (a) adversely affect the security, discipline or good order of a prison or remand centre; or

- (b) endanger the person or anyone else; or
- (c) jeopardise the conduct of any lawful investigation; or
- (d) prejudice the public interest.

**97      Corrections officers**

The chief executive may appoint public servants to be corrections officers for this Act.

**98      Approved forms**

- (1) The Minister may approve forms for this Act (other than forms for use in or in relation to a court).
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

*Note*      A notifiable instrument must be notified under the *Legislation Act 2001*.

**99      Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note*      Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

**100      Review of home detention provisions**

- (1) The Minister must review the operation of the provisions of this Act relating to home detention as soon as is practicable after 2 years after the commencement of this Act.

- (2) A report on the outcome of the review must be presented by the Minister to Legislative Assembly within 6 months after the end of the 2 years.
- (3) This section expires 3 years after it commences.

## Chapter 6 Transitional provisions, repeals and amendments

### 101 Definitions for ch 6

In this chapter:

*commencement* means the commencement of this chapter.

*existing parole order*—see section 104 (1) (Parole orders under former Act).

*former Act* means the *Parole Act 1976*.

*former board* means the parole board established under the former Act.

### 102 Nonparole periods fixed under former Act

A nonparole period fixed under the former Act, section 7 that had not ended before the commencement is taken, after the commencement, to be a nonparole period set under section 31 (Court to set nonparole period) of this Act for the remainder of the period for which it was fixed under the former Act.

### 103 Decisions of former board refusing parole etc

- (1) An opinion formed by the former board under the former Act, section 19 (1) (a) is taken, after the commencement, to be a decision under section 47 (b) (Initial consideration of parole by board) of this Act.
- (2) A statement given to a person under the former Act, section 19 (1) (c) is taken, after the commencement, to be a notice of a parole hearing given to the person under section 47 (b) of this Act.

- (3) If a request was made by a person for the former Act, section 19 (1) (d), the request complied with the former Act, section 19 (2), but the person had not been brought before the board because of the request, then, for section 49 (Further consideration by board of intention to refuse parole) of this Act, the person is taken to have told the secretary that the person wishes to make submissions to the board.

#### **104 Parole orders under former Act**

- (1) A parole order under the former Act, section 20 that was in force immediately before the commencement (an *existing parole order*) is taken, after the commencement, to be a parole order under this Act.
- (2) While this section remains in force, the conditions to which an existing parole order was subject immediately before the commencement are taken, after the commencement, to be the conditions to which the order is subject.
- (3) However, subsection (2) does not prevent the board imposing additional conditions on an existing parole order, or amending any conditions to which an existing parole order is from time to time subject.
- (4) To remove any doubt, the standard conditions prescribed under the regulations for parole orders do not apply to an existing parole order while this section remains in force.

#### **105 Revocation of existing parole orders for breaches before commencement**

Part 3.4 (Revocation of parole orders) applies to a breach of a condition of an existing parole order committed before the commencement.

#### **106 Warrants to appear before former board**

A warrant issued under the former Act, section 25 that was in force immediately before the commencement is taken, after the

commencement, to be a warrant issued under section 54 (Arrest of parolee with warrant) of this Act.

### **107 Existing arrangements with NSW**

An arrangement made under the former Act, section 26 that was in force immediately before the commencement is taken, after the commencement, to be an arrangement made under section 94 (Chief Minister may make arrangements with NSW) of this Act.

### **108 Appointments to former board**

- (1) If a person held appointment as chairperson of the former board immediately before the commencement, the person is taken, on the commencement, to have been appointed as chairperson of the board under this Act for a term of 3 years.
- (2) If a person held appointment as a member (other than chairperson) of the former board immediately before the commencement, the person is taken, on the commencement, to have been appointed as a non-judicial member under this Act for a term of 3 years.
- (3) Section 69 (2) (Term of appointment of members etc) does not apply to an appointment mentioned in this section.

### **109 Regulations about transitional matters**

- (1) The regulations may prescribe transitional matters necessary or convenient to be prescribed for this Act.
- (2) Without limiting subsection (1), the regulations may prescribe matters necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act instead of the provisions of the former Act.
- (3) Regulations made under this section must not be taken to be inconsistent with this Act so far as they can operate concurrently with this Act.
- (4) This section is additional to section 110.



**110 Regulations modifying ch 6**

The regulations may modify the operation of this chapter to make provision with respect to any matter that is not, or is not in the Executive's opinion adequately, dealt with in this chapter.

