



Australian Capital Territory

Sentencing Legislation Amendment Act 2006

A2006-23

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Australian Capital Territory

Sentencing Legislation Amendment Act 2006

A2006-23

An Act to amend Acts because of the enactment of the *Crimes (Sentencing) Act 2005* and *Crimes (Sentence Administration) Act 2005*, and for other purposes

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

J2005-58

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Sentencing Legislation Amendment Act 2006*.

2 Commencement

- (1) This Act commences on the commencement of the *Crimes (Sentence Administration) Act 2005*.

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

- (2) However, an amendment made by this Act for which there is a commencement date stated in brackets at the end of the amendment commences on the date stated.

3 Legislation amended—sch 1 and sch 2

This Act amends the legislation mentioned in schedule 1 and schedule 2.

4 Crimes (Sentencing) Regulation 2006—sch 3

- (1) The provisions set out in schedule 3 are taken, on the commencement of this section, to be a regulation made under the *Crimes (Sentencing) Act 2005*, section 139 (Regulation-making power).
- (2) To remove any doubt and without limiting subsection (1), the provisions set out in schedule 3 may be amended or repealed as if they had been made as a regulation by the Executive under the *Crimes (Sentencing) Act 2005*, section 139.
- (3) To remove any doubt, the regulation mentioned in subsection (1) is taken—
- (a) to have been notified under the Legislation Act on the day this Act is notified; and

-
- (b) to have commenced on the commencement of the *Crimes (Sentencing) Act 2005*; and
 - (c) not to be required to be presented to the Legislative Assembly under the Legislation Act, section 64 (1).
- (4) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
 - (5) This section expires on the day it commences.

**5 Crimes (Sentence Administration) Regulation 2006—
sch 4**

- (1) The provisions set out in schedule 4 are taken, on the commencement of this section, to be a regulation made under the *Crimes (Sentence Administration) Act 2005*, section 325 (Regulation-making power).
- (2) To remove any doubt and without limiting subsection (1), the provisions set out in schedule 4 may be amended or repealed as if they had been made as a regulation by the Executive under the *Crimes (Sentence Administration) Act 2005*, section 325.
- (3) To remove any doubt, the regulation mentioned in subsection (1) is taken—
 - (a) to have been notified under the Legislation Act on the day this Act is notified; and
 - (b) to have commenced on the commencement of the *Crimes (Sentence Administration) Act 2005*; and
 - (c) not to be required to be presented to the Legislative Assembly under the Legislation Act, section 64 (1).
- (4) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (5) This section expires on the day it commences.

6 Legislation repealed

- (1) The following Acts are repealed:
 - *Community Based Sentences (Transfer) Act 2003* A2003-5
 - *Corrections Reform Amendment Act 2004* A2004-61
 - *Custodial Escorts Act 1998* A1998-66
 - *Parole Orders (Transfer) Act 1983* A1983-10
 - *Periodic Detention Act 1995* A1995-3
 - *Prisoners (International Transfer) Act 1999* A1999-9
 - *Prisoners Interstate Leave Act 1997* A1997-99
 - *Prisoners (Interstate Transfer) Act 1993* A1993-70
 - *Rehabilitation of Offenders (Interim) Act 2001* A2001-82
 - *Remand Centres Act 1976* A1976-48
 - *Removal of Prisoners Act 1968* A1968-82
 - *Supervision of Offenders (Community Service Orders) Act 1985* A1985-10.
- (2) The following regulations are repealed:
 - *Community Based Sentences (Transfer) Regulation 2004* SL2004-51
 - *Custodial Escorts Regulation 2002* SL2002-11
 - *Periodic Detention Regulation 1995* SL1995-34
 - *Rehabilitation of Offenders (Interim) Regulation 2001* SL2001-39
 - *Remand Centres Regulation 1976* SL1976-17.
- (3) All other registrable instruments under an Act mentioned in subsection (1) are repealed.

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Administrative Decisions (Judicial Review) Act 1989

[1.1] Schedule 1, new item 4

insert

4	<i>Crimes (Sentence Administration) Act 2005</i>	A decision of the chief executive under any of the following provisions: <ul style="list-style-type: none">• section 20 (Directions to escort officers)• section 31 (Early release of offender)• section 37 (Full-time detention—return from NSW)• section 45 (Periodic detention—alcohol and drug tests)• section 46 (Periodic detention—personal searches)• section 95 (Community service work—alcohol and drug tests)• section 96 (Community service work—frisk searches).
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[1.2] Schedule 1, items 4 to 17

renumber as items 5 to 18

[1.3] Schedule 2, new item 2.6

insert

2.6 Certain decisions under the Crimes (Sentence Administration) Act

- (1) A decision by the chief executive under any of the following provisions of the *Crimes (Sentence Administration) Act 2005*:
- section 25 (Full-time detention—chief executive directions)
 - section 28 (Work and activities by full-time detainee)
 - section 44 (Periodic detention—chief executive directions)
 - section 53 (Periodic detention—activities and work)
 - section 55 (Periodic detention—approval not to perform etc)
 - section 58 (Failing to perform periodic detention—extension of periodic detention period)
 - section 59 (Failing to perform periodic detention—referral to board)
 - section 60 (Offender not fit for periodic detention—extension of periodic detention period)
 - section 87 (Good behaviour—chief executive directions)
 - section 91 (Community service work—chief executive directions)
 - section 92 (Community service work—failure to report etc)
 - section 100 (Rehabilitation programs—chief executive directions)
 - section 138 (Parole—chief executive directions)
 - section 302 (Release on licence—chief executive directions)
 - section 321 (Chief executive directions—general).
- (2) A decision by a work supervisor under the *Crimes (Sentence Administration) Act 2005*, section 54 (3) or (4) (Periodic detention—activities or work outside correctional centres).

Part 1.2 Bail Act 1992

[1.4] Section 2, note 1

substitute

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 '*mental dysfunction*—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.' means that the term 'mental dysfunction' is defined in that dictionary and the definition applies to this Act.

[1.5] Section 8A

substitute

8A Entitlement to bail—breach of sentence obligations

- (1) This section applies to a person arrested, or otherwise brought before the court or a magistrate, in relation to a breach, or anticipated breach, of—
 - (a) a deferred sentence obligation under the *Crimes (Sentencing) Act 2005*; or
 - (b) any of the following obligations under the *Crimes (Sentence Administration) Act 2005*:
 - (i) a periodic detention obligation;
 - (ii) a good behaviour obligation;
 - (iii) a parole obligation;
 - (iv) a release on licence obligation.

- (2) The person has the same entitlement to bail in relation to the breach, or anticipated breach, of the obligation as the person has under this part in relation to the offence to which the obligation relates.

Examples

- 1 Martin has been found guilty of armed robbery and sentenced to periodic detention. He has breached his periodic detention obligations and is arrested and brought before a magistrate under the *Crimes (Sentence Administration) Act 2005*, section 65 (Arrest warrant—breach of periodic detention obligations). There is no presumption in relation to bail because the offence of armed robbery is an offence to which division 2.2 (Presumption for bail) does not apply.
- 2 Joe has been found guilty of threatening to kill. Joe had, 3 years before, been found guilty of an offence involving violence. A suspended sentence order under the *Crimes (Sentencing) Act 2005* is made as part of the sentence for the offence of threatening to kill and Joe is released under the order on signing an undertaking under a good behaviour order. However, Joe breaches the good behaviour order and is before the court on an application to cancel the order. There is no presumption in relation to bail because section 9B (b) applies to make the offence of threatening to kill an offence to which division 2.2 (Presumption for bail) does not apply.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) This section also applies to a person arrested, or otherwise brought before the court, in relation to a breach, or anticipated breach, of an obligation under an order to which the *Crimes (Sentence Administration) Act 2005*, section 332 (Home detention orders—Rehabilitation of Offenders (Interim) Act) applies.
- (4) Subsection (3) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (5) This subsection, subsection (3) and subsection (4) expire 3 years after the day this section commences.

**8B Entitlement to bail—custody relating to sentence
administration board hearings**

- (1) This section applies if—
- (a) a person is arrested under the *Crimes (Sentence Administration) Act 2005*, section 206 (Arrest of offender for board hearing) and brought before a magistrate; or
 - (b) a person is remanded in custody under the *Crimes (Sentence Administration) Act 2005*, section 210 (Custody of offender during board hearing adjournment) and an application for bail for the person is made to a court or magistrate.
- (2) The person has the same entitlement to bail as the person had for the offence to which the board hearing relates.

[1.6] Section 9D (6), definition of *outstanding*, note

substitute

Note **Found guilty**, of an offence, includes—

- having an order made for the offence under the *Crimes (Sentencing) Act 2005*, s 17 (Non-conviction orders—general)
- having the offence taken into account under the *Crimes (Sentencing) Act 2005*, s 57 (Outstanding additional offences taken into account in sentencing)
- having an order made for the offence under the *Children and Young People Act 1999*, s 98 (Disposition without proceeding to conviction)

(see Legislation Act, dict, pt 1).

[1.7] Section 25 (4) (e) and examples

substitute

- (e) a requirement that the person—
- (i) accept supervision by the chief executive; and

- (ii) comply with any reasonable direction of the chief executive; and

Examples of directions

- 1 a direction to attend a program
- 2 a direction to comply with a mental health assessment or treatment order made by the mental health tribunal
- 3 a direction to attend drug or alcohol counselling

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

[1.8] Section 31 (1) (d)

substitute

- (d) for an accused person who is at a correctional centre or a NSW correctional centre—the person in charge of the centre.

[1.9] Section 48 (2) to (5)

substitute

- (2) The person in charge of the correctional centre or other place where the person is in custody must give the court written notice that the person remains in custody because of the failure to comply with a bail condition.

Note If a form is approved under s 58 for a notice, the form must be used.

- (3) The notice must be given to the court not later than 7 days after the day the person is received into custody.
- (4) To remove any doubt, the court to which a notice is given under subsection (2) may, on its own initiative, conduct a review under section 46 of the condition on which bail was granted.
- (5) A notice under this section is required to be given only once in relation to any particular grant of bail.

- (6) A regulation may prescribe information that is to be given to a court with a notice under this section.

[1.10] Dictionary, note 2, new dot points

insert

- chief executive
- correctional centre

[1.11] Dictionary, note 2

omit

- director of corrective services

[1.12] Dictionary, note 2, new dot point

insert

- found guilty

[1.13] Dictionary, definition of *accused person*, paragraph (d)

substitute

- (d) a person subject to an order under the *Crimes (Sentencing) Act 2005*, section 17 (Non-conviction orders—general); and

[1.14] Dictionary, definition of *offence*, paragraph (b) (ii)

substitute

- (ii) a breach of an obligation mentioned in section 8A (Entitlement to bail—breach of sentence obligations).

[1.15] Dictionary, definition of *parental responsibility*

substitute

parental responsibility—a person has ***parental responsibility*** for a child or young person if the person has parental responsibility for the child or young person under the *Children and Young People Act 1999*, section 18.

Note For the meaning of ***parental responsibility***, see the *Children and Young People Act 1999*, s 17.

Part 1.3 Children and Young People Act 1999

[1.16] Section 76, definition of *police officer*

substitute

police officer includes a office-holder under an Act who, because of the Act, has the power to arrest or detain a person or to take a person into the office-holder's custody, but does not include a corrections officer.

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).

[1.17] Section 85 (2) and (4) (a)

omit

remand centre

substitute

correctional centre

[1.18] Section 87 (1)

omit

a custodial escort

substitute

corrections officer

[1.19] Section 95 (4)

substitute

- (4) If the Childrens Court makes an order under subsection (2), the court must not make—
- (a) an order under any of the following provisions of the *Crimes (Sentencing) Act 2005* for the offence:
 - (i) section 17 (Non-conviction orders—general);
 - (ii) section 19 (Reparation orders—losses and expenses generally);
 - (iii) section 20 (Reparation orders—stolen property); or
 - (b) a good behaviour order with a community service condition under the *Crimes (Sentencing) Act 2005*.

[1.20] Section 99 (2)

substitute

- (2) For subsection (1) (b), the Childrens Court may make a good behaviour order under the *Crimes (Sentencing) Act 2005*—
- (a) section 13 (Good behaviour orders); or
 - (b) section 17 (2) (b) (Non-conviction orders—general).

- (3) However, the good behaviour order must not include any of the following conditions under the *Crimes (Sentencing) Act 2005*, section 13:
- (a) that the young person give security for a stated amount, with or without sureties, for compliance with the order;
 - (b) a community service condition;
 - (c) a rehabilitation program condition;
 - (d) a probation condition.
- (4) Subsection (2) and (3) (d) do not limit the Childrens Court's power to make a probation order under section 96 (Disposition of young offenders).

[1.21] Section 102 (3)

omit

prison

substitute

a correctional centre

[1.22] Section 102 (4) (b)

substitute

- (b) the outstanding fine has not been remitted by the Executive.

Note 1 For the remission of a fine by the Executive, see the *Crimes (Sentence Administration) Act 2005*, s 313 (Remission of penalties).

Note 2 A fine also may have been remitted under the *Magistrates Court Act 1930*, s 159 (repealed) or the *Crimes Act 1900*, s 434 (repealed).

[1.23] Section 120 (6)

omit

a custodial escort

substitute

corrections officer

[1.24] Section 122

substitute

122 Temporary custody before transfer between institutions

- (1) If the chief executive gives a transfer direction under section 120 for a person, the person may be placed in a shelter or correctional centre until the person is transferred.

Note **Correctional centre** is defined in the Legislation Act, dict, pt 1.

- (2) However, the person must not be placed in a correctional centre without the written approval of—
- (a) the chief executive; and
 - (b) the chief executive of the administrative unit responsible for the *Crimes (Sentence Administration) Act 2005*.
- (3) The person must not be kept in a shelter for longer than 14 days without the written approval of the chief executive.
- (4) The person must not be kept at a correctional centre for longer than 14 days without the written approval of—
- (a) the chief executive; and
 - (b) the chief executive of the administrative unit responsible for the *Crimes (Sentence Administration) Act 2005*.
- (5) A transfer direction for a person is authority for an officer, corrections officer or police officer—

- (a) to take the person to and from a shelter or correctional centre for this section; and
 - (b) to take the person to the institution in accordance with the direction.
- (6) The authority under subsection (5) (a) is subject to the direction.

