



Australian Capital Territory

# Corrections Management Act 2007

A2007-15

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Australian Capital Territory

# Corrections Management Act 2007

A2007-15

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An Act relating to correctional services, and for other purposes

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## **Preamble**

- 1 The inherent dignity of all human beings, whatever their personal or social status, is one of the fundamental values of a just and democratic society.
- 2 The criminal justice system should respect and protect all human rights in accordance with the *Human Rights Act 2004* and international law.
- 3 Sentences are imposed on offenders as punishment, not for punishment.
- 4 The management of imprisoned offenders, and people remanded or otherwise detained in lawful custody, should contribute to the maintenance of a safe, just and democratic society, particularly as follows:
  - (a) by ensuring justice, security and good order at correctional centres;
  - (b) by ensuring that harm suffered by victims of offenders, and their need for protection, are considered appropriately in making decisions about the management of offenders;
  - (c) by promoting the rehabilitation of imprisoned offenders and their reintegration into society;
  - (d) by ensuring that imprisoned offenders and people remanded or otherwise detained in lawful custody are treated in a decent, humane and just way.

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

## Chapter 1 Preliminary

### 1 Name of Act

This Act is the *Corrections Management Act 2007*.

### 2 Commencement

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

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

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

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

### 3 Dictionary

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

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

For example, the signpost definition '*detainee*—see section 6.' means that the term '*detainee*' is defined in that section and the definition applies to this Act.

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

#### 4 Notes

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

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

#### 5 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 all offences against this Act (see Code, pt 2.1).

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.

#### 6 Application of Act—*detainees*

- (1) This Act applies to each of the following (each of whom is a *detainee*):
  - (a) an offender while the offender is required to be imprisoned under full-time detention because of a committal order for the *Crimes (Sentence Administration) Act 2005*, part 3.1;
  - (b) an offender under a sentence of imprisonment while the offender is required to perform periodic detention in a detention period under the *Crimes (Sentence Administration) Act 2005*, part 5.3;
  - (c) a person while the person is remanded in custody because of an order for remand for the *Crimes (Sentence Administration) Act 2005*, part 3.2;



- (d) anyone else while the person is required to be held in custody or detention under a territory law or a law of the Commonwealth, a State or another Territory.

**Examples—par (d)**

- 1 a person held on a warrant issued under the *Royal Commissions Act 1991*, section 35 (Apprehension of witnesses failing to appear)
- 2 a person in immigration detention under the *Migration Act 1958* (Cwlth)
- 3 an interstate detainee on leave in the ACT held in custody overnight

*Note 1* 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).

*Note 2* For the application of the Act to offenders in full-time imprisonment, or people remanded or otherwise in custody, immediately before the commencement of this Act, see s 501 (Application of Act to transitional detainees).

- (2) However, the application of this Act is subject to the *Crimes (Sentence Administration) Act 2005*, part 4.3 (Full-time detention in NSW).
- (3) Also, to remove any doubt, this Act does not apply to a person detained under the *Children and Young People Act 1999*, unless that Act provides otherwise.

## Chapter 2 Objects and principles

### 7 Main objects of Act

The main objects of this Act are to promote public safety and the maintenance of a just society, particularly by—

- (a) ensuring the secure detention of detainees at correctional centres; and
- (b) ensuring justice, security and good order at correctional centres; and
- (c) ensuring that detainees are treated in a decent, humane and just way; and
- (d) promoting the rehabilitation of offenders and their reintegration into society.

### 8 Management of correctional services

Correctional services must be managed so as to achieve the main objects of this Act, particularly by—

- (a) ensuring that public safety is the paramount consideration in decision-making about the management of detainees; and
- (b) ensuring respect for the humanity of everyone involved in correctional services, including detainees, corrections officers and other people who work at or visit correctional centres; and
- (c) ensuring behaviour by corrections officers that recognises and respects the inherent dignity of detainees as individuals; and
- (d) ensuring that harm suffered by victims, and their need for protection, are considered appropriately in decision-making about the management of detainees.

## **9 Treatment of detainees generally**

Functions under this Act in relation to a detainee must be exercised as follows:

- (a) to respect and protect the detainee's human rights;
- (b) to ensure the detainee's decent, humane and just treatment;
- (c) to preclude torture or cruel, inhuman or degrading treatment;
- (d) to ensure the detainee is not subject to further punishment (in addition to deprivation of liberty) only because of the conditions of detention;
- (e) to ensure the detainee's conditions in detention comply with section 12 (Correctional centres—minimum living conditions);
- (f) if the detainee is an offender—to promote, as far as practicable, the detainee's rehabilitation and reintegration into society.

## **10 Treatment of remandees**

- (1) Functions under this Act in relation to a detainee who is a remandee must also be exercised to recognise and respect that—
  - (a) the remandee must be presumed innocent of any offence for which the remandee is remanded; and
  - (b) the detention is not imposed as punishment of the remandee.
- (2) Subsection (1) does not apply if the remandee—
  - (a) has been convicted or found guilty of the offence for which the remandee is detained; or

- (b) is under a sentence of imprisonment in relation to another offence.

**Examples—par (a)**

- 1 a convicted person remanded in custody for sentencing
- 2 a paroled offender remanded in custody during an adjournment of a hearing by the sentence administration board

*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).

**11 Treatment of certain detainees**

- (1) This section applies to a person (other than a sentenced offender or remandee) while the person is required to be held in custody or detention under a territory law or a law of the Commonwealth, a State or another Territory.
- (2) Functions under this Act in relation to the person must be exercised to recognise and respect the purpose for which the person is held in custody or detention.
- (3) This Act applies in relation to the person as a full-time detainee, with any changes prescribed by regulation.

**12 Correctional centres—minimum living conditions**

- (1) To protect the human rights of detainees at correctional centres, the chief executive must ensure, as far as practicable, that conditions at correctional centres meet at least the following minimum standards:
  - (a) detainees must have access to sufficient food and drink to avoid hunger and poor nourishment;
  - (b) detainees must have access to sufficient suitable clothing that does not degrade or humiliate detainees;
  - (c) detainees must have access to suitable facilities for personal hygiene;

- (d) detainees must have suitable accommodation and bedding for sleeping in reasonable privacy and comfort;
- (e) detainees must have reasonable access to the open air and exercise;
- (f) detainees must have reasonable access to telephone, mail and other facilities for communicating with people in the community;
- (g) detainees must have reasonable opportunities to receive visits from family members, accredited people and others;

*Note* **Family member** and **accredited person** are defined in the dictionary.

- (h) detainees must have reasonable opportunities to communicate with their lawyers;
- (i) detainees must have reasonable access to news and education services and facilities to maintain contact with society;
- (j) detainees must have access to suitable health services and health facilities;
- (k) detainees must have reasonable opportunities for religious, spiritual and cultural observances.

**Example—par (k)**

observances and practices relating to religious or spiritual beliefs, including indigenous spiritual beliefs

*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).

- (2) Chapter 6 (Living conditions at correctional centres) applies in relation to correctional centres.

## Chapter 3 Administration

### Part 3.1 Administration—general

#### 13 Ministerial directions to chief executive

- (1) The Minister may give written directions to the chief executive about the exercise of functions under this Act.

**Example of direction**

a direction to make corrections policies or operating procedures to ensure that functions are exercised in accordance with a particular decision of the Supreme Court or a particular finding of a board of inquiry or royal commission

*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).

- (2) The chief executive must comply with a direction under this section.
- (3) A direction is a notifiable instrument.

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

#### 14 Corrections policies and operating procedures

- (1) The chief executive may make corrections policies and operating procedures, consistent with this Act, to facilitate the effective and efficient management of correctional services.
- (2) Each corrections policy or operating procedure is a notifiable instrument.

*Note 1* A notifiable instrument must be notified under the Legislation Act.

*Note 2* The amendment or repeal of a corrections policy or operating procedure is also a notifiable instrument. See the Legislation Act, section 46 (Power to make instrument includes power to amend or repeal).

- (3) Each corrections policy or operating procedure—

- (a) must be available for inspection by anyone at each correctional centre; and
- (b) may be made available for inspection at any other place decided by the chief executive.

**15 Exclusions from notified corrections policies and operating procedures**

- (1) The chief executive may exclude from a corrections policy or operating procedure notified or available for inspection in accordance with section 14 any matter that the chief executive believes, on reasonable grounds, would be likely to disclose—
  - (a) information that may endanger public safety or undermine justice, security or good order at a correctional centre; or
  - (b) anything prescribed by regulation.
- (2) If subsection (1) applies to a corrections policy or operating procedure—
  - (a) the policy or procedure must contain a statement about the effect of this section; and
  - (b) the excluded matter must be available for inspection, on request, by any of the following:
    - (i) a judge or magistrate;
    - (ii) a member of the Legislative Assembly;
    - (iii) an official visitor;
    - (iv) the human rights commissioner;
    - (v) the public advocate;
    - (vi) the ombudsman;

(vii) anyone else prescribed by regulation.

