



Australian Capital Territory

Rehabilitation of Offenders (Interim) Act 2001

A2001-82

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Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Rehabilitation of Offenders (Interim) Act 2001* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 28 March 2006. It also includes any amendment, repeal or expiry affecting the republished law to 28 March 2006.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Rehabilitation of Offenders (Interim) Act 2001

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Australian Capital Territory

Rehabilitation of Offenders (Interim) Act 2001

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

Chapter 1 Preliminary

1 Name of Act

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

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 terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*institution*—see the *Children and Young People Act 1999*, dictionary.’ means that the term ‘institution’ 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, s 155 and 156 (1)).

4 Notes

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

Note See the Legislation Act, 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 must 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 by regulation.
- (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 by regulation.

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 must 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 35 (Stalking);
- (e) an offence against the Crimes Act, part 3 (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) an offence made up of conduct that is domestic violence under the *Domestic Violence and Protection Orders Act 2001* in relation to 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 Criminal Code, chapter 6 (Serious drug offences) other than the following provisions:
 - (i) section 603 (8) (which is about trafficking in cannabis);
 - (ii) section 616 (8) (which is about cultivating a cannabis plant for selling);
 - (iii) section 618 (Cultivating controlled plant);
 - (iv) section 619 (8) (which is about selling a cannabis plant);
- (k) an offence against the *Periodic Detention Act 1995*, section 57 (1) (Offences by persons other than detainees); or
- (l) an offence against the *Remand Centres Act 1976*, section 18 (Offences by persons other than detainees);

- (m) an offence against any other Territory law prescribed by regulation.

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

- (1) A home detention order must 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 35 (Stalking) or a corresponding offence against a law outside the ACT or Australia; or
 - (ii) an offence made up of conduct that is domestic violence under the *Domestic Violence and Protection Orders Act 2001*, or would be domestic violence if the conduct happened in the ACT, 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 *Domestic Violence and 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 by regulation; 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 by regulation for subsection (1) (d) may include an offence against a law of the Commonwealth, a State, another Territory or a foreign country.

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 an offence that is made up of conduct that is domestic violence under the *Domestic Violence and Protection Orders Act 2001* in relation to anyone with whom it is likely the person would live in the same household if the home detention order were made;
 - (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 by regulation.
- (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) A regulation 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.

Chapter 2 Home detention orders
Part 2.2 Procedures for making home detention orders
Division 2.2.4 Explanation of home detention orders

Section 15

- (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 360 (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 by regulation;
 - (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 by regulation; 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 by regulation.

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

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 arrest 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 arrest of the person and the bringing of the person before the relevant court.
- (3) A person who is arrested 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**

A regulation 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 360 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 by regulation;
 - (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, 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 by regulation during the period stated in the order or prescribed by regulation.
- (4) However, the board may not—
 - (a) revoke or amend any standard conditions prescribed by regulation; 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 by regulation.

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, 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) This section applies if the board decides to make, or not to make, a parole order for a sentenced offender and—
 - (a) a victim of the offender has made a submission to the board under division 3.3.3 (Making decisions about release on parole) about the release of the offender on parole; or
 - (b) the board is aware of concerns expressed by or on behalf of a victim of the offender about the need for protection of the victim, or the victim's family, from violence or harassment by the offender; or
 - (c) details of a victim of the offender are entered in the victims register.
- (2) The board must take all reasonable steps to tell the victim, as soon as is practicable, about—
 - (a) the board's decision; and
 - (b) if the board decides to make a parole order—
 - (i) the date the sentenced offender is to be released on parole; and
 - (ii) the offender's obligations under the parole order.

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 take all reasonable steps to 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 by regulation); 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, 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 96 (Security of 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 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) must 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 by regulation.
- (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 offender's arrest.
- (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 arrest of the sentenced offender and the bringing of the offender before the board.
- (3) A sentenced offender who is arrested 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 in custody on adjournment

- (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 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, under subsection (3) (b), the board imposes an additional condition on the parole order or amends an existing additional condition imposed by the board on the order, the board may, for giving effect to the condition or amended condition and by warrant, remand the offender in custody until a stated date or the happening of a stated event.
- (5) The board must not remand the sentenced offender in custody under this section—
- (a) more than once for the same breach; or
 - (b) for longer than 30 days for a breach.
- (6) The day when the board remands the sentenced offender, and the stated day or the day the stated event happens, are both counted for subsection (5).
- (7) If the board takes action under subsection (1), (3) or (4), the board must—
- (a) record its reasons for taking the action in the minutes of the board; and

- (b) give the sentenced offender a copy of the 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 day the order is made.
- (2) However, if the parole order has ended (otherwise than because it has been revoked) and the board is satisfied that the sentenced offender breached the offender's obligations under the order, an order revoking the order takes effect on the date stated in the order.