[1.25] Section 124 (2) (b) and (3)

omit

remand centre

substitute

correctional centre

[1.26] Sections 125 and 126

substitute

125 Placing in shelter or correctional centre

- (1) If the Childrens Court commits a young person to an institution or State institution, the young person must be placed in a shelter or correctional centre until the young person is removed to the institution.

Note **Correctional centre** is defined in the Legislation Act, dict, pt 1.

- (2) The young person must not be kept in a shelter or correctional centre for longer than 14 days without an order of the Childrens Court or the written approval of the chief executive.
- (3) An order committing a young person to an institution or State institution is authority for an officer, corrections officer or police officer to do 1 or more of the following:
- (a) take the young person to and from a shelter or correctional centre for this section;
 - (b) take the young person to the institution or State institution;

- (c) for a young person committed to a State institution—take the young person to the State or Territory stated in the order for detention in the State institution.
- (4) The authority under subsection (3) (a) is subject to the order.

126 Young people in correctional centres

If a young person is in a correctional centre under this Act, the *Corrections Management Act 2006* applies in relation to the young person as if the young person were a full-time detainee under that Act.

Note **Correctional centre** is defined in the Legislation Act, dict, pt 1.

[1.27] Section 131, new note

insert

Note For remissions, pardons and the prerogative of mercy, see the *Crimes (Sentence Administration) Act 2005*, pt 13.2.

[1.28] Section 139 (2) (b)

substitute

- (b) a corrections officer; or

[1.29] Section 140

substitute

140 Temporary custody pending interstate transfer

- (1) If the chief executive makes an arrangement under this Act for the transfer of a young offender from the ACT to a State in the temporary control of an escort mentioned in section 139 (2), the offender may be placed in a shelter or correctional centre until the offender is delivered to the escort.

Note **Correctional centre** is defined in the Legislation Act, dict, pt 1.

- (2) However, the young offender must not be placed in a correctional centre without the written approval of—
 - (a) the chief executive; and
 - (b) the chief executive of the administrative unit responsible for the *Crimes (Sentence Administration) Act 2005*.
- (3) The young offender must not be kept in a shelter for longer than 14 days without the written approval of the chief executive.
- (4) The young offender must not be kept at a correctional centre for longer than 14 days without the written approval of—
 - (a) the chief executive; and
 - (b) the chief executive of the administrative unit responsible for the *Crimes (Sentence Administration) Act 2005*.
- (5) An arrangement under subsection (1) is authority for an officer, corrections officer or police officer to take the young offender to and from a shelter or correctional centre for this section.
- (6) The authority under subsection (5) is subject to the arrangement.

[1.30] Section 399 (3)

substitute

- (3) This section does not apply to a child or young person to whom the *Corrections Management Act 2006* applies.

[1.31] Section 401A, definition of *place of detention*

omit

remand centre

substitute

correctional centre

[1.32] Section 417 (4), definition of *place of detention*

omit

remand centre

substitute

correctional centre

[1.33] Dictionary, note 2, new dot point

insert

- correctional centre

[1.34] Dictionary, new definition of *corrections officer*

insert

corrections officer—see the *Corrections Management Act 2006*, section 20.

[1.35] Dictionary, definition of *custodial escort*

omit

[1.36] Dictionary, definition of *remand centre*

omit

Part 1.4 Clinical Waste Act 1990

[1.37] Section 36

substitute

36 Disposal of seized things

- (1) The controller must take reasonable steps to return a thing seized under section 34 (e) to the person from whom it was seized, or to someone else who appears to the controller to be entitled to it, if—

- (a) a prosecution for an offence against this Act in relation to the thing is not started within 90 days after the day of the seizure; or
- (b) a person is charged with an offence against this Act in relation to the thing within the 90-day period but the person is not convicted or found guilty of the offence.
- (2) If a person is convicted or found guilty of an offence against this Act in relation to a thing seized under section 34 (e), the court may order—
- (a) that the thing be given to the person who appears to the court to be entitled to it; or
- (b) that the thing be forfeited to the Territory.

Part 1.5 Confiscation of Criminal Assets Act 2003

[1.38] Section 15 (1), note 1

substitute

Note 1 **Found guilty**, of an offence, includes—

- having an order made for the offence under the *Crimes (Sentencing) Act 2005*, s 17 (Non-conviction orders—general)
- having the offence taken into account under the *Crimes (Sentencing) Act 2005*, s 57 (Outstanding additional offences taken into account in sentencing)
- having an order made for the offence under the *Children and Young People Act 1999*, s 98 (Disposition without proceeding to conviction)

(see Legislation Act, dict, pt 1).

[1.39] Section 19, definition of *restraining order*, paragraph (b)

substitute

- (b) another order under this Act of a relevant court; or

[1.40] New section 23 (4)

insert

- (4) Subsections (1) and (2) do not apply if the dealing with the property is in accordance with—
- (a) an additional order under section 39; or
 - (b) this Act.

[1.41] Section 33 (1) (b)

substitute

- (b) another order under this Act of a relevant court; or

[1.42] Section 39 (1), example 2

omit

or execution levied against the property

[1.43] Section 51 heading

substitute

51 Penalty orders—execution against restrained property

[1.44] Section 86 (3) (d)

substitute

- (d) any amount payable by the offender under a reparation order under the *Crimes (Sentencing) Act 2005*, or any corresponding order made under the law of the Commonwealth, a State or another Territory;

Note A reparation order under the *Crimes Act 1900*, s 350 (repealed) is taken to be a reparation order under the *Crimes (Sentencing) Act 2005* (see that Act, s 142).

Part 1.6 Coroners Act 1997

[1.45] Section 2, note 1

substitute

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 ‘*death in custody*—see section 3C.’ means that the term ‘death in custody’ is defined in that section.

[1.46] Section 3

omit

[1.47] New sections 3C and 3D

in part 1, insert

3C Meaning of *death in custody*

- (1) For this Act, *death in custody* means the death of a person—
- (a) at a correctional centre or lockup; or
 - (b) while performing work under a community service condition of a good behaviour order under the *Crimes (Sentencing) Act 2005*; or

Note An order under the *Crimes Act 1900*, s 408 (Directions to perform work) (repealed) is taken to be a good behaviour order under the *Crimes (Sentencing) Act 2005* (see *Crimes (Sentence Administration) Act 2005*, s 339).

- (c) while performing work under a community service order under the *Children and Young People Act 1999*; or
- (d) while performing periodic detention under the *Crimes (Sentencing) Act 2005*; or

- (e) while being taken into or detained in custody, or subject to an order, under the *Mental Health (Treatment and Care) Act 1994*; or
 - (f) while subject to an order under the *Children and Young People Act 1999*, section 96 (1) (i) to (m) (Disposition of young offenders); or
 - (g) while subject to an arrangement under the *Children and Young People Act 1999*, section 134 (Arrangements for transfer—general) or section 145 (Lawful custody for transit through ACT); or
 - (h) while at a licensed place under the *Intoxicated People (Care and Protection) Act 1994*; or
 - (i) while in, being taken into, or after being taken into, the custody of a custodial officer; or
 - (j) while escaping, or attempting to escape, from the custody of a custodial officer, other than a carer under the *Intoxicated People (Care and Protection) Act 1994*.
- (2) Also, ***death in custody*** includes death because of a fatal injury sustained in a place, or in circumstances, mentioned in subsection (1).
- (3) For subsection (1) (f) and (g), a person is ***subject to*** an order or arrangement—
- (a) while being taken into, or detained in, custody under the order or arrangement; or
 - (b) while being restrained, or otherwise being provided with care, under the order or arrangement; or
 - (c) while otherwise subject to the order or arrangement.
- (4) Subsection (1) (b), note and this subsection expire on 2 June 2011.

3D Who is a *custodial officer*?

In this Act:

custodial officer means any of the following:

- (a) a police officer;
- (b) the person in charge of a correctional centre;
- (c) a corrections officer;
- (d) the chief psychiatrist;
- (e) a mental health officer;
- (f) the chief executive of the administrative unit responsible for the *Children and Young People Act 1999*, chapter 2 (General objects, principles and parental responsibility) or an officer under that Act;
- (g) the sheriff, a deputy sheriff, or a person appointed to assist the sheriff, under the *Supreme Court Act 1933*;
- (h) a carer under the *Intoxicated People (Care and Protection) Act 1994*.

[1.48] Dictionary, note 2

substitute

- Act
- ACT
- appoint
- Attorney-General
- Chief Magistrate
- child
- correctional centre
- corrections officer
- director of public prosecutions
- domestic partner (see s 169 (1))

- establish
- Executive
- exercise
- give
- indictable offence
- individual
- in relation to
- instrument
- law
- lawyer
- magistrate
- Minister (see s 162)
- oath
- parent
- person
- police officer
- power
- proceeding
- property
- public servant
- registrar-general
- regulation
- Supreme Court
- the Territory
- under

[1.49] Dictionary, new definition of *chief psychiatrist*

insert

chief psychiatrist—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

[1.50] Dictionary, definition of *custodial officer*

substitute

custodial officer—see section 3D.

[1.51] Dictionary, definition of *death in custody*

substitute

death in custody—see section 3C.

[1.52] Dictionary, new definition of *mental health officer*

insert

mental health officer—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

[1.53] Dictionary, definition of *registrar-general*

omit

Part 1.7 Crimes Act 1900

[1.54] Section 157

substitute

157 Meaning of *lawful custody*—periodic detention

For this part, an offender serving periodic detention in the offender's periodic detention period of a sentence of imprisonment under the *Crimes (Sentencing) Act 2005* is taken to be in lawful custody only while performing periodic detention.

Note The *Crimes (Sentence Administration) Act 2005*, pt 5.3 provides for the performance of periodic detention.

[1.55] Section 159 (d)

substitute

- (d) takes anything into a correctional centre, lockup or another place of lawful detention with intent to facilitate the escape from there of someone else who is detained or in custody in relation to an offence against a law of the Territory, the Commonwealth, a State or another Territory;

[1.56] Section 161 (c)

substitute

- (c) rescues by force a person who is in lawful custody at a correctional centre, lockup or another place of lawful detention in relation to an offence against a law of the Territory, the Commonwealth, a State or another Territory from that centre, lockup or place; or

[1.57] Section 162 (a)

substitute

- (a) in accordance with a permission given under a law of the Territory, the Commonwealth, a State or another Territory, leaves a correctional centre, lockup or another place of lawful detention where the person is detained, in custody or detained during pleasure in relation to an offence against a law of the Territory, the Commonwealth, a State or another Territory; and

[1.58] Sections 162 (b) and 163 (1) (a)

omit

prison

substitute

correctional centre

[1.59] Section 165

omit

[1.60] Section 214 (3) (a)

substitute

- (a) authorising a police officer or corrections officer to take the person to a correctional centre or other place of detention stated in the warrant; and

[1.61] Section 248 (1)

substitute

- (1) A knife seized under section 193 (Power to conduct search of person for knife) is forfeited to the Territory if the person from whom the knife was seized is convicted or found guilty of an offence against section 382 (Possession of knife in public place or school) in relation to the knife.

[1.62] Section 263 (2)

omit

to him or her seems meet

substitute

the judge considers appropriate

[1.63] Section 288 (2)

substitute

- (2) On a trial on indictment the defendant must not, without the court's leave, present evidence in support of an alibi unless, within 14 days after the day the defendant is committed for trial, the defendant gives notice of particulars of the alibi.

[1.64] Section 308 (d)

omit

prison

substitute

a correctional centre

[1.65] Section 309 (1) (a)

omit

custodial escort

substitute

corrections officer

[1.66] Section 315 (3)

omit

prison or remand centre

substitute

correctional centre

[1.67] Section 334 (6)

substitute

- (6) If the Magistrates Court makes an order under subsection (2), it must not make an order under any of the following provisions of the *Crimes (Sentencing) Act 2005* for the offence:
- (a) section 13 (Good behaviour orders);
 - (b) section 17 (Non-conviction orders—general);
 - (c) section 19 (Reparation orders—losses and expenses generally);
 - (d) section 20 (Reparation orders—stolen property).

[1.68] Part 15

omit

[1.69] Sections 368, 369 and 370

omit

[1.70] Section 397 (2)

omit

the defendant may be imprisoned

substitute

the magistrate may order that the defendant be imprisoned

[1.71] Sections 400 and 401

omit

[1.72] Parts 18 and 19

omit

[1.73] Section 430 (2) (b)

substitute

(b) confirm the conviction and recommend that the Executive act under either of the following sections of the *Crimes (Sentence Administration) Act 2005* in relation to the convicted person:

- (i) section 313 (Remission of penalties);
- (ii) section 314 (Grant of pardons); or

[1.74] Part 21

omit

[1.75] Section 436

omit

[1.76] Section 437

substitute

437 Power of courts to bring detainees before them

For a trial or prosecution, a court may order the person in charge of a correctional centre or other place where a person is detained in lawful custody to bring the person before the court and to return the person to the centre or other place in accordance with the order.

[1.77] Section 441 (6) (b) (ii)

substitute

- (ii) a good behaviour order; or

[1.78] Dictionary, note 2, new dot point

insert

- correctional centre

[1.79] Dictionary, new definition of *corrections officer*

insert

corrections officer—see the *Corrections Management Act 2006*, section 20.

Part 1.8 Crimes (Child Sex Offenders) Act 2005

[1.80] Section 7 (1) (c)

substitute

- (c) an offence taken into account by a court under the *Crimes (Sentencing) Act 2005*, part 4.4 (Taking additional offences into account) in making a sentence-related order in relation to a principal offence, or an admission (however described) being

accepted in relation to the offence under a corresponding provision of a foreign law;

[1.81] Section 7 (1) (d) (i)

substitute

- (i) the *Crimes (Sentencing) Act 2005*, section 17 (Non-conviction orders—general); or

Note An order under the *Crimes Act 1900*, s 402 (Conditional release of offenders without proceeding to conviction) (repealed) is taken to be a non-conviction order that is a good behaviour order under the *Crimes (Sentencing) Act 2005* (see *Crimes (Sentence Administration) Act 2005*, s 336).