*Note* Territory laws apply to a delegate of a person in the exercise of a delegation as if the delegate were the person who appointed the delegate (see Legislation Act, s 239 (2)).

## **16 Chief executive directions**

- (1) The chief executive may give directions in relation to a detainee.
- (2) Without limiting subsection (1), the chief executive may give a direction that the chief executive considers necessary and reasonable in relation to any of the following:
  - (a) the welfare or safety of the detainee or anyone else;
  - (b) security or good order at a correctional centre;
  - (c) ensuring compliance with any requirement under this Act or another territory law.
- (3) A direction may be given orally or in writing and may apply to a particular detainee or 2 or more detainees.
- (4) A direction by the chief executive under this Act, or anything done under the direction, is not invalid because of a defect or irregularity in or in relation to the direction.

## **17 Chief executive delegations**

- (1) The chief executive may delegate any of the chief executive's functions under this Act to a corrections officer.
- (2) This section does not limit the chief executive's power to delegate a function under any other territory law.

### **Examples of delegation**

- 1 a delegation for directions to be given to detainees at a correctional centre by the corrections officer in charge of the centre



2 a delegation for functions under chapter 10 (Discipline) to be exercised by a corrections officer at a correctional centre

*Note 1* 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).

*Note 2* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

*Note 3* The *Public Sector Management Act 1994*, s 36 also provides for a chief executive to delegate, and sub-delegate, powers given to the chief executive under a territory law.

## **18 Chief police officer delegations**

- (1) The chief police officer may delegate any of the chief police officer's functions under this Act to a police officer.
- (2) This section does not limit the chief police officer's power to delegate a function under any other territory law.

### **Example of delegation**

a delegation for giving directions under section 30 (Detention in police cells).

*Note 1* 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).

*Note 2* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

## Part 3.2 Corrections officers

### 19 Corrections officers—appointment

- (1) The chief executive may appoint a public servant, or anyone else, as a corrections officer 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).

*Note 3* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation and corrections policy and operating procedure (see Legislation Act, s 104).

- (2) The chief executive may make an appointment under this section only if satisfied that the appointee has appropriate qualifications or experience to exercise the functions of a corrections officer.

### 20 Corrections officers—functions

- (1) A corrections officer—
  - (a) has the functions given to the officer under this Act or any other territory law; and
  - (b) is subject to the directions of the chief executive in the exercise of the functions.
- (2) The functions of a corrections officer may be limited by—
  - (a) the instrument appointing the officer; or
  - (b) written notice given to the officer by the chief executive; or
  - (c) a regulation.

## 21 Doctors—health service appointments

- (1) The chief executive responsible for the administration of the *Public Health Act 1997* must appoint a doctor for each correctional centre.
- (2) The doctor's functions are—
  - (a) to provide health services to detainees; and
  - (b) to protect the health of detainees (including preventing the spread of disease at correctional centres).
- (3) A doctor appointed for a correctional centre must be available to provide health services at the centre at least once each week.
- (4) The doctor may give written directions to the chief executive for subsection (2) (b).
- (5) The chief executive must ensure that each direction under subsection (4) is complied with unless the chief executive believes, on reasonable grounds, that compliance would undermine security or good order at the correctional centre.

## 22 Health professionals—non-therapeutic functions

- (1) The chief executive must appoint a health professional to exercise non-therapeutic functions at each correctional centre.

*Note* **Health professional** includes a doctor and nurse registered under the *Health Professionals Act 2004*.

- (2) In this section:

**non-therapeutic function** does not include a health service or other function mentioned in section 21.

## 23 Identity cards

- (1) This section applies in relation to a person appointed under any of the following:
  - (a) section 19 (Corrections officers—appointment);

- (b) section 21 (Doctors—health service appointments);
  - (c) section 22 (Health professionals—non-therapeutic functions).
- (2) The chief executive must give each person an identity card stating the person's name and the position to which the person is appointed.
- (3) The identity card must show—
- (a) a recent photograph of the person; and
  - (b) the card's date of issue and expiry; and
  - (c) anything else prescribed by regulation.
- (4) A person commits an offence if the person—
- (a) stops being a person to whom this section applies; and
  - (b) does not return the person's identity card to the chief executive no later than 7 days after the day the person stops being a corrections officer.

Maximum penalty: 1 penalty unit.

- (5) An offence against this section is a strict liability offence.

## Part 3.3 Correctional centres

### 24 Correctional centres—declaration

- (1) The Minister may declare a place to be a correctional centre.
- (2) A declaration is a notifiable instrument.

#### Examples of declarations

- 1 the declaration of a place, including a buffer zone surrounding a secure perimeter, to be a correctional centre
- 2 a declaration of a place to be a correctional centre for full-time detention, or for a stated time and purpose, eg a temporary correctional centre for remandees

*Note 1* 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).

*Note 2* A notifiable instrument must be notified under the Legislation Act.

*Note 3* The power to make an instrument includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48).

### 25 Correctional centres—arrangements with NSW

- (1) The Chief Minister may make arrangements with the Governor of New South Wales in relation to keeping full-time detainees at a NSW correctional centre.
- (2) The arrangements may include provision for—
  - (a) the exercise by NSW officers of functions in relation to full-time detainees kept at a NSW correctional centre; and
  - (b) reports by NSW officers about the exercise of those functions.

(3) In this section:

*NSW officer* means an officer or other person having authority under the *Crimes (Administration of Sentences) Act 1999* (NSW) to exercise a function in relation to a full-time detainee.

*Note* The *Crimes (Sentence Administration) Act 2005*, pt 4.3 (Full-time detention in NSW) provides for the removal of full-time detainees to NSW correctional centres.

## **Part 3.4                      Administration—special provisions**

### **26                      Declaration of emergency**

- (1) This section applies if the chief executive believes, on reasonable grounds, that an emergency (including an imminent emergency) exists in relation to a correctional centre that threatens or is likely to threaten—
  - (a) security or good order at the centre; or
  - (b) the safety of anyone at the centre or elsewhere.
- (2) The chief executive may declare that an emergency exists in relation to the correctional centre for a stated period of not more than—
  - (a) 3 days; or
  - (b) if another period is prescribed by regulation—the period prescribed.
- (3) To remove any doubt, the chief executive may make declarations for 2 or more consecutive periods in relation to the same emergency.
- (4) A declaration commences when it is made, unless it provides for a later commencement.
- (5) A declaration—
  - (a) is a notifiable instrument; and
  - (b) must be notified under the Legislation Act no later than the day after the day it is made.

## **27 Emergency powers**

- (1) While an emergency is declared under section 26 in relation to a correctional centre, the chief executive may do 1 or more of the following:
  - (a) restrict any work or activity at the centre;
  - (b) restrict access in, or to or from, the centre or any part of the centre;
  - (c) restrict communications between a detainee and anyone else;
  - (d) authorise a police officer or public servant to exercise any function exercisable by a corrections officer under this Act in accordance with any direction by the chief executive.
- (2) The chief executive must ensure that action taken under this section is necessary and reasonable in the circumstances.

## **28 Arrangements with police**

- (1) The chief executive may make arrangements with the chief police officer for police assistance in relation to the administration of the following Acts:
  - (a) the *Crimes (Sentencing) Act 2005*;
  - (b) the *Crimes (Sentence Administration) Act 2005*;
  - (c) this Act.
- (2) Subject to any arrangement under this section, the chief police officer must comply, as far as practicable, with any request by the chief executive for police assistance mentioned in subsection (1).
- (3) A police officer providing assistance under this section may exercise any function exercisable by a corrections officer under an Act mentioned in subsection (1) in accordance with any direction by the chief executive.



## Chapter 4 Detention in police and court cells etc

### 29 Definitions—ch 4

In this chapter:

*court cell* means a cell (however described) for the detention of a person at a court.

*police cell* means a cell (however described) for the detention of a person at a police station.

### 30 Detention in police cells

- (1) A person lawfully required to be in police custody may, for the purposes of the custody, be detained at a police cell.
- (2) However, a person lawfully required to be in police custody may not be detained continuously at a police cell for a period longer than 36 hours.
- (3) If a person is lawfully required to remain in police custody for a period longer than 36 hours, the chief police officer may direct that the person be transferred to the custody of the chief executive for the purposes of the police custody.
- (4) The direction by the chief police officer—
  - (a) authorises the chief executive to have custody of the person under the direction; and
  - (b) requires the chief executive to do the following:
    - (i) take the person into custody;
    - (ii) arrange for the person's admission to a correctional centre;

- (iii) keep the person in custody under full-time detention under the direction;
  - (iv) provide for police access to the person;
  - (v) return the person to the custody of the chief police officer as required by the direction.
- (5) To remove any doubt, the person is also taken to remain in police custody while in custody under subsection (4).