Note Section 43 (3) deals with the effect of revoking a parole order with effect from a date before the end of parole.

- (3) For subsection (2), the day stated in the order must be—
 - (a) the date when it appears to the board that the offender breached the offender's obligations; or
 - (b) if the board is satisfied that the sentenced offender breached the offender's obligations under the order on 2 or more separate days—the date when it appears to the board that the offender first breached the obligations.

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) committed during the parole period; 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.

62A Warrant by board committing parolee to prison

- (1) This section applies if the board—
 - (a) revokes a parole order for a sentenced offender under section 58 (Revocation of parole orders); or
 - (b) is satisfied that a parole order for a sentenced offender has been automatically revoked under section 61 (Parole order revoked if parolee sentenced to imprisonment) or section 62 (Parole order revoked if former parolee sentenced to imprisonment for offence committed while order in force).
- (2) A judicial member or the secretary must issue a warrant committing the sentenced offender to prison for the relevant period of imprisonment.

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.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def of *entity*).

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 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (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 7G (Magistrates not to do 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

(1) A member of the board must be appointed for a term of not longer than 3 years.

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

(2) The instrument appointing, or evidencing the appointment of, a member of the board must state 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, 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, 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 the functions of the board to a division.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

72A Delegation of chairperson's functions

The chairperson may delegate to a deputy chairperson the chairperson's functions under the following provisions:

- (a) section 49 (1) (Further consideration by board of release of offender on parole);
- (b) section 72 (1) (Divisions of board);
- (c) section 73 (2) (Time and place of board meetings);
- (d) section 74 (Conduct of board proceedings).

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

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 arrest of the sentenced offender to whom the warrant relates and the bringing of the offender before the board.
- (5) If a sentenced offender is arrested 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 to appear before the board at a hearing, at a stated time and place, to do either or both of the following:
 - (a) to give evidence;
 - (b) to produce a stated document or other thing relevant to the hearing.
- (2) 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.
- (3) 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 Powers in relation to witnesses etc

- (1) The judicial member presiding at a hearing of the board may require a witness appearing before the board to give evidence to do 1 or more of the following:
 - (a) to take an oath;
 - (b) to answer a question relevant to the hearing;
 - (c) to produce a stated document or other thing relevant to the hearing.

Note 1 **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

Note 2 The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (2) The judicial member presiding may disallow a question put to a person if the judicial member considers the question is unfair or unduly prejudicial.

87 Privileges against selfincrimination and exposure to civil penalty

- (1) This section applies if a person is required under section 85 (1) or section 86 (1) to—
- (a) produce a document or other thing; or
 - (b) answer a question.
- (2) The person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to produce the document or other thing or answer the question.
- Note* The Legislation Act, s 171 deals with client legal privilege.
- (3) However, any information, document or other thing obtained, directly or indirectly, because of the producing of the document or other thing, or the answering of the question, is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—
- (a) an offence in relation to the falsity or the misleading nature of the answer, document or information; or
 - (b) an offence against the Criminal Code, chapter 7 (Administration of justice offences).

88 Application of Criminal Code, ch 7

An inquiry by the board is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

Note That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to inquiries by the board.

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 people 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, s 200).

93A Protection from liability for board members and secretary

- (1) A person who is, or has been, a member of the board or the secretary is not civilly liable for an act or omission done honestly in the exercise, or purported exercise, of a function under this Act.
- (2) Any liability that would, apart from subsection (1), attach to a person attaches to the Territory.

93B Protection of witnesses etc

- (1) A lawyer representing a sentenced offender, or someone else representing a sentenced offender with the board's consent, at a hearing of the board has the same protection as a barrister has in appearing for a party in a proceeding in the Supreme Court.
- (2) A witness in a proceeding before the board has the same protection as a witness in a proceeding in the Supreme Court.