[1.82] Section 7 (2) (a) (i)

substitute

- (i) the offence was taken into account by a court under the *Crimes (Sentencing) Act 2005*, part 4.4 (Taking additional offences into account) in making a sentence-related order in relation to a principal offence; and

[1.83] New section 7 (3)

insert

- (3) For this section, a reference to ***taking into account*** an offence includes the taking into account of the offence under the *Crimes Act 1900*, section 357 (repealed).

[1.84] Section 9 (1) (a) (i)

substitute

- (i) the *Crimes (Sentencing) Act 2005*, section 17 (Non-conviction orders—general); or

Note An order under the *Crimes Act 1900*, s 402 (Conditional release of offenders without proceeding to conviction) (repealed) is taken to be a non-conviction order that is a good behaviour order under the *Crimes (Sentencing) Act 2005* (see *Crimes (Sentence Administration) Act 2005*, s 336).

[1.85] New section 9 (4)

insert

- (4) Subsection (1) (a) (i), note and this subsection expire on 3 June 2021.

[1.86] Section 108 (1) (c)

substitute

- (c) stops being subject to a good behaviour order under the *Crimes (Sentencing) Act 2005*; or

Note An order under the *Crimes Act 1900*, s 403 (1) (a) (Conditional release of offenders) (repealed) is taken to be a good behaviour order under the *Crimes (Sentencing) Act 2005* (see *Crimes (Sentence Administration) Act 2005*, s 337).

[1.87] Section 108 (4)

substitute

- (4) The following provisions expire on 3 June 2011:
- (a) subsection (1) (c), note;
 - (b) dictionary, definition of **community service order**, paragraph (a), note;
 - (c) this subsection.

[1.88] Dictionary, definition of *community service order*, paragraph (a)

substitute

- (a) means a community service order within the meaning of the *Crimes (Sentencing) Act 2005*, section 13 (6) (Good behaviour orders); or

Note An order under the *Crimes Act 1900*, s 408 (Directions to perform work) (repealed) is taken to be a good behaviour order under the *Crimes (Sentencing) Act 2005* (see *Crimes (Sentence Administration) Act 2005*, s 339).

[1.89] Dictionary, definition of *detainee*

omit

[1.90] Dictionary, definition of *government custody*, paragraph (b)

substitute

- (b) as a detainee under the *Corrections Management Act 2006*; or

[1.91] Dictionary, definition of *parole*

substitute

parole means parole under the *Crimes (Sentence Administration) Act 2005*, and includes an equivalent order (however described) made under a foreign law.

Note A parole order under the *Rehabilitation of Offenders (Interim) Act 2001* (repealed) is taken to be a parole order under the *Crimes (Sentence Administration) Act 2005* (see that Act, s 343 and s 344).

Part 1.9 Crimes (Forensic Procedures) Act 2000

[1.92] Section 71 (a)

substitute

- (a) for a person on whom the procedure is proposed to be carried out who is not serving a sentence of imprisonment at a correctional centre or other place of detention—the person is a serious offender; and

Note **Correctional centre** includes a NSW correction centre, see the dictionary.

[1.93] Section 72 (1) (f) (i)

substitute

- (i) if the serious offender is serving a sentence of imprisonment at a correctional centre or other place of detention—a medical officer for the centre or place be present while the blood is taken; or

[1.94] Section 78 (1)

omit

in prison

substitute

in custody at a correctional centre

[1.95] Section 78 (1)

omit

the prison

substitute

the correctional centre

[1.96] Section 78 (1), new note

insert

Note **Correctional centre** includes a NSW correction centre, see the dictionary.

[1.97] Section 78 (2)

omit

in a prison

substitute

in custody at a correctional centre

[1.98] Dictionary, new definitions

insert

correctional centre includes a NSW correctional centre.

Note **Correctional centre** and **NSW correctional centre** are defined in the Legislation Act, dict, pt 1.

medical officer, for a correctional centre, means a medical officer appointed for the centre.

[1.99] Dictionary, definitions of *prison*, *prison medical officer* and *remand centre*

omit

Part 1.10 Crimes (Restorative Justice) Act 2004

[1.100] Section 13

substitute

13 Definition—*sentence-related order*

In this Act:

sentence-related order, for an offender who is found guilty of an offence, means—

- (a) for an adult offender, any of the following orders of the court:
 - (i) an order sentencing the offender;
 - (ii) an order under the *Crimes (Sentencing) Act 2005*, section 12 (Suspended sentences) or section 17 (Non-conviction orders—general);
- Note* Orders under the *Crimes Act 1900*, s 402 (Conditional release of offenders without proceeding to conviction) (repealed) and s 403 (Conditional release of offenders) (repealed) are taken to be orders under the *Crimes (Sentencing) Act 2005*, s 12 or s 17 (see *Crimes (Sentence Administration) Act 2005*, s 336 to s 338).
- (b) for a young offender, any of the following orders under the *Children and Young People Act 1999*:
 - (i) an order under that Act, section 96 (Disposition of young offenders);
 - (ii) an order under that Act, section 98 (Disposition without proceeding to conviction), including an order dismissing a charge.

Examples for par (a) (i)

- 1 an order for a sentence of imprisonment
- 2 an order for periodic detention under the *Crimes (Sentencing) Act 2005*

- 3 a good behaviour order under the *Crimes (Sentencing) Act 2005*, including an order subject to a community service condition

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

[1.101] Section 20 (2), note 2

substitute

Note 2 The *Crimes (Sentencing) Act 2005*, section 33 (1) (x) provides that, in deciding how an offender should be sentenced (if at all) for an offence, the matters known to the court that it must consider include, if relevant, the fact that the person has accepted responsibility for the offence to take part in restorative justice.

However, the *Crimes (Sentencing) Act 2005*, section 34 (1) (g) provides that a court must not increase the severity of the sentence that it would otherwise impose on a person for an offence because the offender has chosen not to take part, or to continue to take part, in restorative justice for the offence.

[1.102] Section 55 (2), example

substitute

Example

Sam is an offender, and Bella is a victim of Sam's offence. Sam is found guilty of the offence but, under the *Crimes (Sentencing) Act 2005*, section 17 (Non-conviction orders—general), the charge is dismissed and no conviction is recorded. After taking part in a restorative justice conference, Sam and Bella sign a restorative justice agreement under which Sam agrees to work in Bella's garden every Saturday for 6 months.

However, 4 months after the start of the agreement, the company Sam works for moves its head office from Canberra to Brisbane, and Sam is required to move there before the 6 months is over to keep his job. Sam has until then complied fully with the agreement.

The convenor may consider, because of Sam's history of compliance with the agreement, and the change in Sam's situation, there is a change in Sam's situation that would justify an amendment to the agreement to reduce its term so that it will end when Sam has to move to Brisbane.

Note 1 See s (5), def **change in the situation**. The definition excludes a change in the offender's, victim's or parent's attitude to compliance with the restorative justice agreement.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

[1.103] Section 72 (2), example

substitute

Example

Pat has been found guilty of an offence but, without convicting Pat, the court makes a good behaviour order under the *Crimes (Sentencing) Act 2005*, section 17 (Non-conviction orders—general). The offence is referred for restorative justice by the chief executive (corrections).

After a restorative justice conference, Pat enters into a restorative justice agreement with the victim of the offence. Under the agreement, Pat promises to attend a rehabilitation program on a particular night of the week for 3 months. However, after 2 weeks, Pat breaches the agreement by stopping to attend the program.

The chief executive (restorative justice) becomes aware of the breach of the agreement. Under section 57 (2), the chief executive (restorative justice) must report the breach to the referring entity, the chief executive (corrections). However, the chief executive (restorative justice) is the same person as the chief executive (corrections).

This section requires the chief executive to ensure that administrative arrangements are made for the report to be given by a delegate of the chief executive in the chief executive's capacity as administering this Act to someone else who is a delegate of the chief executive in the chief executive's capacity as administering sentence-related orders such as the order for Pat.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Part 1.11 Crimes (Sentencing) Act 2005

[1.104] Section 11 (5), note 1

substitute

Note 1 A condition recommended by the court is, under the *Crimes (Sentence Administration) Act 2005*, an additional condition of the offender's periodic detention (see that Act, s 40, def **additional condition**, par (a)).

[1.105] Section 13 (8)

substitute

(8) This section is subject to chapter 6 (Good behaviour orders).

[1.106] Section 18 (5), example 2

omit

[1.107] Section 42 (4) (f)

omit

[1.108] Section 42 (4) (g) to (l)

renumber as section 42 (4) (f) to (k)

[1.109] Section 65 (2), note

omit

(see Crimes (Sentence Administration) Act 2005)

substitute

(see Crimes (Sentence Administration) Act 2005, s 140 and s 160)

[1.110] Section 67, note

substitute

Note The sentence administration board must have regard to any condition recommended by the sentencing court (see *Crimes (Sentence Administration) Act 2005*, s 130 (3)).

[1.111] New section 68 (3)

insert

- (3) To remove any doubt, this section does not apply in relation to a period of full-time detention that is consequent on the suspension or cancellation of a periodic detention period.

Note If an offender's periodic detention period is suspended or cancelled, the suspended part or the remainder of the sentence of periodic detention must be served by full-time detention (see *Crimes (Sentence Administration) Act 2005*, s 79).

[1.112] Section 71 (3) (b)

substitute

- (b) section 72 (Concurrent and consecutive sentences—offences while in custody or unlawfully absent);

[1.113] Section 72 heading

substitute

72 Concurrent and consecutive sentences—offences while in custody or unlawfully absent

[1.114] Section 72 (1)

substitute

- (1) This section applies if the primary sentence is imposed on the offender for any of the following offences:
- (a) an offence committed while the offender was in lawful custody;
 - (b) an offence committed while the offender was unlawfully absent from a correctional centre or other place during the term of the offender's sentence of imprisonment;

(c) an offence involving an escape from lawful custody.

Example of unlawful absence for par (b)

the offender fails to return to a correctional centre as required after community service work or approved leave

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

[1.115] Section 78 (4)

omit

table 86

substitute

table 79

[1.116] Section 85, definition of *community service condition*, note 2

substitute

Note 2 **Community service work** is work declared by regulation under the *Crimes (Sentence Administration) Act 2005* (see that Act, s 316).

[1.117] New section 110A

insert

110A Reparation orders—enforcing non-money order

- (1) This section applies if the reparation order does not require the payment of money.

Note An offender may breach a reparation order by failing to comply with it (see Legislation Act, dict, pt 1, def **breach**).

- (2) If the offender breaches the reparation order, the person in whose favour the order was made may apply to the court for an order under this section to be made against the offender.

- (3) On an application under subsection (2), the court may make an order for the payment of money against the offender in substitution for the breached order.

[1.118] Section 112 (2)

substitute

- (2) To remove any doubt—
- (a) an amount payable under a reparation order cannot be recovered from property that has been restrained or forfeited under the Confiscation Act; and
- (b) a reparation order for the restoration of property cannot be made for property that has been restrained or forfeited under the Confiscation Act.

Note 1 Restrained property may be dealt with only in accordance with the Confiscation Act (see that Act, s 19, def *restraining order* and s 33 (1)). For the exclusion of restrained property from forfeiture, see the Confiscation Act, pt 6.

Note 2 For applications by a person who had an interest in forfeited property for the property's return or for compensation, see the Confiscation Act, div 9.5.

[1.119] Section 134 (5)

substitute

- (5) If a conviction or finding of guilt is set aside—
- (a) any relevant order to which the conviction or finding of guilt relates is set aside; and
- (b) an appeal court may make any order it considers appropriate in the interests of justice consequent on any order given under subsection (3).

[1.120] Section 136 (1)

substitute

- (1) This section applies to any information in relation to an offence (including an alleged offence) in a record of a criminal justice entity, including information about—
- (a) a person charged with the offence; and
 - (b) a victim of the offence; and
 - (c) a person convicted or found guilty of the offence.

[1.121] Section 136 (4), definition of *criminal justice entity*, paragraph (g)

substitute

- (g) the victims of crime coordinator under the *Victims of Crime Act 1994*;
- (h) any other entity prescribed by regulation.

[1.122] Section 140 heading

substitute

140 Application of Act to offenders charged before and after commencement

[1.123] Section 140 (5), definition of *old sentencing law*, note 1

omit

Crimes (Sentencing Legislation) Consequential Amendments Act 2005

substitute

Sentencing Legislation Amendment Act 2006

[1.124] Section 140 (6)

omit

[1.125] Section 141 (1) (b)

substitute

- (b) for an old nonparole period set before the commencement—the old nonparole period has not ended before the commencement.

[1.126] Section 141 (2) (a)

substitute

- (a) if the old nonparole period was set before the commencement of this section—for the period remaining at the commencement; or

[1.127] Sections 141 (3) and 142 (4)

omit

[1.128] Section 143 (1)

substitute

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act, the *Crimes (Sentence Administration) Act 2005* or the *Sentencing Legislation Amendment Act 2006*.

[1.129] New sections 144 to 147

insert

144 Common law disabilities of convictions abolished

Any rule of the common law that provides that a person has a legal disability because of the person's conviction for the offence is abolished.

145 Construction of outdated references

- (1) In any Act, instrument made under an Act or document, a reference to an earlier law is, in relation to anything to which this Act applies, a reference to this Act.
- (2) In any Act, instrument made under an Act or document, a reference to a provision of an earlier law is, in relation to anything to which this Act applies, a reference to the corresponding provision of this Act.
- (3) In any Act, instrument made under an Act or document, a reference to anything that is no longer applicable because of the repeal or amendment of an earlier law by the *Sentencing Legislation Amendment Act 2006*, and for which there is a corresponding thing under this Act, is taken to be a reference to the thing under this Act, if the context allows and if otherwise appropriate.
- (4) In this section:
earlier law means any of the following:
 - (a) *Crimes Act 1900*;
 - (b) *Magistrates Court Act 1930*;
 - (c) *Periodic Detention Act 1995* (repealed).