**31 Detention in police cells—search powers etc**

- (1) The chief police officer may direct a police officer to conduct a scanning search, frisk search, ordinary search or strip search of a person detained at a police cell.
- (2) For this section, part 9.4 (Searches) and part 9.5 (Seizing property) apply as if the direction, search or seizure occurred under the relevant part in relation to a detainee at a correctional centre.

**32 Other police powers not limited**

To remove any doubt, section 30 and section 31 are additional to, and do not limit, any other provision relating to a police function under a territory law or a law of the Commonwealth, a State or another Territory.

**33 Detention in court cells**

- (1) This section applies to a person who is—
  - (a) in the chief executive’s custody but not admitted as a detainee at a correctional centre; and
  - (b) required to attend a court.
- (2) The chief executive may direct that the person be detained at a court cell in the custody of a corrections officer for the purposes of the person’s attendance at the court.

- (3) However, the person may not be detained continuously at a court cell for a period longer than 36 hours.
- (4) If the person is required to remain in detention for a period longer than 36 hours for the court attendance, the chief executive must—
  - (a) arrange for the person's admission to a correctional centre; and
  - (b) keep the person in custody under full-time detention for the attendance; and
  - (c) take the person to the court as required by the court.
- (5) The person is taken to be a detainee for all purposes under this Act while detained at the court cell.

### **34 Detainees accommodated away from correctional centre**

- (1) This section applies if the chief executive believes, on reasonable grounds, that circumstances exist in relation to a correctional centre that make it necessary or prudent for a detainee admitted at the centre to be accommodated temporarily away from the centre.

#### **Examples**

- 1 where a correctional centre cannot properly accommodate any more detainees
- 2 where there is an outbreak of disease or violent behaviour at a correctional centre
- 3 where a detainee is being transferred to or from a correctional centre or other place and needs accommodation in transit

*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).

- (2) The chief executive may declare that this section applies in relation to the correctional centre for a stated period.
- (3) A declaration is a notifiable instrument.

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

- (4) The chief executive may direct that, while a declaration is in force in relation to a correctional centre, a detainee at the centre be detained—
  - (a) at a police cell in the custody of a police officer; or
  - (b) at a court cell in the custody of a corrections officer.
- (5) The period of detention at a police cell or court cell is not limited by section 30 or section 33.
- (6) To remove any doubt, the detainee remains a detainee for all purposes under this Act while detained under this section.

## Chapter 5      Escorting detainees

### 35      Escort officer functions etc

- (1) This section applies if, under a law in force in the ACT, a person required to be held in the chief executive's custody is to be escorted anywhere by an escort officer.
- (2) To remove any doubt—
  - (a) the escort officer is authorised to have custody of the person for the purpose of escorting the person; and
  - (b) the person is also taken to be in the chief executive's custody; and
  - (c) a corrections officer acting as the escort officer may, for the purpose of escorting the person, exercise any function under this Act that the officer may exercise in relation to a detainee admitted at a correctional centre.

#### Examples of functions—par (c)

- 1 functions given to the officer under section 20 (Corrections officers—functions) or delegated to the officer by the chief executive (for example, giving directions to detainees)
- 2 the officer's functions under part 9.4 (Searches) or part 9.7 (Use of force)

*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).

### 36      Escorting arrested person to court etc

- (1) This section applies if a person arrested by a police officer—
  - (a) has not been released on bail; and
  - (b) is in police custody; and

- (c) is required by law to be brought before a court or tribunal.
- (2) A police officer may request an escort officer to bring the person before the court or tribunal.
- (3) The escort officer must bring the person before the court or tribunal and, for that purpose, may—
  - (a) take the person into custody; and
  - (b) arrange for the person to be detained under this Act until the person is brought before the court or tribunal.

**37 Custody etc during proceedings**

Subject to any order or direction of a court, an escort officer who is required to bring a person before a court must, as far as practicable—

- (a) ensure the safe custody and welfare of the person for the purposes of the proceeding; and
- (b) ensure that the person does not obstruct or hinder the proceeding.

**38 Executing warrants of imprisonment or remand etc**

- (1) The chief executive may make escort officers available to attend on a court or tribunal—
  - (a) to take a person into custody; or
  - (b) to arrange for a person to be kept in custody; or
  - (c) to transfer or otherwise deal with a person.
- (2) An order or direction of the court addressed to all escort officers—
  - (a) is taken to be addressed to each escort officers; and
  - (b) may be executed by any escort officers.

**39 Other powers not limited**

To remove any doubt, this chapter is additional to, and does not limit, any other provision relating to the escorting of detainees under a territory law or a law of the Commonwealth, a State or another territory.

**Examples of other provisions**

- 1 The *Crimes Sentence (Administration) Act 2005*, part 3.3 (Committal—miscellaneous)—
  - section 20 (Directions to escort officers)
  - section 21 (Orders to bring offender or remandee before court etc).
- 2 A law of a State relating to the escort of prisoners through the ACT.

*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).

## Chapter 6 Living conditions at correctional centres

*Note to ch 6*

Anything expressed in this chapter to be an entitlement for ch 10 (Discipline) is not affected by anything that happens under that chapter. See s 154 (Meaning of *privilege*) and s 188 (Privileges and entitlements—impact of discipline).

### 40 Food and drink

- (1) The chief executive must ensure that—
  - (a) sufficient nutritional food and drink are provided for detainees to avoid hunger and poor nourishment; and
  - (b) meals are provided for detainees at times consistent with the cultural norms of Australia; and
  - (c) clean drinking water is provided to meet the needs of detainees.
- (2) The chief executive must also ensure, as far as practicable, that allowance is made for the religious, spiritual and cultural needs of detainees in relation to the provision of food and drink.
- (3) If a doctor, other than a doctor appointed under section 22 (Health professionals—non-therapeutic functions), prescribes a particular diet for a detainee, the chief executive must ensure that reasonable steps are taken to provide the detainee with the diet.
- (4) For chapter 10 (Discipline), subsections (1), (2) and (3) are taken to provide an entitlement for each detainee in relation to food and drink.



- (5) Without limiting section 14 (Corrections policies and operating procedures), a corrections policy or operating procedure may include provision for any of the following:
- (a) the nutritional standards to be met by food and drink for detainees;
  - (b) the provision of nutritional advice about food and drink provided to detainees;
  - (c) the appointment of a nutritionist.
- (6) For chapter 10 (Discipline), a detainee's entitlement in relation to food and drink includes anything expressed to be an entitlement in a corrections policy or operating procedure made for subsection (5).

#### **41 Clothing**

- (1) The chief executive must ensure that—
- (a) sufficient, suitable clothing is provided for detainees; and
  - (b) any particular clothing, including a uniform, issued to detainees is not likely to degrade or humiliate detainees.
- (2) The chief executive must also ensure, as far as practicable, that clothing provided for detainees is clean and hygienic.
- (3) For chapter 10 (Discipline), this section is taken to provide an entitlement for each detainee in relation to clothing.

#### **42 Personal hygiene**

- (1) The chief executive must ensure that—
- (a) toilet facilities and washing or showering facilities are available to detainees; and
  - (b) the facilities are clean, hygienic and private enough to ensure the dignity and self-respect of detainees.

- (2) For chapter 10 (Discipline), this section is taken to provide an entitlement for each detainee in relation to personal hygiene.

### **43 Sleeping areas**

- (1) The chief executive must ensure that—
- (a) detainees have sleeping places, with bed and bedding, suitable for reasonable privacy and comfort; and
  - (b) sleeping places, including beds and bedding, are clean and hygienic.
- (2) For chapter 10 (Discipline), this section is taken to provide an entitlement for each detainee in relation to sleeping areas.

### **44 Treatment of convicted and non-convicted detainees**

- (1) Without limiting section 14 (Corrections policies and operating procedures), the chief executive must make a corrections policy or operating procedure providing for different treatment of convicted detainees and non-convicted detainees.

#### **Example**

a corrections policy or operating procedure, in accordance with the following rules of the United Nations *Standard Minimum Rules for the Treatment of Prisoners*, for non-convicted detainees to be able to—

- procure food at own expense (r 87)
- be offered work but not be obliged to work (r 89)
- procure reading and writing material at own expense (r 90)
- visit and be treated by own doctor at own expense (r 91)

*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).

- (2) The chief executive must also ensure that convicted detainees are accommodated separately from non-convicted detainees.
- (3) For chapter 10 (Discipline)—

- (a) a detainee's entitlement in relation to treatment in detention includes anything expressed to be an entitlement in a corrections policy or operating procedure made for subsection (1); and
  - (b) subsection (2) is taken to provide an entitlement for each detainee in relation to accommodation.
- (4) However, the chief executive may give directions for different accommodation of a non-convicted detainee if the chief executive suspects, on reasonable grounds, that is necessary to ensure the safety of the detainee or anyone else.