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 information

- (1) The board or the secretary must not disclose to an offender a document, or any part of a document, containing any of the following details about a victim of the offender:
 - (a) the victim's home or business address;

- (b) any email address for the victim;
 - (c) any contact telephone or fax number for the victim.
- (2) This Act does not require a person to be given a copy of a document, or any part of a document, if there is, in a judicial member's opinion, a substantial risk that giving it to a person would—
- (a) adversely affect the security, discipline or good order of a prison or remand centre; or
 - (b) jeopardise the conduct of any lawful investigation; or
 - (c) endanger the person or anyone else; 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, in writing, 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.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

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

99 Regulation-making power

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

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may prescribe offences for contraventions of a regulation and prescribe maximum penalties of not more than 10 penalty units for offences against a regulation.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- another Territory
- fail
- found guilty
- function
- police officer
- public servant
- remand centre.

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.

deputy chairperson means a deputy chairperson of the board.

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, 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 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 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.

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.

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

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Rehabilitation of Offenders (Interim) Act 2001 A2001-82

notified 10 September 2001 (Gaz 2001 No S66)
s 1, s 2 commenced 10 September 2001 (IA s 10B)
s 7 commenced 24 September 2003 (s 7 (5))
remainder commenced 24 September 2001 (s 2 and CN 2001 No 4)

as amended by

Rehabilitation of Offenders (Interim) Amendment Act 2002 A2002-1

notified LR 26 February 2002
s 1, s 2 commenced 26 February 2002 (LA s 75)
s 5 commenced 27 February 2002 (s 2 (2))
remainder taken to have commenced 23 September 2001 (s 2 (1))

Statute Law Amendment Act 2002 A2002-30 pt 3.59

notified LR 16 September 2002
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))
pt 3.59 commenced 17 September 2002 (s 2 (1))

Rehabilitation of Offenders (Interim) Amendment Act 2002 (No 2) A2002-50 pt 2

notified LR 20 December 2002
s 1, s 2 commenced 20 December 2002 (LA s 75 (1))
pt 2 commenced 21 December 2002 (s 2 (1))

Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 2 pt 2.78

notified LR 26 March 2004
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))
sch 2 pt 2.78 commenced 9 April 2004 (s 2 (1))

Criminal Code (Serious Drug Offences) Amendment Act 2004 A2004-56 sch 1 pt 1.6

notified LR 6 September 2004
s 1, s 2 commenced 6 September 2004 (LA s 75 (1))
sch 1 pt 1.6 commenced 6 March 2005 (s 2 and LA s 79)

**Domestic Violence and Protection Orders Amendment Act 2005
A2005-13 sch 1 pt 1.16**

notified LR 24 March 2005
s 1, s 2 commenced 24 March 2005 (LA s 75 (1))
sch 1 pt 1.16 commenced 25 March 2005 (s 2)

Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.49

notified LR 12 May 2005
s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))
sch 3 pt 3.49 commenced 2 June 2005 (s 2 (1))

**Criminal Code (Administration of Justice Offences) Amendment Act
2005 A2005-53 sch 1 pt 1.27, sch 2 pt 2.4**

notified LR 26 October 2005
s 1, s 2 commenced 26 October 2005 (LA s 75 (1))
sch 1 pt 1.27, sch 2 pt 2.4 commenced 23 November 2005 (s 2)

4 Amendment history

Commencement

s 2 om R1 LA

Dictionary

s 3 am A2005-13 amdt 1.50

Imprisonment by way of home detention

s 6 am A2002-30 amdt 3.642

Remand by way of home detention

s 7 am A2002-30 amdt 3.643
(5), (6) exp 24 September 2003 (s 7 (6))

Home detention not available for offenders for certain offences

s 9 am A2002-30 amdt 3.644; A2004-56 amdt 1.51; pars renum
R8 LA (see A2004-56 amdt 1.52); A2005-13 amdt 1.51;
A2005-53 amdt 2.25

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

s 10 am A2002-30 amdt 3.644, amdt 3.645; A2005-13 amdt 1.52,
amdt 1.53
(4), (5) exp 27 March 2006 (s 10 (5))