146 Application of Legislation Act, s 88

A provision of this chapter (other than section 143 or section 147) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

147 Expiry of ch 10

- (1) This chapter expires 5 years after the day it commences.

- (2) When this chapter expires, the following provisions also expire:
- (a) *Confiscation of Criminal Assets Act 2003*, section 86 (3) (d), note;
 - (b) the following provisions of the *Magistrates Court Act 1930*:
 - (i) section 146, definition of *fine*, paragraph (e), note;
 - (ii) section 154D (4), note;
 - (c) the following provisions of the *Victims of Crime (Financial Assistance) Act 1983*:
 - (i) section 35 (2) (c), note;
 - (ii) section 40 (2) (c), note;
 - (iii) section 66 (2) (a) (i), note.

[1.130] Dictionary, new definition of *at*

insert

at, in relation to a correctional centre, includes in the correctional centre.

[1.131] Dictionary, definition of *community service work*

substitute

community service work—see the *Crimes (Sentence Administration) Act 2005*, section 316.

[1.132] Dictionary, definition of *corrections officer*

substitute

corrections officer—see the *Corrections Management Act 2006*, section 20.

[1.133] Dictionary, definition of *parole order*

substitute

parole order—see the *Crimes (Sentence Administration) Act 2005*, section 117.

[1.134] Dictionary, definition of *periodic detention*

substitute

periodic detention, for an offender—see the *Crimes (Sentence Administration) Act 2005*, section 40.

[1.135] Dictionary, definition of *periodic detention period*

omit

amended

substitute

extended

[1.136] Further amendments, mentions of *in a correctional centre*

omit

in a correctional centre

substitute

at a correctional centre

in

- section 9 (2), note 1
- section 10 (3)
- section 29 (1) (a), note
- section 29 (1), example 2
- section 31 (c), example
- section 82 (1) (c)

Part 1.12 Crimes (Sentence Administration) Act 2005

[1.137] Section 10 (2) (a)

substitute

- (a) the registrar of the Magistrates Court, in relation to an order under the *Magistrates Court Act 1930*, section 154D (Fine defaulters—imprisonment); and

[1.138] Section 10 (2), new note 2

insert

Note 2 For the application of this Act to sentenced offenders and other detainees under full-time imprisonment before the commencement of this Act, see s 327 (Application of Act to offenders and other people in custody), s 330 (Full-time imprisonment—sentenced offenders) and s 331A (Full-time imprisonment—other detainees).

[1.139] Section 15 (2), new note

insert

Note For the application of this Act to remandees in custody before the commencement of this Act, see s 327 (Application of Act to offenders and other people in custody) and s 331 (Full-time imprisonment—remandees).

[1.140] Section 26 (1)

omit

detention in—

substitute

detention at—

[1.141] Section 26 (2) (a)

omit

in the ACT correctional centre

substitute

at the ACT correctional centre

[1.142] Section 46

substitute

46 Periodic detention—searches

- (1) The chief executive may direct an offender, orally or in writing, to submit to a search when reporting to perform periodic detention.
- (2) The provisions of the *Corrections Management Act 2006* relating to searches apply, with any necessary changes, in relation to a direction under this section and any search conducted under the direction.

[1.143] Section 84 (1), definition of *community service condition*

omit

section 86

substitute

section 85

[1.144] Section 96 (2)

substitute

- (2) The provisions of the *Corrections Management Act 2006* relating to searches apply, with any necessary changes, in relation to a direction under this section and any frisk search conducted under the direction.

[1.145] Section 117, definition of *victim*

omit

[1.146] New section 118A

in part 7.1, insert

118A Parole—meaning of *registered victim* and *victim*

In this chapter:

registered victim, of an offender, means a person who is a registered victim of an offence by the offender only if this chapter applies to the sentence of imprisonment for the offence.

victim, of an offender, means a person who is a victim of an offence by the offender only if this chapter applies to the sentence of imprisonment for the offence.

[1.147] New section 138A

insert

138A Parole—alcohol and drug tests

- (1) The chief executive may direct an offender, orally or in writing, to give a test sample.
- (2) The provisions of the *Corrections Management Act 2006* relating to alcohol and drug tests apply, with any necessary changes, in relation to a direction under this section and any sample given under the direction.

[1.148] Section 153 (3) (a)

omit

release under the parole order

substitute

release on parole

[1.149] Section 168 (4)

omit

parole release date for the sentence

substitute

offender's parole release date

[1.150] New section 302A

insert

302A Release on licence—alcohol and drug tests

- (1) The chief executive may direct an offender, orally or in writing, to give a test sample.
- (2) The provisions of the *Corrections Management Act 2006* relating to alcohol and drug tests apply, with any necessary changes, in relation to a direction under this section and any sample given under the direction.

[1.151] New section 314A

in part 13.2, insert

314A Prerogative of mercy

The prerogative of mercy is not affected by—

- this Act
- the *Corrections Management Act 2006*
- the *Crimes (Sentencing) Act 2005*.

[1.152] New section 321A

insert

321A Evidentiary certificates

- (1) A certificate that appears to be signed by or for the chief executive, and states any matter relevant to anything done or not done under this Act in relation to person, is evidence of the matter.
- (2) Without limiting subsection (1), a certificate under subsection (1) may state any of the following:
 - (a) that a stated person was, or was not subject to full-time detention or periodic detention on a stated day;
 - (b) that a stated person was or was not in the chief executive's custody on a stated day;
 - (c) that a stated offender subject to full-time detention did not comply with a stated obligation of the detention;
 - (d) that a stated offender subject to periodic detention did not comply with a stated obligation of the detention;
 - (e) that a stated offender's release from imprisonment on a stated day was authorised by a parole order;
 - (f) that a stated offender released from imprisonment on parole did not comply with a stated condition of the parole;
 - (g) that a stated offender's release from imprisonment on a stated day was authorised by a licence;
 - (h) that a stated offender released from imprisonment on licence did not comply with a stated condition of the release;
 - (i) that the chief executive gave a stated direction to a stated person on a stated day;
 - (j) that a stated person did not comply with a stated direction by the chief executive on a stated day;

- (k) that a stated decision was made by the board on a stated date;
 - (l) that a stated person did, or did not, occupy a position under this Act on a stated day;
 - (m) that a stated instrument under this Act was, or was not, in force on a stated day;
 - (n) that a stated instrument is a copy of an instrument made, given, issued or received under this Act.
- (3) A certificate that appears to be signed by or for the chief executive, and states any matter prescribed by regulation for this section, is evidence of the stated matter.
- (4) A certificate mentioned in subsection (1) or (2) may state a matter by reference to a date or period.
- (5) A certificate of the results of the analysis of a substance under this Act, signed by an analyst, is evidence of the facts stated in the certificate.
- (6) A court must accept a certificate or other document mentioned in this section as proof of the matters stated in it if there is no evidence to the contrary.
- (7) However, the following certificates must not be admitted in evidence by a court unless the court is satisfied that reasonable efforts have been made to serve a copy of the certificate on the person concerned:
- (a) a certificate about a matter mentioned in subsection (2) (c), (d) or (f) or (h) to (j);
 - (b) a certificate mentioned in subsection (5).
- (8) The chief executive may appoint analysts for this Act.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (9) An appointment under subsection (8) is a notifiable instrument.

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

- (10) In this section:

analyst means a person who is appointed as an analyst under subsection (8).

[1.153] Chapter 16 heading

substitute

Chapter 16 Transitional—general

[1.154] Section 328, definition of *consequential amendments Act*

omit

Crimes (Sentencing Legislation) Consequential Amendments Act 2005

substitute

Sentencing Legislation Amendment Act 2006

[1.155] Section 330 (2) and (3)

substitute

- (2) If the offender's sentence was imposed before the commencement day—
- (a) this Act applies in relation to the sentence on and after the commencement day; and
 - (b) the court order for the sentence is taken to be a committal order under part 3.1 (Imprisonment) in relation to the sentence on and after the commencement day.

- (3) If the offender's sentence is imposed on or after the commencement day—
 - (a) this Act applies in relation to the sentence from the time when the sentence is imposed; and
 - (b) the court order for the sentence is taken to be a committal order under part 3.1 in relation to the sentence from the time when the sentence is imposed.
- (4) For each offender to whom this section applies, the chief executive is taken to have given a direction under section 26 (Full-time detention in ACT or NSW) on the commencement day that the offender be kept in full-time detention in the place where the offender was in full-time imprisonment immediately before the commencement day.

[1.156] Section 331 (2) and (3)

substitute

- (2) If the order for the offender's remand was made before the commencement day—
 - (a) this Act applies in relation to the remand on and after the commencement day; and
 - (b) the court order for the remand is taken to be a remand order under part 3.2 (Remand) in relation to the remand on and after the commencement day.
- (3) If the order for the offender's remand is made on or after the commencement day—
 - (a) this Act applies in relation to the remand from the time when the order is made; and
 - (b) the court order for the remand is taken to be an order for remand under part 3.2 in relation to the remand from the time when the order is made.

- (4) For each offender to whom this section applies, the chief executive is taken to have given a direction under section 26 (Full-time detention in ACT or NSW) on the day the order is made that the offender be kept in full-time detention in the place where the offender was in full-time imprisonment immediately before that day.

[1.157] New sections 331A and 331B

insert

331A Full-time imprisonment—other detainees

- (1) This section applies if a person (other than a sentenced offender or remandee) is required, immediately before the commencement day, to be held in custody or detention under a territory law or a law of the Commonwealth, a State or another Territory.
- (2) The warrant or other authority (however described) for the custody or detention is taken to be a committal order under part 3.1 (Imprisonment) in relation to the custody or detention on and after the commencement day.
- (3) For each person to whom this section applies, the chief executive is taken to have given a direction under section 26 (Full-time detention in ACT or NSW) on the commencement day that the offender be kept in full-time detention in the place where the offender was held in custody or detention immediately before the commencement day.

331B Application of Act to transitional warrants under Removal of Prisoners Act (repealed)

- (1) A warrant in force immediately before the commencement day under the *Removal of Prisoners Act 1968* (repealed), section 5 (Removal to, or detention in, State) in relation to a detainee is taken, on and after the commencement day, to be a direction under this Act, section 26 (Full-time detention in ACT or NSW) for the detention of the detainee at a NSW correctional centre.

- (2) To remove any doubt, this Act, part 4.3 (Full-time detention in NSW) applies in relation to a detainee to whom this section applies.
- (3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

[1.158] Part 16.6 heading

substitute

Part 16.6 Transitional—other provisions

[1.159] New sections 348A and 348B

insert

348A Sentence administration board—transitional members etc

- (1) This section applies to a person who held any of the following positions on the Sentence Administration Board (the *old board*) under the *Rehabilitation of Offenders (Interim) Act 2001* (repealed) immediately before the commencement day:
 - (a) chairperson;
 - (b) deputy chairperson;
 - (c) member.
- (2) The chairperson of the old board is taken to be the chairperson of the board under this Act.
- (3) A deputy chairperson of the old board is taken to be a deputy chairperson of the board under this Act.
- (4) A member of the old board is taken to be a member of the board under this Act.
- (5) A person who holds a position on the board under this Act because of this section holds that position, subject to this Act, for the

remainder of the term for which the person was appointed to the corresponding position on the old board.

348B Official visitors—transitional

- (1) This section applies to a person who held a position of official visitor under the *Remand Centres Act 1976* (repealed) immediately before the commencement day.
- (2) The person is taken to be an official visitor in relation to a correctional centre under this Act.
- (3) A person who holds a position of official visitor in relation to a correctional centre under this Act because of this section holds that position, subject to this Act, for the remainder of the term for which the person was appointed as an official visitor under the *Remand Centres Act 1976* (repealed).

[1.160] Section 349 heading

substitute

349 Transitional regulations—ch 16

[1.161] Section 349 (1)

substitute

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act, the *Crimes (Sentencing) Act 2005* or the *Sentencing Legislation Amendment Act 2006*.

[1.162] Section 350

substitute

350 Construction of outdated references

- (1) In any Act, instrument made under an Act or document, a reference to an earlier law is, in relation to anything to which this Act applies, a reference to this Act.
- (2) In any Act, instrument made under an Act or document, a reference to a provision of an earlier law is, in relation to anything to which this Act applies, a reference to the corresponding provision of this Act.
- (3) In any Act, instrument made under an Act or document, a reference to anything that is no longer applicable because of the repeal or amendment of an earlier law by the *Sentencing Legislation Amendment Act 2006*, and for which there is a corresponding thing under this Act, is taken to be a reference to the thing under this Act, if the context allows and if otherwise appropriate.
- (4) In this section:
earlier law means any of the following:
 - (a) *Community Based Sentences (Transfer) Act 2003* (repealed);
 - (b) *Crimes Act 1900*;
 - (c) *Custodial Escorts Act 1998* (repealed);
 - (d) *Magistrates Court Act 1930*;
 - (e) *Parole Orders (Transfer) Act 1983* (repealed);
 - (f) *Periodic Detention Act 1995* (repealed);
 - (g) *Prisoners (International Transfer) Act 1999* (repealed);
 - (h) *Prisoners Interstate Leave Act 1997* (repealed);
 - (i) *Prisoners (Interstate Transfer) Act 1993* (repealed);

- (j) *Rehabilitation of Offenders (Interim) Act 2001* (repealed);
- (k) *Remand Centres Act 1976* (repealed);
- (l) *Removal of Prisoners Act 1968* (repealed);
- (m) *Supervision of Offenders (Community Service Orders) Act 1985* (repealed).

351 Application of Legislation Act, s 88—ch 16

A provision of this chapter (other than section 348 or section 352) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

352 Expiry of ch 16

- (1) This chapter expires 5 years after the day it commences.
- (2) When this chapter expires, the following provisions also expire:
 - (a) section 10, note 2;
 - (b) section 15, note.