**Example**

Remandee J has served various sentences for violence offences, has an aggressive personality and enjoys bullying other people. The chief executive suspects that other remandees detained with J are highly vulnerable in comparison with J. The chief executive decides that J should be accommodated with convicted offenders.

*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).

- (5) In this section:

***convicted detainee*** means a detainee whose detention is because of the detainee's conviction of an offence.

**45 Access to open air and exercise**

- (1) The chief executive must ensure, as far as practicable, that detainees—
  - (a) have access to the open air for at least 1 hour each day; and
  - (b) can exercise for at least 1 hour each day.
- (2) The standards under subsection (1) may both be satisfied during the same hour on any day.

- (3) For chapter 10 (Discipline), this section is taken to provide an entitlement for each detainee in relation to access to the open air and exercise.

#### **46 Communication with family and others**

- (1) The chief executive must ensure, as far as practicable, that adequate opportunities are provided for detainees to be able to remain in contact with family members, friends, associates and others by telephone calls, mail and visits.
- (2) For subsection (1), the chief executive must have regard, in addition to any other relevant matter, to whether the detainee's detention is for a reason other than the conviction of an offence.
- (3) The chief executive must also ensure that the overall treatment of a detainee, including any segregation or disciplinary action, does not unreasonably deprive the detainee generally of all communication with other people.
- (4) In particular, the chief executive must ensure that the overall treatment of a detainee does not deprive the detainee generally of all communication with any of the following:
- (a) the courts;
  - (b) accredited people;
  - (c) a doctor of the detainee's choice for health services;
  - (d) family members;
  - (e) other people with whom the detainee may communicate under this Act.
- (5) For chapter 10 (Discipline), subsections (1) to (4) are taken to provide an entitlement for each detainee in relation to communication generally with other people.

- (6) However, this section is subject to the following:
- (a) section 47 (Telephone calls);
  - (b) section 48 (Mail);
  - (c) section 49 (Visits by family members etc);
  - (d) section 50 (Contact with accredited people).

#### **47 Telephone calls**

- (1) The chief executive must ensure that each correctional centre has telephone facilities for detainees to make and receive telephone calls.
- (2) A detainee may make at least—
- (a) 1 telephone call on admission to a correctional centre; and
  - (b) 1 telephone call each week to a family member.

*Note* **Family member** is defined in the dictionary.

- (3) A detainee may also make and receive further telephone calls for necessary contact with a family member, friend or someone else.
- (4) A detainee who makes a telephone call mentioned in subsection (2) or (3) must pay for the call if the chief executive believes, on reasonable grounds, that is appropriate.

#### **Example**

if the detainee can afford to pay for the call

*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).

- (5) For chapter 10 (Discipline), subsections (2) and (3) are taken to provide entitlements for each detainee in relation to telephone calls.
- (6) However, the chief executive may give directions denying or limiting the use of a telephone by a detainee for a call mentioned in

subsection (2) or (3) if the chief executive suspects, on reasonable grounds, that the call may—

- (a) undermine security or good order at a correctional centre; or
- (b) revictimise a victim; or
- (c) circumvent any process for investigating complaints or reviewing decisions under this Act; or
- (d) have the purpose of causing community distress.

**Example—par (d)**

Mr F was imprisoned for intentionally inflicting grievous bodily harm against his former wife. He had been convicted previously of domestic violence offences. He believes he has a right to assault his former wife and advocates the matter is private. Mr F believes that organisations that support victims of domestic violence are a social evil. He begins to use telephone calls to his brother to organise him into inciting violence against organisations advocating women's rights. Following complaints from the organisations, the chief executive denies phone calls between Mr F and his brother.

- (7) Also, subsections (2) and (3) are subject to—
  - (a) section 103 (Monitoring telephone calls etc); and
  - (b) any operating procedure mentioned in subsection (8).
- (8) An operating procedure may include provision regulating the following in relation to detainees' telephone calls:
  - (a) the times for making or receiving calls;
  - (b) the frequency and length of calls;
  - (c) arrangements for payment for the cost of calls made.

## **48 Mail**

- (1) The chief executive must ensure, as far as practicable, that detainees can send and receive as much mail as they wish.

- (2) However, a detainee may send mail to, and receive mail from, a person only if the person is nominated by the detainee by written notice given to the chief executive.
- (3) A detainee who sends mail must pay for the cost of any writing and other material, and postage, for the mail if the chief executive believes, on reasonable grounds, that is appropriate.

**Example**

if the detainee can afford to pay for the material and postage

*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) For chapter 10 (Discipline), subsection (2) is taken to provide an entitlement for each detainee in relation to mail.
- (5) However, the chief executive may give directions denying or limiting the sending or receiving of an item of mail by a detainee if the chief executive suspects, on reasonable grounds, that it may—
- (a) undermine security or good order at a correctional centre; or
  - (b) revictimise a victim; or
  - (c) circumvent any process for investigating complaints or reviewing decisions under this Act; or
  - (d) have the purpose of causing community distress.

**Example—par (d)**

AW was convicted of murdering her parents with a view to obtaining an inheritance. The W family are well known in the community and family members had actively campaigned for a higher sentence for AW. AW began writing inflammatory letters to her relatives and friends of her parents. Having received complaints about the letters from family members, the chief executive denies AW from sending further letters to family members who had complained about the letters.

- (6) Also, subsections (1) and (2) are subject to—

- (a) section 104 (Monitoring ordinary mail); and
  - (b) section 105 (Monitoring protected mail); and
  - (c) any operating procedure mentioned in subsection (7).
- (7) An operating procedure may include provision regulating the following in relation to detainees' mail:
- (a) the way mail is sent or received;
  - (b) the provision of writing and other material for sending mail;
  - (c) arrangements for payment for the cost of the material and postage.

#### 49 Visits by family members etc

- (1) The chief executive must ensure that each correctional centre has suitable facilities for detainees to receive visits from family members and other people.

**Example of non-family member visitor**

a person who is a long-term friend or a friend who normally lives with the detainee

*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).

- (2) A detainee may have at least 1 visit, of at least 30 minutes, each week by a family member.

*Note* **Family member** is defined in the dictionary.

- (3) For chapter 10 (Discipline), subsection (2) is taken to provide an entitlement for each detainee in relation to visits by family members.
- (4) However, the chief executive may give directions denying or limiting a visit mentioned in subsection (1) if the chief executive suspects, on reasonable grounds, that the visit may—



- (a) undermine security or good order at a correctional centre; or
- (b) revictimise a victim; or
- (c) circumvent any process for investigating complaints or reviewing decisions under this Act; or
- (d) have the purpose of causing community distress.

**Example—par (d)**

Mr J is convicted of numerous serious sexual offences against young girls. He begins to write letters to various public figures, including journalists, stating that his crimes were motivated by a love for the children and that he intends to change his name to that of one of his victims. He makes arrangements for a visit by a journalist for a story about why he wants to change his name. The chief executive may deny the visit on the ground that it may cause community distress.

- (5) Also, this section is subject to section 143 (Visiting conditions).

## **50 Contact with accredited people**

- (1) The chief executive must ensure that a detainee has adequate opportunities for contact with an accredited person, whether by telephone or mail or by a visit by an accredited person.

*Note* **Accredited person** is defined in the dictionary.

- (2) For chapter 10 (Discipline), subsection (1) is taken to provide an entitlement for each detainee in relation to contact with an accredited person.
- (3) However, the chief executive may give directions denying or limiting a detainee's contact with an accredited person if the chief executive suspects, on reasonable grounds, that the contact may—
  - (a) undermine security or good order at a correctional centre; or
  - (b) circumvent any process for investigating complaints or reviewing decisions under this Act.
- (4) Also, this section is subject to section 143 (Visiting conditions).

**51 Visits—protected communications**

The chief executive must not listen to, or record, a communication at a visit between a detainee and any of the following people:

- (a) a lawyer representing the detainee;
- (b) an official visitor;
- (c) the human rights commissioner;
- (d) the public advocate;
- (e) the ombudsman;
- (f) a person prescribed by regulation.

*Note 1* Electronic communications between a detainee and a person mentioned in this section must not be monitored, see s 103.

*Note 2* For restrictions on monitoring mail between a detainee and a person mentioned in this section, see s 105.