**111 Repeals**

- (1) The *Parole Act 1976* No 29 is repealed.
- (2) The *Parole Board (Fees) Regulations* SL 1977 No 9 are repealed.

**112 Acts amended—sch 1**

Schedule 1 amends the Acts mentioned in that schedule.

**113 Expiry of ch 6**

This chapter expires 1 year after it commences.

## Schedule 1 Consequential amendments

(see s 112)

### Part 1.1 Custodial Escorts Act 1998

#### [1.1] Section 3, definition of *arrested person*, paragraph (a) (i)

*substitute*

- (i) has been arrested by a police officer, whether under a warrant or otherwise; or

#### [1.2] Section 3, definition of *court*

*substitute*

*court* includes—

- (a) a judge or magistrate; and
- (b) the Sentence Administration Board established under the *Rehabilitation of Offenders (Interim) Act 2001*; and
- (c) any other entity having power to compel the attendance of witnesses.

### Part 1.2 Director of Public Prosecutions Act 1990

#### [1.3] Section 6 (1) (ga)

*substitute*

- (ga) attending a meeting of the Sentence Administration Board established under the *Rehabilitation of Offenders (Interim) Act 2001*;

**[1.4] Section 6 (1)**

*renumber paragraphs when Act next republished under Legislation Act 2001*

**Part 1.3 Evidence (Miscellaneous Provisions) Act 1991**

**[1.5] Section 14, definition of *Territory court*, paragraph (e)**

*substitute*

- (e) an arbitrator or umpire conducting proceedings under the *Commercial Arbitration Act 1986*; or
- (f) the Sentence Administration Board established under the *Rehabilitation of Offenders (Interim) Act 2001*.

**Part 1.4 Parole Orders (Transfer) Act 1983**

**[1.6] Section 3, new definition of *board***

*insert*

***board*** means the Sentence Administration Board established under the Rehabilitation of Offenders Act.

**[1.7] Section 3, definition of *Parole Board***

*omit*

**[1.8] Section 3, definition of *parole order*, paragraph (a)**

*omit*

*Parole Act 1976*

*substitute*

Rehabilitation of Offenders Act

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**[1.9] Section 3, new definition of *Rehabilitation of Offenders Act***

*insert*

*Rehabilitation of Offenders Act* means the *Rehabilitation of Offenders (Interim) Act 2001*.

**[1.10] Section 7 (1) (d)**

*omit*

Parole Board

*substitute*

board

**[1.11] Section 9 (2) (b)**

*substitute*

(b) give the chairperson of the board a copy of the documents required under paragraph (c) to be kept in a register; and

**[1.12] Section 10 (2) (c)**

*omit*

*Parole Act 1976*

*substitute*

Rehabilitation of Offenders Act

**[1.13] Section 10 (4)**

*substitute*

(4) If a parole order registered under this Act is revoked under the Rehabilitation of Offenders Act, the parolee is liable to serve a sentence of imprisonment equal to the period for which the parolee was liable to be imprisoned on the day the parolee was released on parole under the order.

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## Part 1.5 Periodic Detention Act 1995

### [1.14] Section 33

*substitute*

#### 33 Application of Rehabilitation of Offenders (Interim) Act

The *Rehabilitation of Offenders (Interim) Act 2001* applies in relation to a term of imprisonment required to be served by a person because of the cancellation of a periodic detention order under section 29 (Cancellation on subsequent conviction) or section 30 (Cancellation otherwise than on subsequent conviction) as if—

- (a) for section 31 (Court to set nonparole period) of that Act—the court had sentenced the person to the relevant term of imprisonment; or
- (b) for section 32 (Setting of nonparole period for person serving 1 or more previous sentences) of that Act—a reference in that section to the existing sentence or the new sentence included that term of imprisonment.

## Part 1.6 Remand Centres Act 1976

### [1.15] New section 15 (1) (r)

*insert*

- (r) a person who, under the *Rehabilitation of Offenders (Interim) Act 2001*—
  - (i) is referred by a court for assessment for suitability for home detention; or
  - (ii) is before the Sentence Administration Board pending a hearing or decision of the board about the person's parole order.