[1.163] New chapter 17

insert

Chapter 17 Transitional—interim custody arrangements

600 Purpose—ch 17

The purpose of this chapter is to make interim transitional provision, until the commencement of the *Corrections Management Act 2006*, in relation to the custody of people under sentences of imprisonment or under remand, or in other lawful custody, under a law in force in the ACT.

601 Relationship with ch 16

This chapter is additional to, and does not limit, chapter 16 (Transitional—general).

602 No application to home detention

To remove any doubt, this chapter does not apply in relation to an order to which section 332 (Home detention orders—Rehabilitation of Offenders (Interim) Act) applies.

603 Definitions—ch 17

(1) In this chapter:

Corrections Management Act 2006 means an Act about correctional services passed by the Legislative Assembly after 2 June 2006 that provides that this definition applies to it.

Note The new sentencing law commences on 2 June 2006.

custody, in relation to a person, means the custody of the person under a sentence of imprisonment or under remand, or in other lawful custody, under a law in force in the ACT.

interim custody period means the period commencing on 2 June 2006 and ending immediately before the *Corrections Management Act 2006* commences.

new sentencing law means the following Acts:

- (a) the *Crimes (Sentencing) Act 2005*;
- (b) the *Crimes (Sentence Administration) Act 2005*.

old custody law means the territory law in force immediately before 2 June 2006 applying in relation to the custody of a person, and includes, in particular, the following:

- (a) the provisions of the *Periodic Detention Act 1995* (repealed), as applied by section 606 (Application of old custody law—periodic detention);

- (b) the provisions of the *Prisoners Interstate Leave Act 1997* (repealed);
 - (c) the provisions of the *Remand Centres Act 1976* (repealed), as applied by section 607 (Application of old custody law—remand).
- (2) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

604 Application of new sentencing law—interim custody period

- (1) Subject to section 605, the old custody law applies to the new sentencing law in relation to the custody of a person in the interim custody period.
- (2) For subsection (1), the old custody law and the new sentencing law apply with—
 - (a) any necessary changes so that the person in custody is dealt with as nearly as practicable in the way the person would have been dealt with before 2 June 2006; and
 - (b) any changes prescribed by regulation.
- (3) For subsection (1) and (2), a reference in the new sentencing law to something relating to the custody of a person is taken to be a reference to the corresponding thing under the old custody law.

Examples of corresponding references

reference under new sentencing law	case	reference under old custody law
serving a sentence of imprisonment by full-time detention at a correctional centre under the <i>Corrections Management Act 2006</i>	<i>Crimes (Sentence Administration) Act 2006</i> : <ul style="list-style-type: none"> • section 24 (Full-time detention obligations) 	undergoing imprisonment in NSW under the <i>Removal of Prisoners Act 1968</i> (repealed) (see that Act, s 4 (Imprisonment may be served in State))

Schedule 1 Consequential amendments
Part 1.12 Crimes (Sentence Administration) Act 2005

Amendment [1.163]

	<ul style="list-style-type: none"> section 26 (Full-time detention in ACT or NSW) 	
correctional centre	in relation to periodic detention	detention centre under the <i>Periodic Detention Act 1995</i> (repealed)
correctional centre	in relation to remand	remand centre under the <i>Remand Centres Act 1976</i> (repealed)
chief executive	in relation to periodic detention	director of corrective services under the <i>Periodic Detention Act 1995</i> (repealed)
chief executive	in relation to remand	administrator under the <i>Remand Centres Act 1976</i> (repealed)
escort officer	in relation to removing a full-time detainee to a NSW correctional centre	constable under the <i>Removal of Prisoners Act 1968</i> (repealed)
corrections officer	in relation to periodic detention	custodial officer under the <i>Periodic Detention Act 1995</i> (repealed)
corrections officer	in relation to remand	custodial officer under the <i>Remand Centres Act 1976</i> (repealed)

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

605 Old custody law continues

- (1) For section 604, the provisions of the old custody law apply in relation to the custody of a person in the interim custody period despite the repeal of the following Acts and regulations (and any

instruments under them) by the *Sentencing Legislation Amendment Act 2006*, section 6 (Legislation repealed):

- *Community Based Sentences (Transfer) Act 2003* A2003-5
- *Community Based Sentences (Transfer) Regulation 2004* SL2004-51
- *Custodial Escorts Act 1998* A1998-66
- *Custodial Escorts Regulation 2002* SL2002-11
- *Parole Orders (Transfer) Act 1983* A1983-10
- *Periodic Detention Act 1995* A1995-3
- *Periodic Detention Regulation 1995* SL1995-34
- *Prisoners (International Transfer) Act 1999* A1999-9
- *Prisoners Interstate Leave Act 1997* A1997-99
- *Prisoners (Interstate Transfer) Act 1993* A1993-70
- *Rehabilitation of Offenders (Interim) Act 2001* A2001-82
- *Rehabilitation of Offenders (Interim) Regulation 2001* SL2001-39
- *Remand Centres Act 1976* A1976-48
- *Remand Centres Regulation 1976* SL1976-17
- *Removal of Prisoners Act 1968* A1968-82
- *Supervision of Offenders (Community Service Orders) Act 1985* A1985-10.

- (2) However, a provision of the old custody law has no effect to the extent that it is inconsistent with the new sentencing law.
- (3) For subsection (2), a provision is taken to be consistent with the new sentencing law to the extent that it can operate concurrently with that law.
- (4) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

606 Application of old custody law—periodic detention

- (1) For section 605, the provisions of the *Periodic Detention Act 1995* (repealed) continue to apply in relation to the custody of a person in the interim custody period, and, in particular, for the application of the relevant provisions in relation to the custody of the person in that period.
- (2) For subsection (1), the *relevant provisions* are as follows:
 - (a) section 8 (Identification of detainees);
 - (b) section 21 (Complaints by detainees);
 - (c) section 23 (Manager may require alcohol or drug testing);
 - (d) section 27 (Directions);
 - (e) part 3 (Corrective services administration).
- (3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

607 Application of old custody law—remand

- (1) For section 605 (Old custody law continues), the provisions of the *Remand Centres Act 1976* (repealed) continue to apply in relation to the custody of a person in the interim custody period.
- (2) However, the following provisions of the *Remand Centres Act 1976* (repealed) do not apply in relation to the custody of a person in the interim custody period:
 - (a) section 15 (Persons who may be detained);
 - (b) section 16 (Transportation of detainees).
- (3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

608 Additional powers of courts etc

- (1) This section applies to a court, judge or magistrate, or the registrar or a deputy registrar of a court, (a *judicial entity*) in relation to the exercise of a function under the new sentencing law or the old custody law in relation to the custody of a person in the interim custody period.
- (2) A judicial entity may make any order or give any direction it considers necessary or desirable to facilitate the application of the new sentencing law or the old custody law in relation to the custody of the person in the interim custody period.
- (3) This section is additional to, and does not limit, any other power of the judicial entity.
- (4) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

609 Additional powers of sentence administration board

- (1) This section applies to the board in relation to the exercise of a function under the new sentencing law or the old custody law in relation to the custody of a person in the interim custody period.
- (2) The board may give any direction it considers necessary or desirable to facilitate the application of the new sentencing law or the old custody law in relation to the custody of a person in the interim custody period.
- (3) This section is additional to, and does not limit, any other power of the board.
- (4) A direction under this section is subject to any order or direction under section 608.
- (5) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

610 Additional powers of chief executive

- (1) This section applies to the chief executive in relation to the exercise of a function under the new sentencing law or the old custody law in relation to the custody of a person in the interim custody period.
- (2) The chief executive may give any direction the chief executive considers necessary or desirable to facilitate the application of the new sentencing law or the old custody law in relation to the custody of a person in the interim custody period.
- (3) This section is additional to, and does not limit, any other power of the chief executive.
- (4) A direction under this section is subject to—
 - (a) any order or direction under section 608 (Additional powers of courts etc); and
 - (b) any direction under section 609 (Additional powers of sentence administration board).
- (5) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

611 Transitional regulations—ch 17

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act, the *Crimes (Sentencing) Act 2005*, the *Corrections Management Act 2006* or the *Crimes (Sentencing Legislation) Consequential Amendments Act 2005*.
- (2) A regulation may modify this chapter (including its operation in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.

612 Expiry—ch 17

This chapter expires 1 year after the day it commences.

[1.164] Dictionary, new definition of *at*

insert

at, in relation to a correctional centre, includes in the correctional centre.

[1.165] Dictionary, definition of *combination sentence*

substitute

combination sentence—see the *Crimes (Sentencing) Act 2005*, section 29 (1) (Combination sentences—offences punishable by imprisonment) and section 30 (1) (Combination sentences—offences punishable by fine).

[1.166] Dictionary, definition of *community service condition*

omit

section 86

substitute

section 85

[1.167] Dictionary, definition of *nonparole period*, note

omit

in a NSW correctional centre

substitute

at a NSW correctional centre

[1.168] Dictionary, definitions of *registered victim* and *victim*

substitute

registered victim, of an offender, means—

- (a) for chapter 7 (Parole)—see section 118A; or
- (b) for this Act—see section 213.

victim, of an offender, means—

- (a) for chapter 7 (Parole)—see section 118A; or
- (b) for this Act—see section 214.

[1.169] Further amendments, references to *Corrections Management Act 2005*

omit

Corrections Management Act 2005

substitute

Corrections Management Act 2006

in

- section 6
- section 7 (2) (b)
- section 8 (2) (c)
- section 9 (3) (b)
- sections 13 and 14
- section 18 (1) (a)
- section 19
- section 24
- section 36 (3) (b)
- section 42 (2) (e)
- section 43 (1) (d)
- section 45 (2)

- section 46 (2)
- section 62 (1)
- section 85 (c)
- section 86 (1) (d)
- section 95 (2)
- section 96 (2)
- section 136 (b)
- section 137 (1) (d)
- section 216 (1), example 4, paragraph (e)
- section 300 (b)
- section 301 (1) (d)
- section 319 (1)
- section 322 (1), definition of *research*, paragraph (b) and (2) (c)
- section 329
- dictionary, definition of *test sample*

[1.170] Further amendments, mentions of *in a correctional centre* or *in a NSW correctional centre*

omit

in a correctional centre

substitute

at a correctional centre

in

- section 36 (2) (a)
- section 37 (4)
- section 162, definition of *sentence of imprisonment*
- section 200 (3) (b)
- section 330 (1) (b)

[1.171] Further amendments, mentions of (*Application of Act—charges after commencement*)

omit

(Application of Act—charges after commencement)

substitute

(Application of Act to offenders charged before and after commencement)

in

- section 326 (2), note
- section 330 (1), note
- section 332 (2), note
- section 334 (1), note
- section 336 (1), note
- section 337 (1), note
- section 338 (1), note
- section 339 (1), note
- section 340 (1), note
- section 348 (2), note 1

Part 1.13 Director of Public Prosecutions Act 1990

[1.172] Section 6 (1) (k)

substitute

(k) the functions of the director under the *Crimes (Sentence Administration) Act 2005*;

Part 1.14 Domestic Violence and Protection Orders Act 2001

[1.173] Section 34 (2), note

substitute

Note In deciding the sentence to be imposed on a person under this section, the Magistrates Court must consider the matters under the *Crimes (Sentencing) Act 2005*, s 33 (Sentencing—relevant considerations).

[1.174] Section 101 (2) (c)

substitute

- (c) information from being given to a criminal justice entity under the *Crimes (Sentencing) Act 2005*, section 136 (Information exchanges between criminal justice entities); or
- (ca) information from being given to the chief executive in relation to the exercise of the chief executive's functions; or

[1.175] Section 101 (2)

renumber paragraphs when Act next republished under Legislation Act

Part 1.15 Drugs of Dependence Act 1989

[1.176] Section 121, definition of *responsible officer*

substitute

responsible officer means—

- (a) in relation to an offender who is under 18 years old—the chief executive of the administrative unit responsible for the *Children and Young People Act 1999*, chapter 2 (General objects, principles and parental responsibility); or

- (b) in any other case—the chief executive of the administrative unit responsible for the *Crimes (Sentence Administration) Act 2005*.

[1.177] Section 123 (6)

omit

[1.178] Section 123

renumber subsections when Act next republished under Legislation Act

[1.179] Section 124 (7) (c)

substitute

- (c) that any security under any good behaviour order in relation to the original offence committed by the offender be forfeited.

[1.180] Section 125 (4)

omit

may admit him or her to bail on the recognisance it considers appropriate

substitute

may grant bail to the offender

[1.181] Section 128

omit

Part 1.16 Electoral Act 1992

[1.182] Section 71A

omit

For this part,

substitute

- (1) For this part,

[1.183] New section 71A (2)

insert

- (2) In this section:

sentence of imprisonment does not include a periodic detention period of the sentence set by a court under the *Crimes (Sentencing) Act 2005*, section 11 (Periodic detention).

[1.184] Section 103 (1)

omit

subsections (2) and (4)

substitute

this section

[1.185] New section 103 (3A)

insert

- (3A) A person is not eligible to be an MLA if the person is under a sentence of imprisonment for 1 year or longer for a conviction of an indictable offence.

Note For the meaning of *indictable offence*, see the Legislation Act, s 190 (Indictable and summary offences).

[1.186] Section 103 (4) (b), notes

substitute

Note **Contravention** is defined for pt 16 (Disputed elections, eligibility and vacancies) in s 250.

[1.187] Section 103

renumber subsections when Act next republished under Legislation Act

[1.188] Section 131 (1) (b)

omit

in a remand centre

substitute

at a correctional centre

[1.189] New section 131 (4)

insert

- (4) To remove any doubt, subsection (2) does not give an elector detained in lawful custody any right to leave, or be released from, the place of custody to cast a vote.