**52 News and educational services**

- (1) The chief executive must ensure, as far as practicable, that detainees have reasonable access to—
  - (a) newspapers, radio and television broadcasts and other mass media (including the internet) for news and information; and
  - (b) a library or library service.
- (2) The chief executive may, as part of a detainee's case management plan, approve a detainee participating in academic, vocational or cultural education or training if satisfied it would benefit the detainee in any of the following ways:
  - (a) by providing the detainee with suitable vocational skills;
  - (b) by promoting the detainee's rehabilitation or reintegration into society;

- (c) by contributing satisfactorily to the detainee's personal development.
- (3) For chapter 10 (Discipline), participation in education or training approved under subsection (2) is taken to be an entitlement for the detainee.

### **53 Health care**

- (1) The chief executive must ensure that—
  - (a) detainees have a standard of health care equivalent to that available to other people in the ACT; and
  - (b) arrangements are made to ensure the provision of appropriate health services for detainees; and
  - (c) conditions in detention promote the health and wellbeing of detainees; and
  - (d) as far as practicable, detainees are not exposed to risks of infection.
- (2) In particular, the chief executive must ensure that detainees have access to—
  - (a) regular health checks; and
  - (b) timely treatment where necessary, particularly in urgent circumstances; and
  - (c) hospital care where necessary; and
  - (d) as far as practicable—
    - (i) specialist health services from health professionals; and
    - (ii) necessary health care programs, including rehabilitation programs.
- (3) For chapter 10 (Discipline), subsections (1) and (2) are taken to provide an entitlement for each detainee in relation to health care.

- (4) A regulation may make provision in relation to health services for detainees, including provision about the following:
- (a) the appointment of health professionals for this Act;
  - (b) the provision of health service clinics for detainees;
  - (c) appointments for detainees with health professionals;
  - (d) rehabilitation for detainees who suffer personal injury arising out of or in the course of their detention;
  - (e) security arrangements for detainees visiting health professionals or health facilities, particularly outside correctional centres.
- (5) For chapter 10 (Discipline), a detainee's entitlement in relation to health care includes anything expressed to be an entitlement in a regulation made for subsection (4).

#### **54 Transfers to health facilities**

- (1) The chief executive may direct that a detainee be transferred to a health facility at a correctional centre, or outside a correctional centre, if the chief executive believes, on reasonable grounds, that is necessary or desirable for the detainee to receive health services at the facility.

*Note* **Health facility** is defined in the dictionary.

- (2) The chief executive must have regard to the advice of a doctor appointed under section 21 (Doctors—health service appointments) when considering whether to make a direction under subsection (1).
- (3) The chief executive may direct an escort officer to escort the detainee to or from the health facility, or while at the facility.
- (4) The detainee may be discharged from the health facility only if—
- (a) the health professional in charge of the detainee's care approves the discharge; or

- (b) the chief executive directs that the detainee be removed from the facility.

**Example of direction for removal of detainee from health facility**

where the detainee is a danger to the safety of people at the facility

*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).

- (5) The chief executive may give a direction for ensuring that a detainee discharged from a health facility under this section is returned to a correctional centre stated in the direction.
- (6) For chapter 10 (Discipline), this section is taken to provide an entitlement for each detainee in relation to health care.

## 55 Religious, spiritual and cultural needs

- (1) The chief executive must ensure, as far as practicable, that provision is made at correctional centres for the religious, spiritual and cultural needs of detainees.

**Examples of religious, spiritual or cultural needs**

- 1 observances and practices relating to religious or spiritual beliefs, including indigenous spiritual beliefs
- 2 observances or practices arising because a person belongs to a particular culture

*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).

- (2) In particular, the chief executive must ensure, as far as practicable, that detainees have reasonable access to—
- (a) ministers of religion and other people with standing in a particular culture whom detainees wish to see for religious, spiritual or cultural purposes; and
  - (b) religious services at the correctional centre; and

- (c) books and other articles associated with their religious, spiritual or cultural practices.
- (3) However, the chief executive may give directions denying or limiting a detainee's access under subsection (1) or (2) if the chief executive suspects, on reasonable grounds, that it may—
- (a) undermine security or good order at a correctional centre; or
  - (b) revictimise a victim; or
  - (c) circumvent any process for investigating complaints or reviewing decisions under this Act; or
  - (d) cause community distress.
- (4) A detainee must not be required to receive a visit from anyone representing a particular religion, spiritual belief or culture, or attend any related service or practice, if the detainee does not wish to do so.
- (5) For chapter 10 (Discipline), subsections (1) and (2) are taken to provide an entitlement for each detainee in relation to religious observance.
- (6) In this section:
- minister of religion*** means—
- (a) a person registered under the *Marriage Act 1961* (Cwlth), part 4.1 (Authorised celebrants); or
  - (b) a person prescribed by regulation.

## Chapter 7      Inspection of correctional centres

### 56      Independent inspections

- (1) This section applies to each of the following:
  - (a) a judge;
  - (b) a magistrate;
  - (c) a member of the Legislative Assembly;
  - (d) the human rights commissioner;
  - (e) the ombudsman.
- (2) A person mentioned in subsection (1) may, at any reasonable time, enter and inspect—
  - (a) a correctional centre; or
  - (b) a place outside a correctional centre where a detainee is, or has been, directed to work or participate in an activity.

**Example of time that would not be reasonable**

a time that would hinder a search at a correctional centre

*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).

### 57      Official visitors—appointment

- (1) The Minister must appoint at least 1 official visitor.
- (2) The Minister may appoint a person as an official visitor only if satisfied the person has suitable qualifications or experience to exercise the functions of an official visitor.

- (3) The Minister must not appoint a public employee as an official visitor.
- (4) An appointment of an official visitor must be for not longer than 3 years.
- (5) The conditions of appointment of an official visitor are the conditions agreed between the Minister and the member, subject to any determination under the *Remuneration Tribunal Act 1995*.

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

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

*Note 3* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

## 58 Official visitors—functions

- (1) An official visitor's functions are—
  - (a) to inspect correctional centres and places outside correctional centres where detainees are, or have been, directed to work or participate in an activity; and
  - (b) to exercise any other function given to an official visitor under this Act or another territory law.
- (2) For subsection (1), an official visitor—
  - (a) must visit each correctional centre in accordance with the conditions of the official visitor's appointment; and
  - (b) may visit a place outside a correctional centre where a detainee is, or has been, directed to work or participate in an activity; and



- (c) may, at any reasonable time, enter a correctional centre or a place mentioned in paragraph (b).

**Example of time that would not be reasonable**

a time that would hinder a search at a correctional centre

*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) If an official visitor believes, on reasonable grounds, that the detention of a detainee (including any aspect of the treatment, living conditions, work or activities of the detainee) is not in accordance with this Act, the official visitor must report that belief to the Minister in writing.
- (4) A corrections officer must give an official visitor any reasonable help the official visitor asks for to exercise the official visitor's functions.

## **59 Complaints to official visitors**

- (1) A detainee may complain to an official visitor about any aspect of the detainee's detention or treatment in detention, including—
- (a) the operation of a correctional centre where the detainee is detained; or
- (b) conditions, or work or activities provided, at a place where the detainee is, or has been, directed to work or participate in an activity.
- (2) The chief executive must ensure that an official visitor is told as soon as practicable about any detainee who has told a corrections officer that the detainee wants to see an official visitor.
- (3) A detainee is not required to explain to the chief executive or a corrections officer why the detainee may want to see an official visitor.

**60 Investigation etc by official visitors**

- (1) An official visitor must investigate each complaint made under section 59 unless the official visitor believes, on reasonable grounds, that the complaint is frivolous or vexatious.
- (2) An official visitor may—
  - (a) make a recommendation about the complaint to the chief executive; or
  - (b) if the official visitor considers it is appropriate, give the Minister a report about any complaint or investigation.
- (3) As soon as practicable after the end of each quarter, an official visitor must give the Minister a written report for the quarter summarising—
  - (a) the number and kinds of complaints received by the official visitor; and
  - (b) the number and kinds of complaints investigated by the official visitor; and
  - (c) the outcomes of investigations of complaints.

*Note* For the meaning of *quarter*, see the Legislation Act, dict, pt 1.
- (4) The quarterly report may include comments by the official visitor about anything in relation to a complaint or investigation to which the report applies.

**61 Official visitors—ending appointments**

- (1) The Minister may end the appointment of an official visitor—
  - (a) if the official visitor contravenes a territory law; or
  - (b) for misbehaviour; or
  - (c) if the official visitor becomes bankrupt or executes a personal insolvency agreement; or

- (d) if the official visitor is convicted or found guilty, in the ACT, of an offence punishable by imprisonment for at least 1 year; or
  - (e) if the official visitor is convicted or found guilty, outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or
  - (f) if the official visitor fails to visit a correctional centre in accordance with the conditions of the official visitor's appointment without the Minister's approval; or
  - (g) for physical or mental incapacity, if the incapacity substantially affects the exercise of the official visitor's functions.
- (2) An official visitor's appointment ends if the person becomes a public employee.