**[1.16] Section 15**

*renumber subsections and paragraphs when Act next republished under Legislation Act 2001*

**Part 1.7                      Removal of Prisoners Act 1968**

**[1.17] Section 3 (1), definition of *authorised officer***

*substitute*

*authorised officer* means—

- (a) the sheriff or a deputy sheriff of the Territory; or
- (b) a magistrate; or
- (c) the registrar or a deputy registrar of the Magistrates Court; or
- (d) the chairperson, a deputy chairperson or the secretary of the Sentence Administration Board established under the *Rehabilitation of Offenders (Interim) Act 2001*; or
- (e) a sheriff, registrar, deputy registrar, district registrar, or similar officer, of a federal court.

## Dictionary

(see s 3)

***assessment report*** means a report under section 13 (Assessment of suitability for home detention).

***board*** means the Sentence Administration Board.

***chairperson*** means the chairperson of the board.

***Crimes Act*** means the *Crimes Act 1900*.

***corrections officer*** means a public servant appointed as a corrections officer under section 97 (Corrections officers).

***deputy chairperson*** means a deputy chairperson of the board.

***domestic violence offence***—see the Crimes Act, dictionary.

***eligibility date***, in relation to a sentenced offender, means the day the offender's nonparole period ends.

***full-time detention*** means imprisonment that is required to be served otherwise than by way of periodic detention or home detention.

***harm***, for chapter 3 (Nonparole periods and parole)—see section 29 (Definitions for ch 3).

***home detention*** means detention in accordance with chapter 2 (Home detention orders).

***home detention order*** means an order in force under section 6 (Imprisonment by way of home detention) or section 7 (Remand by way of home detention).

***institution***—see the *Children and Young People Act 1999*, dictionary.

***judicial member*** means the chairperson or a deputy chairperson.

**member** means a member of the board, and includes the chairperson and a deputy chairperson.

**non-judicial member** means a member other than the chairperson or a deputy chairperson.

**nonparole period** means—

- (a) a nonparole period set under section 31 (Court to set nonparole period); or
- (b) if the nonparole period is subject to reduction or remission under the *Removal of Prisoners Act 1968*, section 5 (Removal to, or detention in, the State)—the nonparole period less the period of reduction or remission.

**notice of a parole hearing**—see section 47 (Initial consideration of parole by board).

**obligations** means—

- (a) for a person subject to a home detention order—the obligations that the person has under section 19 (Obligations under home detention order) because of the making of the order
- (b) for a person subject to a parole order—the obligations that the person has under section 39 (Obligations under parole order) because of the making of the order.

**offender** means a person convicted or found guilty of an offence by a court.

**parolee** means a person subject to a parole order.

**parole date**, for a sentenced offender subject to a parole order, means the date stated in the order for the offender's release from custody.

**parole order** means an order in force under any of the following sections:

- section 47 (Initial consideration of parole by board)



- section 50 (Decision of board about parole after further consideration)
- section 52 (Making of parole orders in exceptional circumstances).

**police officer** includes a member of a police force or service of a State or another Territory.

**prison** includes any place in or outside the ACT where a person who has been sentenced to a term of imprisonment may be detained to serve the sentence by full-time detention.

**relevant court** means—

- (a) in relation to a remandee for whom a home detention order has been made—the remanding court; and
- (b) in relation to a sentenced offender for whom a home detention order has been made—the sentencing court.

**remand centre**—see the *Remand Centres Act 1976*, section 3.

**remandee** means a person remanded in custody by a court for an offence.

**remanding court**, in relation to a remandee for whom a home detention order has been made, means the court that made the home detention order, and includes that court differently constituted.

**secretary** means the secretary of the board, and includes an assistant secretary of the board.

**sentence** means—

- (a) when used as a noun—the penalty imposed for an offence; and
- (b) when used as a verb—to impose a penalty for an offence.

**sentenced offender** means a person convicted or found guilty of an offence by a court and sentenced for the offence, and includes a parolee.

**sentencing court**, in relation to an offender sentenced by a court, means the court by which the sentence was imposed, and includes that court differently constituted.

**served**—a term of imprisonment is **served** when—

- (a) the person is discharged from imprisonment; or
- (b) apart from the person serving another term of imprisonment, the person would have been discharged from imprisonment.

**State institution**—see the *Children and Young People Act 1999*, section 65.

**subject**—see section 5 (Meaning of *subject* to imprisonment etc).

**victim**, for chapter 3 (Nonparole periods and parole)—see section 29 (Definitions for ch 3).

**victims register**—see section 34 (Victims register).

**young person**—see the *Children and Young People Act 1999*, section 64.

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## Endnote

### Penalty units

The *Legislation Act 2001*, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

*[Presentation speech made in Assembly on 9 August 2001]*

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