[1.190] Section 149, definition of *remand centre*

omit

[1.191] Section 150 (3) and (4)

substitute

- (3) The commissioner may arrange for an officer to visit electors detained at a correctional centre to take their votes.
- (4) A visit mentioned in subsection (3) must be made at a time, and in accordance with any conditions, arranged between the commissioner and the person in charge of the correctional centre.

[1.192] Section 151 (2)

substitute

- (2) The number of scrutineers for a particular candidate who are present at a hospital, special hospital or correctional centre with the visiting officer must not be more than the number of officers at the hospital, special hospital or correctional centre.

[1.193] Section 151 (5)

substitute

- (5) A visit under section 150 to a person detained at a correctional centre must not be made if the person in charge of the centre tells the visiting officer that the visit is prohibited on security grounds.

[1.194] Dictionary, note 2, new dot points

insert

- correctional centre
- indictable offence

[1.195] Dictionary, definition of *remand centre*

omit

Part 1.17 Evidence (Miscellaneous Provisions) Act 1991

[1.196] Section 16, definition of *territory court*, paragraph (f)

substitute

- (f) the sentence administration board; or
- (g) a presiding officer under the *Corrections Management Act 2006*, chapter 10 (Conduct of disciplinary inquiries).

[1.197] Dictionary, note 2, new dot point

insert

- sentence administration board

Part 1.18 Firearms Act 1996

[1.198] Section 6

omit

This Act

substitute

- (1) This Act

[1.199] Section 6 (b)

substitute

- (b) a corrections officer in relation to a firearm in the officer's possession for use in the exercise of the officer's functions; or

[1.200] New section 6 (2)

insert

- (2) In this section:

corrections officer includes a person engaged by an entity responsible under a State law for providing correctional services for offenders.

Note *Corrections officer* is defined in the Legislation Act, dict, pt 1.

[1.201] Section 46 (3) (c)

substitute

- (c) is subject to a court order (however described), in the ACT or elsewhere, to keep the peace; or

Part 1.19 Firearms Regulation 1997

[1.202] Section 29 (2) (b) (xi) (C)

omit

recognisance

substitute

court order (however described)

Part 1.20 Food Act 2001

[1.203] Section 9 (1) (o) (i)

substitute

- (i) a correctional centre or lockup, or an institution or shelter under the *Children and Young People Act 1999*; or

Part 1.21 Hawkers Act 2003

[1.204] Section 18 (3) (c)

substitute

- (c) whether the applicant or anyone else who is concerned with, or takes part in, the applicant's management has been convicted or found guilty of an offence against—
 - (i) the Criminal Code, section 313 (Receiving); or
 - (ii) the *Crimes Act 1900*, section 105 (Handling stolen property) (repealed); or
 - (iii) an offence against the law of a State or another Territory that corresponds to an offence mentioned in subparagraph (i) or (ii);

- (d) whether the applicant or anyone else who is concerned with, or takes part in, the applicant's management has contravened an order under—
 - (i) the Criminal Code, section 364 (Stolen property held by dealers etc—owners rights); or
 - (ii) the *Crimes Act 1900*, section 109 (Delivery of stolen property held by dealers) (repealed); or
 - (iii) a provision of the law of a State or another Territory that corresponds to a provision mentioned in subparagraph (i) or (ii).

Part 1.22 Health Professionals Regulation 2004

[1.205] Schedule 17, section 150M (7)

omit

Part 1.23 Judicial Commissions Act 1994

[1.206] Section 44 (6)

omit

Part 1.24 Juries Act 1967

[1.207] Section 10 (a)

omit

free

[1.208] Schedule 2, part 2.1, items 22 to 30

substitute

- 22 a corrections officer
- 23 an employee at a place declared to be an attendance centre, institution or shelter under the *Children and Young People Act 1999*, section 412
- 24 a person appointed as 1 of the following:
- (a) a royal commission under the *Royal Commissions Act 1991*, section 5;
 - (b) a board of inquiry under the *Inquiries Act 1991*, section 5;
 - (c) a member of a judicial commission under the *Judicial Commissions Act 1994*, section 6
- 25 a public servant during the period the public servant is made available to a royal commission, board of inquiry or judicial commission

[1.209] Dictionary, note 2, new dot points

insert

- corrections officer
- judge
- registrar.

Part 1.25 Land (Planning and Environment) Act 1991

[1.210] Section 272

substitute

272 Disposal of seized things

- (1) The planning and land authority must take reasonable steps to return a thing seized under section 269 (1) (d) to the person from whom it was seized, or to someone else who appears to the authority to be entitled to it, if—
 - (a) a prosecution for an offence against this part in relation to the thing is not started within 90 days after the day of the seizure; or
 - (b) a person is charged with an offence against this part in relation to the thing within the 90-day period but the person is not convicted or found guilty of the offence.
- (2) If a person is convicted or found guilty of an offence against this part in relation to a thing seized under section 269 (1) (d), the court may order—
 - (a) that the thing be given to the person who appears to the court to be entitled to it; or
 - (b) that the thing be forfeited to the Territory.

Part 1.26 Legislation Act 2001

[1.211] Section 140, example 3

omit

‘an order under the *Crimes Act 1900*, section 402’

substitute

‘a non-conviction order under the *Crimes (Sentencing) Act 2005*’

[1.212] Dictionary, part 1, definition of *committed for trial*

substitute

commit, a person for trial, means—

- (a) to order that the person be remanded in custody until tried by the Supreme Court; or
- (b) to grant bail to the person to appear and be tried by the Supreme Court.

[1.213] Dictionary, part 1, new definitions

insert

correctional centre means a correctional centre under the *Corrections Management Act 2006*.

corrections officer means a corrections officer under the *Corrections Management Act 2006*.

[1.214] Dictionary, part 1, definition of *custodial escort*

omit

[1.215] Dictionary, part 1, definition of *director of corrective services*

omit

[1.216] Dictionary, part 1, definition of *found guilty*

substitute

found guilty, of an offence, includes—

- (a) having an order made for the offence under the *Crimes (Sentencing) Act 2005*, section 17 (Non-conviction orders—general); and
- (b) having the offence taken into account under the *Crimes (Sentencing) Act 2005*, section 57 (Outstanding additional offences taken into account in sentencing); and
- (c) having an order made for the offence under the *Children and Young People Act 1999*, section 98 (Disposition without proceeding to conviction).

[1.217] Dictionary, part 1, new definition of *NSW correctional centre*

insert

NSW correctional centre means a correctional centre (however described) under the *Crimes (Administration of Sentences) Act 1999* (NSW).

[1.218] Dictionary, part 1, definitions of *remand centre* and *remand centre administrator*

omit

[1.219] Dictionary, part 1, definition of *sentence administration board*

substitute

sentence administration board means the Sentence Administration Board under the *Crimes (Sentence Administration) Act 2005*.

Part 1.27 Magistrates Court Act 1930

[1.220] Section 13

substitute

13 Issue of writ of execution after case decided

After a case has been heard and decided, any magistrate or the registrar may issue a writ of execution for the purposes of the case.

[1.221] Section 17C

omit

warrant of commitment or writ of execution is granted on it

substitute

committal order or writ of execution is issued for the conviction or order

[1.222] Section 17E

omit

If a warrant of commitment or writ of execution is granted

substitute

If a committal order or writ of execution is issued

[1.223] Section 17E

omit

warrant or writ

substitute

committal order or writ

[1.224] Section 18A, definitions of *administrator*, *escort* and *superintendent*

omit

[1.225] Section 23B

omit

[1.226] Section 43 (2) (a)

omit

confined in prison for any other offence than that charged in the indictment—on proof on oath that the person so confined in prison is the person charged and named in the indictment, issue a warrant directed to the gaoler of the prison where the person is so confined, commanding the gaoler to detain the person in the gaoler's custody

substitute

detained at a correctional centre (including a NSW correctional centre) for any other offence—on proof on oath that the person is the person charged in the indictment, issue a warrant directing the person in charge of the correctional centre to detain the person

[1.227] Division 3.4.3

substitute

Division 3.4.3 Remand

70 Remand of defendant

- (1) This section applies if the court considers it is necessary or desirable to adjourn the hearing of a proceeding for an indictable offence—
 - (a) because of the absence of witnesses; or
 - (b) for any other reasonable cause.

- (2) The court may—
- (a) adjourn the hearing; and
 - (b) order the remand of the defendant into custody for a stated period; and
 - (c) order the chief executive to arrange for the defendant to be brought before the court at a stated time and place for the hearing.

Note The court must issue a warrant for the remand of the defendant in the chief executive's custody (see *Crimes (Sentence Administration) Act 2005*, s 17).

- (3) If the period of remand is not longer than 3 days, the order may be made orally.

Note The *Crimes (Sentence Administration) Act 2005*, pt 3.2 provides for the chief executive to have custody of the defendant during the remand.

- (4) Any single period of remand under this section must be no longer than—

- (a) 28 days; or
- (b) if the defendant chooses to be remanded for a longer period without review—a longer period that the court considers reasonable.

72 Bringing remanded defendant before court

The court may order that a defendant remanded under section 70 be brought before the court at any time during the period for which the defendant was remanded.

Note The *Crimes (Sentence Administration) Act 2005*, pt 3.2 and pt 3.3 provide for the chief executive to have custody of the defendant during the remand and to bring the defendant before the court as ordered by the court.

72A Bail application hearings—audiovisual links

- (1) This section applies if—
 - (a) a person in custody is entitled to appear, or is required to appear or be brought, before the court for the hearing of an application for bail; and
 - (b) the hearing could be conducted using an audiovisual link between the court and the place of custody.
- (2) Unless the court directs otherwise, the hearing must be conducted using the audiovisual link.
- (3) The court may amend or revoke a direction under subsection (2)—
 - (a) at any time; and
 - (b) on its own initiative or on application by a party to the bail proceeding.
- (4) In this section:

audiovisual link—see the *Evidence (Miscellaneous Provisions) Act 1991*, dictionary.

72B Defendant's appearance in non-bail proceedings—audiovisual links

- (1) This section applies if the court gives a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (Territory courts may take evidence and submissions from outside ACT) or section 32 (1) (Use of link in proceedings) in relation to any part of a proceeding in relation to a defendant remanded under—
 - (a) section 70 (Remand of defendant); or
 - (b) section 72 (Bringing remanded defendant before court).
- (2) The chief executive must make arrangements to ensure that the evidence can be taken, or the submission made, in accordance with the court's direction.

[1.228] Sections 74 and 75

substitute

74 Remand of defendant before decision

The court may, at any time before the court gives its decision in a case, order that the defendant be remanded in custody.

Note 1 The court must issue a warrant for the remand of the defendant in the chief executive's custody (see *Crimes (Sentence Administration) Act 2005*, s 17).

Note 2 The *Crimes (Sentence Administration) Act 2005*, pt 3.2 provides for the chief executive to have custody of the defendant during the remand.

75 Remand of witness or defendant after decision

- (1) If the court commits a witness or a person sought to be made a witness, it must order that the witness or person be remanded in custody.
- (2) If the court commits a defendant, it must order that the defendant be remanded in custody.

[1.229] Section 79 (1) (d)

substitute

- (d) if a party is at a correctional centre—the person in charge of the centre.

[1.230] Section 82

omit

[1.231] Section 84

substitute

84 Particular cases may be adjourned

- (1) Before or during the hearing or further hearing of an information, the magistrate may adjourn the hearing or further hearing.
- (2) The magistrate may, by order, release the defendant (whether or not on bail) or remand the defendant in custody.

Note 1 If the court remands the defendant in custody it must issue a warrant for the defendant's remand in the chief executive's custody (see *Crimes (Sentence Administration) Act 2005*, s 17).

Note 2 The *Crimes (Sentence Administration) Act 2005*, part 3.2 provides for the chief executive to have custody of the defendant during the remand.

[1.232] Section 94 (b)

substitute

- (b) in any other case—commit the defendant for trial for the offence.

Note 1 For the meaning of *commit* a person for trial, see the Legislation Act, dict, pt 1.

Note 2 The court must issue a warrant for the remand of the defendant in the chief executive's custody (see *Crimes (Sentence Administration) Act 2005*, s 17).

[1.233] Section 105

substitute

105 Court may remand noncompliant witness

- (1) If a witness fails to enter into a recognisance, the court may order the remand of the witness in custody until after the defendant's trial, unless the witness enters into the recognisance before a magistrate.

Note The *Crimes (Sentence Administration) Act 2005*, pt 3.2 provides for the chief executive to have custody of the defendant during the remand.

- (2) If the witness is remanded under this section, a magistrate may order the chief executive to release the witness from custody in accordance with the order if—
- (a) the defendant is not committed for trial for the offence with which the defendant is charged; or
 - (b) the relevant officer declines to file an information against the defendant for the offence; or
 - (c) the witness enters into the recognisance before a magistrate.

[1.234] Section 111 (3)

omit

safe custody,

substitute

custody

[1.235] Section 141 (1), new note

insert

Note If the defendant is sentenced to imprisonment, the court must issue a warrant for the imprisonment of the defendant in the chief executive's custody (see *Crimes (Sentence Administration) Act 2005*, s 12).

[1.236] Section 141 (4)

substitute

- (4) The minute must not form part of—
- (a) a warrant under the *Crimes (Sentence Administration) Act 2005*, section 12 (Warrant for imprisonment); or
 - (b) a writ of execution.

[1.237] Section 144 (1)

substitute

- (1) On application, the registrar must give an applicant a copy of—
- (a) an information; or
 - (b) a minute or memorandum of a conviction or order; or
 - (c) a formal conviction or order; or
 - (d) a committal order.

[1.238] Section 145

omit

[1.239] Section 146

omit

In

substitute

- (1) In

[1.240] Section 146, definition of *fine*, paragraph (a)

substitute

- (a) a fine payable under a fine order under the *Crimes (Sentencing) Act 2005*; or

[1.241] Section 146, definition of *fine*, paragraph (e)

substitute

- (e) an amount payable to the Territory under a reparation order under the *Crimes (Sentencing) Act 2005*; or

Note A reparation order under the *Crimes Act 1900*, s 350 (repealed) is taken to be a reparation order under the *Crimes (Sentencing) Act 2005* (see that Act, s 142).