*Note 1* A public employee must not be appointed as an official visitor (see s 57 (3)).

*Note 2* A person's appointment also ends if the person resigns (see Legislation Act, s 210).

## **62 Relationship with other inspection laws**

- (1) This Act must be construed and administered in a way that is consistent with an inspection law unless the contrary intention appears from this Act or that law.
- (2) This Act is taken to be consistent with an inspection law to the extent that it is capable of operating concurrently with that law.
- (3) The chief executive may make arrangements with a person responsible for the exercise of functions under an inspection law to ensure, as far as practicable, the safety of an inspector (however described) or anyone else affected by the exercise of the function in relation to a detainee or correctional centre.

- (4) A person exercising a function under an inspection law in relation to a detainee or correctional centre must exercise the function in accordance with any direction by the chief executive in relation to—
- (a) the safety of anyone at the correctional centre; or
  - (b) security or good order at a correctional centre.

- (5) In this section:

***inspection law*** means an Act that provides for the entry and inspection of premises, or the search of people or premises.

**Examples of inspection laws**

- *Crimes Act 1900*
- *Emergencies Act 2004*
- *Food Act 2001*
- *Public Health Act 1997*

*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).

## Chapter 8 Admission to correctional centres

### 63 Meaning of *admission* to correctional centre

In this Act:

*admission*, of a detainee to a correctional centre, means—

- (a) admission of the detainee to the centre for detention; and
- (b) for a detainee reporting to the centre to perform periodic detention—includes the first, but not the second or subsequent, time the detainee reports to the centre to perform periodic detention.

### 64 Authority for detention

- (1) A person must not be admitted to, or detained at, a correctional centre unless the detention is—
  - (a) authorised by a warrant under the *Crimes (Sentence Administration) Act 2005*, section 12 (Warrant for imprisonment); or
  - (b) authorised by a warrant under the *Crimes (Sentence Administration) Act 2005*, section 17 (Warrant for remand); or
  - (c) otherwise authorised, whether by a warrant or other authority (however named), under a territory law or a law of the Commonwealth, a State or another Territory.

#### Examples—par (c)

- 1 an accused person who is refused bail by an authorised person under the *Bail Act 1992*
- 2 a person held on a warrant issued under the *Royal Commissions Act 1991*, section 35 (Apprehension of witnesses failing to appear)

3 a person in immigration detention under the Migration Act 1958 (Cwlth)

4 an interstate detainee on leave in the ACT held in custody overnight

*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).

- (2) Before the person is admitted to the correctional centre, the chief executive must be given the warrant or evidence of other authority for the detention.
- (3) The validity of a person's detention at a correctional centre is not affected by a defect or irregularity in or in relation to the warrant or the evidence of other authority for the detention.

## 65 Identification of detainees

- (1) For the identification of a detainee admitted to a correctional centre, the chief executive may direct that all or any of the following be taken of, or from, the detainee:
  - (a) prints of the detainee's hands, fingers, feet or toes;
  - (b) a photograph or video recording;
  - (c) a measurement;
  - (d) a cast or impression;
  - (e) a buccal swab or saliva sample;
  - (f) a blood sample;
  - (g) anything else prescribed by regulation.
- (2) Anything taken of, or from, a detainee under subsection (1) must be destroyed if—
  - (a) the detainee is found not guilty of any offence to which the detention relates, other than on the ground of unsoundness of mind; or

- (b) proceedings for any offence to which the detention relates are discontinued or dismissed.
- (3) However, subsection (2) does not apply if, for any part of the period of detention in relation to an offence, the detainee was also being detained for another offence—
  - (a) of which the detainee has been convicted; or
  - (b) for which a proceeding (including any appeal proceeding) is still pending.
- (4) A blood sample under this section may only be taken by a health professional appointed under section 22 (Health professionals—non-therapeutic functions).

*Note* The *Crimes (Forensic Procedures) Act 2000* includes provision for carrying out forensic procedures on people in custody. See particularly pt 2.7 (Carrying out of certain forensic procedures after conviction of serious offenders).

## **66 Information about entitlements and obligations**

- (1) As soon as practicable after a detainee is admitted to a correctional centre, the chief executive must ensure that reasonable steps are taken to explain the following to the detainee:
  - (a) the detainee's entitlements and obligations under this Act;
  - (b) the case management plan arrangements;
  - (c) the role of official visitors;
  - (d) the procedures for seeking information and making complaints;
  - (e) if the detainee is a national of a foreign country—the right to have a diplomatic or consular representative of the country told about the detention;
  - (f) anything else prescribed by regulation;

- (g) anything else the chief executive considers necessary or desirable.

**Examples—par (g)**

- 1 corrections policies and operating procedures relevant to the detainee
- 2 the scope and effect of the chief executive's directions
- 3 for a transgender or intersex detainee—the effect of section 79 in relation to choice of sexual identity
- 4 the health services, work and activities available to detainees
- 5 for an offender—the role of the sentence administration board

*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).

- (2) The explanation under subsection (1)—

- (a) may be in general terms; and
- (b) as far as practicable, must be in language the detainee can readily understand.

**Example—par (a)**

a written statement or checklist used by corrections officers to give detainees a general summary of the things mentioned in subsection (1)

*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) The chief executive must arrange for the assistance of an interpreter in complying with subsection (1) or (2) if the chief executive believes, on reasonable grounds, that the detainee is unable, because of inadequate knowledge of the English language or a disability, to communicate with reasonable fluency in English.
- (4) Without limiting subsection (3), the assistance of the interpreter may be provided by telephone.



- (5) The chief executive must also ensure that copies of the following are available for inspection by detainees at each correctional centre:
  - (a) this Act;
  - (b) corrections policies and operating procedures available under section 14.
- (6) The chief executive must tell a diplomatic or consular representative of a foreign country about the detention of a national of that country, if asked by the detainee.

#### **67 Initial assessment**

- (1) The chief executive must ensure that—
  - (a) each detainee admitted to a correctional centre is assessed as soon as practicable to identify any immediate physical or mental health, or safety or security, risks and needs; and
  - (b) any risks and needs identified by the assessment are addressed.
- (2) In particular, the chief executive must ensure that any ongoing risks and needs are addressed in the detainee's case management plan.

#### **68 Health assessment**

- (1) The assessment under section 67 of a detainee's physical and mental health needs and risks must be made within 24 hours after the detainee's admission.
- (2) The health assessment must involve—
  - (a) an initial assessment by a nurse and a review of the nurse's assessment by a doctor appointed under section 21 (Doctors—health service appointments); or
  - (b) an assessment by a doctor appointed under section 21 (Doctors—health service appointments).

- (3) The health assessment must include an assessment of the detainee's risk of self-harm.

*Note 1* The detainee's case management plan must also address the detainee's health condition, any risk of self-harm and any treatment regime (see s 78).

*Note 2* The *Mental Health (Treatment and Care) Act 1994* also includes provision for assessment orders, and emergency detention and care, under that Act.

## **69 Alcohol and drug tests on admission**

- (1) For an assessment under section 67, the chief executive may direct the detainee, orally or in writing, to provide a test sample.
- (2) Division 9.6.2 (Alcohol and drug testing—detainees) applies in relation to the direction and any sample given under the direction.

## **70 Strip search on admission**

- (1) For an assessment under section 67, the chief executive may direct the detainee, orally or in writing, to submit to a strip search.
- (2) Part 9.4 (Searches) and part 9.5 (Seizing property) apply in relation to the direction and any strip search conducted under the direction.

## **71 Property of detainees**

- (1) The chief executive may allow a detainee's property to be brought into a correctional centre.
- (2) However, the chief executive may give directions imposing conditions in relation to the detainee's property brought into a correctional centre, including conditions in relation to—
- (a) the nature, amount and location of property that may be held by a detainee at the centre; and
  - (b) the use of the property.

- (3) The chief executive must ensure that the register of detainees includes details of the property each detainee has at a correctional centre.
- (4) Without limiting section 14 (Corrections policies and operating procedures), a corrections policy or operating procedure may make provision in relation to detainee's property, including provision in relation to the following:
- (a) the taking and storage of the property;
  - (b) access to, and use of, the property;
  - (c) transfer of the property;
  - (d) compensation for loss or damage;
  - (e) return of the property to the detainee.
- (5) In this section:

*detainee's property* does not include a prohibited thing.

*Note* Pt 9.5 (Seizing property) provides generally for the seizure, forfeiture and return of property.

## **72 Security classification**

The chief executive must arrange a security classification for a detainee as soon as practicable after the detainee's admission to a correctional centre.

## **73 Case management plan**

The chief executive must arrange for a case management plan to be prepared for a detainee as soon as practicable after the detainee's admission to a correctional centre.