Assessment of suitability for home detention

s 13 am A2005-13 amdt 1.54

Endnotes

4 Amendment history

Obligations under home detention orders

s 19 am A2002-30 amdt 3.646

Arrest with warrant of person subject to home detention order

s 22 am A2002-50 s 4, s 5

Victim to be told of decision to make parole order etc

s 42 sub A2002-50 s 6

Board to seek views of victims

s 46 am A2002-50 s 7

Decision of board about parole after further consideration

s 50 am A2002-30 amdt 3.647

Arrest of parolee with warrant

s 54 am A2002-50 ss 8-10

Warrant remanding parolee in custody on adjournment

s 56 hdg sub A2002-50 s 11

Revocation of parole orders

s 58 am A2002-50 s 12

Date of effect of revocation of parole order

s 59 sub A2002-50 s 13

Warrant by board committing parolee to prison

s 60 om A2002-50 s 13

Parole order revoked if parolee sentenced to imprisonment

s 61 am A2002-50 s 14

Warrant by board committing parolee to prison

s 62A ins A2002-50 s 15

Functions of board

s 66 am A2002-30 amdt 3.648

Appointment of members

s 68 am A2002-30 amdt 3.649; A2005-20 amdt 3.338

Term of appointment of members

s 69 sub A2002-30 amdt 3.650

Divisions of board

s 72 am A2002-30 amdt 3.651, amdt 3.652

Delegation of chairperson's functions

s 72A ins A2002-50 s 16

Sentenced offenders to appear before board

s 84 am A2002-50 s 17, s 18

-
- Board may require attendance of people and production of documents**
s 85 am A2002-30 amdt 3.653; A2005-53 amdt 1.132; ss renum
A2005-53 amdt 1.133
- Powers in relation to witnesses etc**
s 86 am A2002-30 amdt 3.654
sub A2005-53 amdt 1.134
- Privileges against selfincrimination and exposure to civil penalty**
s 87 am A2004-15 amdt 2.163, amdt 2.164
sub A2005-53 amdt 1.134
- Application of Criminal Code, ch 7**
s 88 sub A2005-53 amdt 1.134
- Protection from liability for board members and secretary**
s 93A ins A2002-50 s 19
- Protection of witnesses etc**
s 93B ins A2002-50 s 19
- Security of information**
s 96 sub A2002-50 s 20
- Giving evidence and answering questions before board**
s 98 am A2002-30 amdt 3.655, amdt 3.656
- Review of home detention provisions**
s 100 sub A2002-30 amdt 3.657
exp 24 September 2004 s (100 (3))
- Transitional provisions, repeals and amendments**
ch 6 hdg exp 24 September 2002 (s 113)
- Definitions for ch 6**
s 101 exp 24 September 2002 (s 113)
- Nonparole periods fixed under former Act**
s 102 exp 24 September 2002 (s 113)
- Decisions of former board refusing parole etc**
s 103 exp 24 September 2002 (s 113)
- Parole orders under former Act**
s 104 exp 24 September 2002 (s 113)
- Revocation of existing parole orders for breaches before commencement**
s 105 exp 24 September 2002 (s 113)
- Warrants to appear before former board**
s 106 exp 24 September 2002 (s 113)
- Existing arrangements with NSW**
s 107 exp 24 September 2002 (s 113)

Endnotes

5 Earlier republications

Appointments to former board

s 108 exp 24 September 2002 (s 113)

Regulations about transitional matters

s 109 exp 24 September 2002 (s 113)

Regulations modifying ch 6

s 110 exp 24 September 2002 (s 113)

Repeals

s 111 om R1 LA

Acts amended—sch 1

s 112 om R1 LA

Expiry of ch 6

s 113 sub A2002-30 amdt 3.658
exp 24 September 2002 (s 113)

Consequential amendments

sch 1 am A2002-1 ss 4-6
om R1 LA

Dictionary

dict am A2002-30 amdt 3.659
def **domestic violence offence** om A2005-13 amdt 1.55
def **remand centre** om A2002-30 amdt 3.660

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	A2002-1	28 February 2002
2	A2002-30	17 September 2002
3	A2002-30	25 September 2002
4*	A2002-50	21 December 2002
5	A2002-50	24 September 2003

Republication No	Amendments to	Republication date
6	A2004-15	9 April 2004
7	<u>A2004-56</u>	25 September 2004
8	A2004-56	6 March 2005
9	A2005-13	25 March 2005
10	A2005-20	2 June 2005
11*	A2005-53	23 November 2005

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