- (f) a financial penalty imposed, otherwise than under the *Crimes (Sentencing) Act 2005*, in relation to an offence.

[1.242] Section 152 (5)

substitute

- (5) A person committed under section 154D (Fine defaulters—imprisonment) is not entitled to make an application.

[1.243] Section 153 (3) (b) and (c)

substitute

- (b) the outstanding fine has been remitted by the Executive; or

Note 1 For the remission of a fine by the Executive, see the *Crimes (Sentence Administration) Act 2005*, s 313 (Remission of penalties).

Note 2 A fine also may have been remitted under this Act, s 159 (repealed) or the *Crimes Act 1900*, s 434 (repealed).

- (c) the person has completed serving a period of imprisonment because of an order under section 154D (Fine defaulters—imprisonment); or

[1.244] Sections 154D to 158

substitute

154D Fine defaulters—imprisonment

- (1) The registrar must order the imprisonment of a fine defaulter—
- (a) if satisfied that all reasonable action has been taken under this division to secure payment and there is no reasonable likelihood of the outstanding fine being paid; and
- (b) the outstanding fine has not been remitted by the Executive.

Note 1 The registrar must issue a warrant for the imprisonment of the person in the chief executive's custody (see *Crimes (Sentence Administration) Act 2005*, s 12).

Note 2 For the remission of a fine by the Executive, see the *Crimes (Sentence Administration) Act 2005*, s 313 (Remission of penalties).

Note 3 A fine also may have been remitted under this Act, s 159 (repealed) or the *Crimes Act 1900*, s 434 (repealed).

- (2) The order, or any warrant under the *Crimes (Sentence Administration) Act 2005*, section 12 (Warrant for imprisonment), must not be given effect if the amount of the outstanding fine is paid to the Territory, or to someone acting for the Territory, before the person is imprisoned.
- (3) The period for which the fine defaulter must be committed is the lesser of—
 - (a) a period worked out at the rate of 1 day for each \$100, or part of \$100, of the outstanding fine; or
 - (b) 6 months.
- (4) This section does not apply to a person if the person's liability to pay the fine is derived from a reparation order under the *Crimes (Sentencing) Act 2005*.

Note A reparation order under the *Crimes Act 1900*, s 350 (repealed) is taken to be a reparation order under the *Crimes (Sentencing) Act 2005* (see that Act, s 142).

157 Outstanding fine discharged by payment

- (1) This section applies if—
 - (a) a person is imprisoned under section 154D; and
 - (b) an amount is paid to the Territory (through the registrar or the chief executive) to discharge an amount of the outstanding fine.
- (2) If the amount paid completely discharges the outstanding fine, the chief executive must release the person from imprisonment immediately, unless the person must otherwise be lawfully detained.

158 Outstanding fine satisfied by imprisonment

A person imprisoned under section 154D (Fine defaulters—imprisonment) discharges the person's liability to pay the outstanding fine—

- (a) at the rate of \$100 for each day or part of a day for which the person is detained under the warrant; or
- (b) if the person is committed for 6 months—at the end of the 6-month period.

[1.245] Section 159

omit

[1.246] Sections 185 to 188

omit

[1.247] Section 191

omit

registrar, keeper of a gaol and superintendent of a remand centre

substitute

registrar and person in charge of a correctional centre

[1.248] Section 194

substitute

194 Writ of execution not void for form only

A writ of execution is not void only because of a defect or error in it if there is a conviction or order that is valid, or that may be amended and made valid, under this Act to support it.

[1.249] Section 208 (1) (e) and (f)

substitute

- (e) an appeal from an order of the court under any of the following provisions of the *Crimes (Sentencing) Act 2005*:
- (i) part 3.2 (Sentences of imprisonment);
 - (ii) part 3.3 (Non-custodial sentences);
 - (iii) part 3.4 (Non-association and place restriction orders);
 - (iv) part 3.5 (Deferred sentence orders);
 - (v) part 3.6 (Combination sentences);

Note Orders under the *Crimes Act 1900*, pt 18 (Conditional release of offenders) are taken to be orders under the *Crimes (Sentencing) Act 2005* (see *Crimes (Sentence Administration) Act 2005*, ch 16).

- (f) an appeal from an order of the court under the *Crimes (Sentence Administration) Act 2005*, part 6.6 (Good behaviour orders—amendment and discharge).

[1.250] Section 216 (2)

omit

may, by warrant, commit the person to a remand centre

substitute

may order the person be remanded in custody

[1.251] Section 216 (2), new note

insert

Note The court must issue a warrant for the remand of the defendant in the chief executive's custody (see *Crimes (Sentence Administration) Act 2005*, s 17).

[1.252] Section 219B (2)

substitute

(2) In subsection (1) (f):

sentence or penalty includes a sentence or penalty imposed by an order of the Magistrates Court under—

(a) any of the following provisions of the *Crimes (Sentencing) Act 2005*:

- (i) part 3.2 (Sentences of imprisonment);
- (ii) part 3.3 (Non-custodial sentences);
- (iii) part 3.4 (Non-association and place restriction orders);
- (iv) part 3.5 (Deferred sentence orders);
- (v) part 3.6 (Combination sentences); or

Note Orders under the *Crimes Act 1900*, pt 18 (Conditional release of offenders) are taken to be orders under the *Crimes (Sentencing) Act 2005* (see *Crimes (Sentence Administration) Act 2005*, ch 16).

(b) the *Crimes (Sentence Administration) Act 2005*, part 6.6 (Good behaviour orders—amendment and discharge).

[1.253] Section 222 (1)

omit

warrant of commitment

substitute

committal order

[1.254] Section 222 (1)

omit

the warrant

substitute

the committal order

[1.255] Section 222 (2)

omit

commitment

substitute

committal

[1.256] Section 223 (2)

substitute

- (2) The Supreme Court must allow the committal order, and may allow the conviction or judgment, to be immediately amended as necessary in accordance with the facts.

[1.257] Section 226 (1)

omit

committed to gaol

substitute

imprisoned or detained

[1.258] Sections 250 to 253

omit

or the *Bail Act 1992*

[1.259] Section 254 (4)

omit

or under the *Bail Act 1992*, section 36 (1)

[1.260] Section 312 (2) (b)

substitute

(b) order that the person be remanded in custody until the earlier of the following:

- (i) the date to which the proceeding is adjourned;
- (ii) the person agrees to comply with the relevant Code provisions.

Note The court must issue a warrant for the remand of the person in the chief executive's custody (see *Crimes (Sentence Administration) Act 2005*, s 17).

[1.261] Section 312 (3) (a)

omit

committed the person

substitute

ordered the person's remand

[1.262] Section 312 (4)

omit

committed

substitute

remanded

[1.263] Section 313

omit

[1.264] Dictionary, note 2, new dot point

insert

- corrections officer

[1.265] Dictionary, note 2

omit

- custodial escort
- remand centre
- remand centre administrator

[1.266] Dictionary, definition of *administrator*

omit

[1.267] Dictionary, new definition of *committal order*

insert

committal order—see the *Crimes (Sentence Administration) Act 2005*, section 10.

[1.268] Dictionary, definitions of *escort* and *superintendent*

omit

Part 1.28 Mental Health (Treatment and Care) Act 1994

[1.269] Section 38A

omit

A police officer, or an escort under the *Custodial Escorts Act 1998*,

substitute

A police officer or corrections officer

[1.270] Dictionary, note 2, new dot points

insert

- correctional centre
- corrections officer

[1.271] Dictionary, definition of *community care facility*

omit

a facility the principal purpose of which is for the detention of persons sentenced to imprisonment

substitute

a correctional centre

Part 1.29 Prohibited Weapons Act 1996

[1.272] Section 4

omit

A person

substitute

(1) A person

[1.273] Section 4

omit

while acting in the ordinary course of the person's duties

substitute

in the exercise of the person's functions

[1.274] Section 4 (e) and (f)

omit

a member of

[1.275] New section 4 (2)

insert

- (2) A corrections officer does not commit an offence against this Act only because of something done by the officer in the exercise of the officer's functions.

Note *Corrections officer*, *exercise* and *function* are defined in the Legislation Act, dict, pt 1.

Part 1.30 Road Transport (Alcohol and Drugs) Act 1977

[1.276] Section 29

substitute

29 Conditional release of convicted person

If a person is convicted of an offence against this Act, the court, on an application by the convicted person, may, instead of ordering the convicted person to pay a fine or sentencing the person to imprisonment, make a rehabilitation program order within the meaning of the *Crimes (Sentencing) Act 2005*, section 13 (7) (Good behaviour orders).

(commencement: 2 June 2007)

[1.277] New section 41A (1) (i) and (j)

substitute

- (i) that a non-conviction order was made under the *Crimes (Sentencing) Act 2005*, section 17 (2) (a) (Non-conviction orders—general); or
- (j) that an offence was taken into account by a court under the *Crimes (Sentencing) Act 2005*, part 4.4 (Taking additional offences into account);

[1.278] Section 45

omit

Despite the *Crimes Act 1900*, section 352 (2) a

substitute

A

Part 1.31 Royal Commissions Act 1991

[1.279] Section 35 (3) (b)

omit

force

substitute

service or force

[1.280] Section 35 (6)

omit

**Part 1.32 Security Industry Regulation
2003**

[1.281] Section 6 (3), definition of *custodial officer*

substitute

custodial officer means—

- (a) a corrections officer under the *Corrections Management Act 2006*, section 20; or
- (b) an escort under the *Children and Young People Act 1999*, part 6.3 (Interstate transfer); or

- (c) an officer (other than a police officer) mentioned in the *Children and Young People Act 1999*, section 120 (6) (Transfer directions), section 122 (4) (Temporary custody prior to transfer between institutions) or section 125 (3) (Placing in shelter or remand centre); or
- (d) a prison officer under the *Crimes (Sentence Administration) Act 2005*, section 217 (Definitions—pt 11.1) or a person appointed as an escort under the *Crimes (Sentence Administration) Act 2005*, section 240 (3) (Interstate transfer—transfer in custody of escort), definition of *escort*, paragraph (c); or
- (e) a prison officer or another officer (other than a police officer) mentioned in the *Crimes (Sentence Administration) Act 2005*, section 257 (International transfer—functions of prison officers, police officers etc).

Part 1.33 Spent Convictions Act 2000

[1.282] Section 6 (b)

substitute

- (b) the person is charged with the offence and a court finds the person guilty of the offence.

[1.283] Section 6, examples 1 to 4

substitute

- 1 the court makes an order under the *Crimes (Sentencing) Act 2005*, s 17 (Non-conviction orders—general)
- 2 the court makes an order under the *Children and Young People Act 1999*, s 98 (Disposition without proceeding to conviction)

[1.284] Section 7 (2)

substitute

- (2) In this Act, a reference to a conviction that is *spent* includes a reference to the charge to which the spent conviction related.

[1.285] Section 11 (2) (a)

substitute

- (a) a conviction for which a sentence of imprisonment of longer than 6 months has been imposed;

[1.286] Section 11 (3)

substitute

- (3) In this section:

sentence of imprisonment—

- (a) includes a period of a sentence of imprisonment to be served by periodic detention under the *Crimes (Sentence Administration) Act 2005*; but
- (b) does not include the detention of a person under a control order.

[1.287] Section 12 (1)

omit

subsections (2) to (8)

substitute

this section

[1.288] Section 12 (2), (3) and (4)

substitute

- (2) If a charge for an offence is dismissed under either of the following provisions, the finding of guilt for the offence (however described) is spent on the dismissal of the charge:
- (a) the *Crimes (Sentencing) Act 2005*, section 17 (Non-conviction orders—general);
 - (b) the *Children and Young People Act 1999*, section 98 (Disposition without proceeding to conviction).

Note An order under the *Crimes Act 1900*, s 402 (Conditional release of offenders without proceeding to conviction) (repealed) is taken to be a non-conviction order that is a good behaviour order under the *Crimes (Sentencing) Act 2005* (see *Crimes (Sentence Administration) Act 2005*, s 336).

- (3) If an order under the *Crimes (Sentencing) Act 2005*, section 17 (Non-conviction orders—general) is a good behaviour order subject to a condition, the order is spent only when the condition is completely satisfied.

[1.289] Section 12

renumber subsections when Act next republished under Legislation Act

Part 1.34 Supreme Court Act 1933

[1.290] Section 37Q, heading

substitute

37Q Bail time on appeal does not count towards sentence

[1.291] Section 70A (2) (a) to (c)

substitute

- (a) order the person to pay a fine not exceeding \$5 000; or
- (b) order that the person be imprisoned for not longer than 6 months; or
- (c) make orders under both paragraph (a) and (b).

Part 1.35 Supreme Court Rules 1937

[1.292] Order 68, rule 10

substitute

10 Detention of arrested person

If a person is arrested by the sheriff on any civil process of the court, the person is to be taken to a correctional centre and detained until released by the court.

[1.293] Order 80, rule 1, definition of *sentence*, examples 1 and 2

substitute

- 1 a reparation order under the *Crimes (Sentencing) Act 2005*, s 19 or s 20
- 2 a good behaviour order under the *Crimes (Sentencing) Act 2005*, s 13

[1.294] Order 80, rule 32

omit

recognisance

substitute

undertaking

[1.295] Order 86, rules 9 and 48, definition of *sentence*, examples 1 and 2

substitute

1 a reparation order under the *Crimes (Sentencing) Act 2005*, s 19 or s 20

2 a good behaviour order under the *Crimes (Sentencing) Act 2005*, s 13

[1.296] Order 86, rule 63 (4), definition of *fine*, example 5

substitute

5 an amount payable for reparation under the *Crimes (Sentencing) Act 2005*, s 19

Part 1.36 Taxation Administration Act 1999

[1.297] New section 5A

in part 1, insert

5A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to an offence against s 71 (6) (Orders to comply with requirements). The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences) and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness*, and *strict liability*).