**74**      **Entries in register of detainees**

The chief executive must ensure that details of each detainee admitted to a correctional centre are entered in the register of detainees on the detainee's admission to the centre.

*Note*      The chief executive must keep a register of detainees at a correctional centre (see s 76).

## **Chapter 9            Management and security**

### **Part 9.1            Management and security—                           general**

#### **75            Compliance with chief executive’s directions**

A detainee must comply with any direction given under this Act to the detainee by the chief executive.

*Note*     Under s 17, the chief executive may delegate any of the chief executive’s functions, including the giving of directions, to a corrections officer.

#### **76            Register of detainees**

- (1) The chief executive must keep a register containing details of each detainee at a correctional centre.
- (2) The register must include details of the following for each detainee:
  - (a) full name;
  - (b) authority for detention;
  - (c) period of authorised detention;
  - (d) for a detainee under a sentence of imprisonment—
    - (i) the sentence, including any periodic detention period or other element of a combination sentence; and
    - (ii) any nonparole period;
  - (e) current place of detention;
  - (f) security classification;
  - (g) case management plan;

- (h) sex, including that chosen under section 79 (Transgender and intersex detainees—sexual identity);
- (i) any known condition of the detainee that requires, or is likely to require, a health service;
- (j) anything taken under section 65 (Identification of detainees);
- (k) anything else the chief executive considers necessary or appropriate for the proper management of the detainee.

**Examples—par (i)**

- 1 nutritional or health needs
- 2 need for spectacles, contact lens, crutches, prosthesis or other artificial aids
- 3 language or literacy difficulties

*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) The register must be available for inspection under chapter 7 (Inspection of correctional centres).

- (4) In this section:

*combination sentence*—see the *Crimes (Sentencing) Act 2005*, dictionary.

## **77 Health reports**

- (1) For this Act, the chief executive may ask a relevant chief executive for a written report about a detainee's health.
- (2) The relevant chief executive must comply with the request as soon as practicable.
- (3) The relevant chief executive's report must include personal health information about the detainee that is in a health record—
  - (a) in the relevant chief executive's custody; or

- (b) to which the relevant chief executive has access through any arrangement with another chief executive.
- (4) The chief executive must ensure that a doctor appointed under section 21 (Doctors—health service appointments) assesses the report from a relevant chief executive and includes a statement of the detainee’s condition (the *health schedule*) in the detainee’s case management plan.
- (5) The health schedule must include a summary of—
  - (a) the detainee’s condition and health risks, including any likelihood of the condition resulting in a medical emergency or the onset of significant health problems and any associated symptoms; and
  - (b) a treatment regime for the detainee

**Examples—s (5)**

- 1 Detainee D has diabetes. The health schedule for D explains the type of diabetes, the treatment required, any likely medical emergency or significant health problem and the associated symptoms, such as hypoglycaemia.
- 2 Detainee P has epilepsy. The health schedule for P explains the type of epilepsy, the treatment required, the symptoms and consequences of any failure to maintain the treatment regime.

*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).

- (6) Without limiting section 14 (Corrections policies and operating procedures), a corrections policy or operating procedure may include provision in relation to the health schedule, including provision in relation to any of the following:
  - (a) the content of the schedule and, in particular, any statement about the detainee’s health risks and treatment regime;
  - (b) the people who may access the health schedule and the circumstances for access.

(7) The chief executive must ensure that the relevant chief executive's report and the health schedule is available only to people authorised by the chief executive.

(8) In this section:

**health record**—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

**personal health information**—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

**relevant chief executive** means a chief executive whose administrative unit is responsible for any provision of the following Acts:

- (a) the *Children and Young People Act 1999*;
- (b) the *Disability Services Act 1991*;
- (c) the *Health Act 1993*;
- (d) the *Mental Health (Treatment and Care) Act 1994*.

*Note* Compliance with a request under this section does not involve a contravention of a privacy principle under the *Health Records (Privacy and Access) Act 1997* (see that Act, s 5 (The privacy principles)).

## 78 Case management plans—scope etc

(1) The chief executive—

- (a) must maintain an individual management plan for each detainee, other than a remandee; and
- (b) may maintain an individual management plan for a detainee who is a remandee.

(2) A case management plan for a detainee must—

- (a) outline work and activities for the detainee; and



- (b) be based on an assessment of the needs, capacities and disposition of the detainee; and
  - (c) be consistent with the resources available to the chief executive to manage the detainee; and
  - (d) if the detainee is an offender—outline how the detainee is to be prepared for lawful release and reintegration into society at the earliest possible time.
- (3) A case management plan may deal with any matter relating to a detainee, including the following:
- (a) provision for the safe, secure and humane treatment of the detainee;
  - (b) for a detainee at risk of self-harm—an outline of the risk and strategies for managing the risk;
  - (c) the welfare of the detainee, including the detainee’s participation in work or activities, and other constructive use of time in detention;
  - (d) details of any academic, vocational or cultural education or training for the detainee approved under section 52 (News and educational services);
  - (e) the detainee’s health condition and risks, and any associated treatment regime;
  - (f) for a detainee with a physical, mental or educational disability—strategies for extra assistance to minimise any disadvantage suffered by the detainee because of the disability, particularly in relation to suitability for work and release from detention;
  - (g) for a detainee serving a sentence of imprisonment by full-time detention—requirements for the detainee to be—
    - (i) told the detainee’s release date under the sentence; and

- (ii) given necessary assistance in applying for parole;
- (h) anything else prescribed by regulation or directed by the chief executive.

## **79 Transgender and intersex detainees—sexual identity**

- (1) This section applies to a transgender or intersex detainee.
  - (2) For this Act, the sex of the detainee is taken to be—
    - (a) the sex chosen under subsection (3); or
    - (b) if subsection (4) applies—the sex chosen with approval under subsection (4).
  - (3) On admission to a correctional centre—
    - (a) the detainee may tell the chief executive the sex the detainee chooses to be identified with; or
    - (b) if the detainee fails to make a choice under paragraph (a)—the chief executive may choose the sex the detainee is to be identified with having regard to the report obtained under subsection (5).
- Note* **Fail** includes refuse, see the Legislation Act, dict, pt 1.
- (4) The chief executive may, on application by the detainee, approve a change in the sex the detainee chooses to be identified with, having regard to the report obtained under subsection (5).
  - (5) Before making a decision under subsection (3) or (4), the chief executive must obtain a report by a doctor appointed under section 22 (Health professionals—non-therapeutic functions) about the detainee’s sexual identity.
  - (6) The chief executive must—
    - (a) give the detainee written notice of a decision by the chief executive under subsection (3) or (4); and

- (b) must ensure that the detainee's sex chosen under this section is entered in the register of detainees.

**Examples of effect of this section**

The conduct of searches of the detainee, and the allocation of accommodation and sanitary facilities for the detainee, would be on the basis that the detainee was a person of the chosen sex.

*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).

**80 Security classification—basis etc**

- (1) The chief executive must—
- (a) give each detainee a security classification; and
  - (b) review the classification at least annually or otherwise as prescribed by regulation.
- (2) When deciding a detainee's security classification, the chief executive must consider the following:
- (a) the reason for the detention, including the nature of any offence for which the detainee is detained;
  - (b) the risks posed by the detainee if the detainee were to escape;
  - (c) the risk of the detainee escaping;
  - (d) the risks posed by the detainee while at a correctional centre;
  - (e) the risks to the detainee of being accommodated with particular detainees or in particular areas at a correctional centre;
  - (f) any matter prescribed by regulation.
- (3) The chief executive may consider anything else the chief executive considers relevant.

- (4) The security measures to which a detainee is subject under a security classification must be the minimum necessary to ensure secure detention of the detainee.

## **81 Prohibited things**

- (1) The chief executive may declare a thing to be a prohibited thing.  
(2) A declaration is a notifiable instrument.

### **Examples of prohibited things**

- 1 a weapon or something crafted as a weapon
- 2 an explosive
- 3 alcohol
- 4 a controlled drug under the Criminal Code
- 5 a mobile phone

*Note 1* The power to make an instrument includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48.)

*Note 2* A notifiable instrument must be notified under the Legislation Act.

*Note 3* 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).

## **82 Possession of prohibited things**

- (1) A detainee commits an offence if the detainee possesses a prohibited thing.

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

- (2) Subsection (1) does not apply if the chief executive approves the detainee's possession of the thing.

**83 Work by detainees**

A regulation may make provision in relation to work by detainees, including provision in relation to any of the following:

- (a) the kind of work that may be done by detainees;
- (b) the places where detainees may work, including places outside a correctional centre;
- (c) any payment or other return to which detainees are entitled for work done;
- (d) accounting for any payment or other return credited to detainees for work done.