Note 2 Penalty units

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

[1.298] Section 70 (1) (d) and (e)

after

convicted

insert

or found guilty

[1.299] Section 70 (4)

substitute

- (4) For subsection (1) (d) and (e), a reference to a person being ***found guilty*** includes a reference to an order being made in relation to the person under the *Crimes Act 1914* (Cwlth), section 19B (1).

[1.300] Section 71

substitute

71 Orders to comply with requirements

- (1) This section applies if a person is convicted or found guilty of an offence against a tax law for a failure of the person to comply with a requirement (the ***relevant requirement***)—
- (a) to provide to or lodge with the commissioner any information or document; or
 - (b) to attend before the commissioner or anyone else; or
 - (c) to have an instrument properly stamped.
- (2) The court may, by order, require the person, within a stated time or at a stated place and time, to do either or both of the following:
- (a) to comply with the relevant requirement;

- (b) to comply with any other requirements that have or could have been made in relation to the person under a tax law that the court considers necessary to ensure that the relevant requirement is complied with.
- (3) The order may be made whether or not the time to comply with the relevant requirement or any other requirement has ended.
- (4) If the order is not given orally to the person, the court's proper officer must serve a copy of the order on the person.
- (5) The making of an order under this section does not limit the court's power to impose a sentence on the person for the offence or make any other order in relation to the offence.
- (6) The person must comply with an order under this section to the extent that the person is capable of doing so.

Maximum penalty (subsection (6)): 100 penalty units, imprisonment for 1 year or both.

Part 1.37 Victims of Crime (Financial Assistance) Act 1983

[1.301] Section 35 (2) (c)

substitute

- (c) an amount of reparation in relation to the injury or damage payable in the applicant's favour under a reparation order under the *Crimes (Sentencing) Act 2005*;

Note A reparation order under the *Crimes Act 1900*, s 350 (repealed) is taken to be a reparation order under the *Crimes (Sentencing) Act 2005* (see that Act, s 142).

[1.302] Section 40 (2) (c)

substitute

- (c) an amount of reparation in relation to the injury or damage payable under an order under a reparation order under the *Crimes (Sentencing) Act 2005*;

Note A reparation order under the *Crimes Act 1900*, s 350 (repealed) is taken to be a reparation order under the *Crimes (Sentencing) Act 2005* (see that Act, s 142).

[1.303] Section 52, definition of *related crime*, paragraph (b)

substitute

- (b) any other offence if an offence mentioned in paragraph (a) was taken into account by a court when sentence was passed on the offender for that other offence.

[1.304] New section 54 (2)

insert

- (2) However, the registrar must not make the provisional order only because the person's property is subject to a restraining order or forfeiture order under the *Confiscation of Criminal Assets Act 2003*.

[1.305] Section 54 (2) to (4)

renumber as section 54 (3) to (5)

[1.306] New section 61A

insert

61A Recovery under restitution orders—Confiscation of Criminal Assets Act

- (1) This section applies in relation to the recovery from a defendant (including under an arrangement under section 58) of an amount under a provisional order for restitution or a provisional order for restitution that is confirmed.

- (2) To remove any doubt, the amount cannot be recovered from property that has been restrained or forfeited under the *Confiscation of Criminal Assets Act 2003*.

Note 1 Restrained property may be dealt with only in accordance with the Confiscation Act (see that Act, s 19, def *restraining order* and s 33 (1)). For the exclusion of restrained property from forfeiture, see the Confiscation Act, pt 6.

Note 2 For applications by a person who had an interest in forfeited property for the property's return or for compensation, see the Confiscation Act, div 9.5.

- (3) In this section:

restrained—see the *Crimes (Sentencing) Act 2005*, section 112 (3).

[1.307] Section 66 (2) (a) (i)

substitute

- (i) the *Crimes (Sentencing) Act 2005*; or

Note A reparation order under the *Crimes Act 1900*, s 350 (repealed) is taken to be a reparation order under the *Crimes (Sentencing) Act 2005* (see that Act, s 142).

[1.308] Section 67

substitute

67 Extended meaning of *conviction*—pt 5

- (1) For this part, a person is taken to have been convicted of an offence if—
- (a) the person is found guilty of the offence; or
- (b) the offence was taken into account by a court when sentencing the person for another offence.

Note *Found guilty* is defined in the Legislation Act, dict, pt 1.

- (2) For this section, a person is taken to have been found guilty of an offence if an order is made in relation to the offence under the *Crimes Act 1914* (Cwlth), section 19B (1).

[1.309] Section 69 (2) (b)

substitute

- (b) any other offence that the court has taken into account in passing sentence for the first mentioned offence.

Part 1.38 **Victims of Crime (Financial Assistance) Regulation 1998**

[1.310] Regulation 4 (1) (a) and (2)

omit

director of corrective services

substitute

chief executive

Part 1.39 **Workers Compensation Act 1951**

[1.311] Section 205 (1)

omit

For the *Crimes Act 1900*, section 342, in

substitute

In

Schedule 2 Crimes Act 1900—other amendments

(see s 3)

[2.1] Section 116 (1)

omit

is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

substitute

commits an offence.

Maximum penalty: imprisonment for 20 years.

[2.2] Section 116 (2)

omit

is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

substitute

commits an offence.

Maximum penalty: 300 penalty units, imprisonment for 15 years or both.

[2.3] Section 116 (3)

omit

is guilty of an offence punishable, on conviction, by imprisonment for 6 months, a fine not exceeding 50 penalty units or both.

substitute

commits an offence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

[2.4] Section 117 (1)

omit

is guilty of an offence punishable, on conviction, by imprisonment for 25 years.

substitute

commits an offence.

Maximum penalty: imprisonment for 25 years.

[2.5] Section 117 (2)

omit

is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

substitute

commits an offence.

Maximum penalty: imprisonment for 20 years.

[2.6] Section 119 (1)

omit

\$1 000

substitute

10 penalty units

[2.7] Section 119 (2)

omit

\$1 000

substitute

10 penalty units

[2.8] Section 122

omit

is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

substitute

commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 5 years or both.

[2.9] Section 137

omit

Maximum penalty: imprisonment for 10 years.

substitute

Maximum penalty: 200 penalty units, imprisonment for 10 years or both.

[2.10] Section 138 (1)

omit

Maximum penalty: imprisonment for 10 years.

substitute

Maximum penalty: 200 penalty units, imprisonment for 10 years or both.

[2.11] Section 139 (1)

omit

Maximum penalty: imprisonment for 10 years.

substitute

Maximum penalty: 200 penalty units, imprisonment for 10 years or both.

[2.12] Section 140A

omit

Maximum penalty: imprisonment for 10 years.

substitute

Maximum penalty: 200 penalty units, imprisonment for 10 years or both.

[2.13] Section 140B (1)

omit

Maximum penalty: imprisonment for 10 years.

substitute

Maximum penalty: 200 penalty units, imprisonment for 10 years or both.

[2.14] Section 140C (1)

omit

Maximum penalty: imprisonment for 10 years.

substitute

Maximum penalty: 200 penalty units, imprisonment for 10 years or both.

[2.15] Section 141

omit

is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

substitute

commits an offence.

Maximum penalty: 200 penalty units, imprisonment for 7 years or both.

[2.16] Section 142

omit

is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

substitute

commits an offence.

Maximum penalty: 200 penalty units, imprisonment for 7 years or both.

[2.17] Section 143

omit

is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

substitute

commits an offence.

Maximum penalty: 200 penalty units, imprisonment for 7 years or both.

[2.18] Section 144

omit

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

substitute

commits an offence.

Maximum penalty: 200 penalty units, imprisonment for 10 years or both.

[2.19] Section 145

omit

is guilty of an offence punishable, on conviction, by imprisonment for 3 years.

substitute

commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 3 years or both.

[2.20] Section 147

omit

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

substitute

commits an offence.

Maximum penalty: 200 penalty units, imprisonment for 10 years or both.

[2.21] Section 148

omit

is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

substitute

commits an offence.

Maximum penalty: 200 penalty units, imprisonment for 7 years or both.

[2.22] Section 151

omit

is guilty of an offence punishable, on conviction, by a fine not exceeding \$2 000, by imprisonment for 1 year or both.

substitute

commits an offence.

Maximum penalty: 20 penalty units, imprisonment for 1 year or both.

[2.23] Section 152

omit

is guilty of an offence punishable, on conviction, by a fine not exceeding \$2 000, by imprisonment for 1 year or both.

substitute

commits an offence.

Maximum penalty: 20 penalty units, imprisonment for 1 year or both.

[2.24] Section 153 (1)

omit

Maximum penalty: imprisonment for 2 years.

substitute

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

[2.25] Section 153 (2)

omit

Maximum penalty: imprisonment for 2 years.

substitute

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

[2.26] Section 154 (1)

omit

Maximum penalty: fine of \$100, imprisonment for 1 month or both.

substitute

Maximum penalty: 1 penalty unit, imprisonment for 1 month or both.

[2.27] Section 154 (2)

omit

Maximum penalty: fine of \$250, imprisonment for 3 months or both.

substitute

Maximum penalty: 2.5 penalty units, imprisonment for 3 months or both.

[2.28] Section 159

omit

is guilty of an offence punishable, on conviction, by imprisonment for 5 years, a fine of \$10 000 or both.

substitute

commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 5 years or both.

[2.29] Section 160

omit

is guilty of an offence punishable, on conviction, by imprisonment for 5 years, a fine of \$10 000 or both.

substitute

commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 5 years or both.

[2.30] Section 161

omit

is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

substitute

commits an offence.

Maximum penalty: imprisonment for 14 years.

[2.31] Section 162

omit

is guilty of an offence punishable, on conviction, by imprisonment for 5 years, a fine of \$10 000 or both.

substitute

commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 5 years or both.

[2.32] Section 163 (1) and (2)

omit

is guilty of an offence punishable, on conviction, by imprisonment for 5 years, a fine of \$10 000 or both.

substitute

commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 5 years or both.

[2.33] Section 164

omit

is guilty of an offence punishable, on conviction, by imprisonment for 5 years, a fine of \$10 000 or both.

substitute

commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 5 years or both.

[2.34] Section 166 (1)

omit

is guilty of an offence punishable, on conviction, by imprisonment for a period not exceeding 2 years, a fine not exceeding \$20 000 or both.

substitute

commits an offence.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

Schedule 3 New Crimes (Sentencing) Regulation

(see s 4)



Australian Capital Territory

Crimes (Sentencing) Regulation 2006

Subordinate Law SL2006-

made under the

Crimes (Sentencing) Act 2005

1 Name of regulation

This regulation is the *Crimes (Sentencing) Regulation 2006*.

2 Rehabilitation program—Act, s 93 def *rehabilitation program*

For the Act, each of the following is a rehabilitation program:

- (a) programs to treat adults for sexual behaviour that is unlawful or inappropriate;
- (b) programs to treat children for sexual behaviour that is unlawful or inappropriate;
- (c) programs that impart self-management and social skills to enable offenders to deal with difficult situations in ways that do not involve the criminal behaviour;
- (d) programs for people who have committed a domestic violence offence;
- (e) drug and alcohol rehabilitation programs.

Schedule 4 New Crimes (Sentence Administration) Regulation

(see s 5)



Australian Capital Territory

Crimes (Sentence Administration) Regulation 2006

Subordinate Law SL2006-

made under the

Crimes (Sentence Administration) Act 2005

1 Name of regulation

This regulation is the *Crimes (Sentence Administration) Regulation 2006*.

2 Dictionary

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

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*drug of dependence*—see the *Drugs of Dependence Act 1989*, section 3 (1).' means that the term 'drug of dependence' is defined in that section and the definition applies to this regulation.

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

3 Notes

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

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

4 Parole order—core conditions—Act, s 137 (1) (f)

The following conditions are prescribed:

- (a) the offender must live only at premises approved by the chief executive;
- (b) the offender must report to a person at a time and place nominated by the chief executive;
- (c) the offender must not use a prohibited substance, or abuse a prescribed substance that is lawfully obtained;

-
- (d) the offender must authorise each doctor, therapist or counsellor of the offender to give information about the offender to the chief executive;
- (e) the offender must not leave the ACT for longer than 1 day without the prior written permission of the chief executive;
- (f) the offender must comply with all conditions to which a permission to leave the ACT is subject;
- (g) the offender must not leave Australia without the board's prior written permission;
- (h) the offender must not have possession or control of a firearm, prohibited weapon, prohibited article or offensive weapon;
- (i) the offender must comply with any direction given to the offender by the chief executive.

Example for par (b)

to report to a corrections officer at a correctional centre, or to a person where the offender works

Examples for par (i)

directions about any of the following:

- associating with particular people
- visiting any place, including a particular suburb
- obtaining, being available for or keeping employment
- attending or taking part in an approved activity or program

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Dictionary

(see s 2)

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

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

- ACT
- chief executive
- doctor.

Note 3 Terms used in this regulation have the same meaning that they have in the *Crimes (Sentence Administration) Act 2005* (see Legislation Act, s 148). For example, the following terms are defined in the *Crimes (Sentence Administration) Act 2005*, dict:

- board
- offender
- test sample.

drug of dependence—see the *Drugs of Dependence Act 1989*, section 3 (1).

drugs and poisons standard—see the *Poisons and Drugs Act 1978*, dictionary.

firearm—see the *Firearms Act 1996*, section 4.

offensive weapon—see the *Crimes Act 1900*, dictionary.

prescribed substance means—

- (a) a drug of dependence; or
- (b) a substance mentioned in the drugs and poisons standard, schedule 2, schedule 3 or schedule 4.

prohibited article—see the *Prohibited Weapons Act 1996*, section 3 (1).

prohibited substance—see the *Drugs of Dependence Act 1989*, section 3 (1).

prohibited weapon—see the *Prohibited Weapons Act 1996*, section 3 (1).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2 May 2006.

2 Notification

Notified under the Legislation Act on 18 May 2006.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Sentencing Legislation Amendment Bill 2006, which was passed by the Legislative Assembly on 11 May 2006.

Clerk of the Legislative Assembly