**84 Trust accounts for detainees**

- (1) The chief executive must ensure that money belonging to a detainee is held for the detainee in a trust account.
- (2) The chief executive may deduct amounts from the amount held in trust for a detainee the amount for payment of any financial penalty or reparation that must be paid as disciplinary action against the detainee.
- (3) A regulation may make provision in relation to the operation or maintenance of trust accounts.

**85 Prohibited areas**

- (1) The chief executive may define an area at a correctional centre where detainees are prohibited (a *prohibited area*).
- (2) The chief executive must take reasonable steps to bring each prohibited area to the attention of detainees, corrections officers and other people who work at or visit the centre.

- (3) Without limiting subsection (1), the chief executive must ensure that notices or signs are prominently displayed at or near each prohibited area indicating that it is an area where detainees are prohibited.

## **86 Nonsmoking areas**

- (1) The chief executive may define an area at a correctional centre as an area in which smoking is prohibited (a *nonsmoking area*).
- (2) The chief executive must take reasonable steps to bring each non-smoking area to the attention of detainees, corrections officers and other people who work at or visit the centre.
- (3) Without limiting subsection (1), the chief executive must ensure that notices or signs are prominently displayed at or near each nonsmoking area indicating that smoking is prohibited in the area.
- (4) The *Smoking (Prohibition in Enclosed Public Places) Act 2003* does not apply to a correctional centre.

## **87 Management and security—corrections policies and operating procedures**

- (1) Without limiting section 14 (Corrections policies and operating procedures), a corrections policy or operating procedure may include provision for any other matter in relation to the management or security of detainees.
- (2) The chief executive must ensure that a corrections policy or operating procedure makes provision in relation to each the following:
  - (a) a detainee giving birth;
  - (b) a marriage of a detainee;
  - (c) the death of a detainee.

## **Part 9.2                      Segregation**

### **88                      Meaning of *segregation***

In this Act:

*segregation*, of a detainee—

- (a) means the restriction or denial of the detainee's opportunity—
  - (i) to go into, or be in, a particular part of a correctional centre; or
  - (ii) to associate with other detainees; and
- (b) includes separate confinement.

### **89                      Segregation under pt 9.2—purpose**

To remove any doubt, segregation under this part must not be used for punishment or disciplinary purposes.

### **90                      Segregation—safety and security**

- (1) The chief executive may direct that a detainee be segregated from other detainees if the chief executive believes, on reasonable grounds, that the segregation is necessary or prudent to protect—
  - (a) the safety of anyone else at a correctional centre; or
  - (b) security or good order at a correctional centre.
- (2) When making a direction under this section, the chief executive must also have regard to any relevant, known cultural consideration and the likely impact of segregation on the health and wellbeing of the detainee.

- (3) The chief executive must give the detainee prompt notice of the direction, why it was given, when it takes effect and the provisions for its duration and review under this part.
- (4) The chief executive must revoke the direction if the chief executive believes, on reasonable grounds, that the protection mentioned in subsection (1) is no longer necessary or prudent.
- (5) The chief executive—
  - (a) may review the direction at any time, on the chief executive's own initiative or on request by the detainee; and
  - (b) must review the direction before any transfer of the detainee to another correctional centre; and
  - (c) must review the direction at least once every 21 days while it remains in force.
- (6) After reviewing the direction, the chief executive may—
  - (a) confirm the direction; or
  - (b) make a further direction under subsection (1); or
  - (c) revoke the direction under subsection (4).
- (7) To remove any doubt, the chief executive may make more than 1 further direction under this section.
- (8) Subject to this section and section 94 (Segregated detainees removed to NSW), a direction ends at the end of—
  - (a) 28 days after the day it is given; or
  - (b) if subsection (6) (b) applies—90 days after the day the further direction, or latest further direction, is given.

## **91 Segregation—protective custody**

- (1) The chief executive may direct that a detainee be segregated from other detainees if the chief executive believes, on reasonable



grounds, that the segregation is necessary or prudent to protect the safety of the detainee.

- (2) The chief executive may give the direction at any time, on the chief executive's own initiative or on request by the detainee.
- (3) The chief executive must give the detainee prompt notice of the direction, why it was given, when it takes effect and the provisions for its duration and review under this part.
- (4) The chief executive must revoke the direction if the chief executive believes, on reasonable grounds, that the protection mentioned in subsection (1) is no longer necessary or prudent.
- (5) The chief executive—
  - (a) may review the direction at any time, on the chief executive's own initiative or on request by the detainee; and
  - (b) must review the direction before any transfer of the detainee to another correctional centre; and
  - (c) must review the direction at least once every 21 days while it remains in force.
- (6) After reviewing the direction, the chief executive may—
  - (a) confirm the direction; or
  - (b) make a further direction under subsection (1); or
  - (c) revoke the direction under subsection (4).
- (7) To remove any doubt, the chief executive may make more than 1 further direction under this section.
- (8) Subject to this section and section 94 (Segregated detainees removed to NSW), a direction ends—
  - (a) 28 days after the day it is given; or

- (b) if subsection (6) (b) applies—90 days after the day the further direction, or latest further direction, is given.

## **92 Segregation—health**

- (1) The chief executive may direct that a detainee be segregated from other detainees if the chief executive believes, on reasonable grounds, that the segregation is necessary or prudent—
  - (a) to assess the detainee’s physical or mental health; or
  - (b) to protect anyone (including the detainee) from harm because of the detainee’s physical or mental health; or
  - (c) to prevent the spread of disease.
- (2) The chief executive must give the detainee prompt notice of the direction, why it was given, when it takes effect and the provisions for its duration and review under this part.
- (3) The chief executive must revoke the direction if the chief executive believes, on reasonable grounds, that the direction is no longer necessary or prudent.
- (4) The chief executive—
  - (a) may review the direction at any time, on the chief executive’s own initiative or on request by the detainee; and
  - (b) must review the direction on request by a doctor appointed under section 21 (Doctors—health service appointments); and
  - (c) must review the direction before any transfer of the detainee to another correctional centre; and
  - (d) must review the direction at least once every 21 days while it remains in force.
- (5) After reviewing the direction, the chief executive may—
  - (a) confirm the direction; or

- (b) make a further direction under subsection (1); or
  - (c) revoke the direction under subsection (3).
- (6) To remove any doubt, the chief executive may make more than 1 further direction under this section.
- (7) When acting under subsection (1), (3) or (4), the chief executive must have regard to any advice given by a doctor appointed under section 21 (Doctors—health service appointments) in relation to the segregation of the detainee.

**93 Interstate segregated detainees transferred to ACT**

- (1) This part applies if—
- (a) an interstate segregation direction applies to a detainee; and
  - (b) the detainee is transferred (however described) into custody at a correctional centre in the ACT.
- (2) Despite the transfer, the interstate direction—
- (a) continues to apply in relation to the detainee—
    - (i) as if it were a direction under this part; and
    - (ii) with any necessary changes, and any change prescribed by regulation; and
  - (b) subject to this part, ends 3 days after the day the detainee is taken into custody at the correctional centre in the ACT.
- (3) In this section:
- interstate segregation direction* means a direction or order (however described) that—
- (a) corresponds substantially to a direction under this part; and

- (b) is in force under a law of the Commonwealth, a State or another Territory that is declared by regulation to be a corresponding law for this section.

#### **94 Segregated detainees removed to NSW**

- (1) This section applies if both of the following apply to a detainee:
  - (a) a direction under the *Crimes (Sentence Administration) Act 2005*, section 26 (Full-time detention in ACT or NSW) that the detainee be removed to a NSW correctional centre;
  - (b) a direction (the *ACT direction*)—
    - (i) under this part; or
    - (ii) under chapter 10 (Discipline) for investigative segregation.
- (2) Despite the detainee's removal to a NSW correctional centre, the ACT direction—
  - (a) continues to apply in relation to the detainee, with any necessary changes, and any change prescribed by regulation; and
  - (b) subject to this part, ends 3 days after the day the detainee is taken into custody at the NSW correctional centre.

#### **95 Segregation not to affect minimum living conditions**

- (1) The segregation of a detainee under this part does not affect the standards applying to the detainee under section 12 (Correctional centres—minimum living conditions).
- (2) However, subsection (1) does not prevent the application of the standards in a way that is necessary and reasonable for the purpose of the segregation.

**96 Application for review of segregation directions**

- (1) A detainee may apply to an adjudicator for a review of the chief executive's directions under any of the following sections:
  - (a) section 90 (Segregation—safety and security);
  - (b) section 91 (Segregation—protective custody);
  - (c) section 92 (Segregation—health).

- (2) The application must be made no later than 7 days after the day the chief executive gives the detainee notice of the direction.

*Note* If a form is approved under s 228 for an application under this section, the form must be used.

- (3) Subject to any decision by the adjudicator under section 97, the application does not affect the segregation of the detainee under the direction under review.

**97 Review of segregation directions**

- (1) On application under section 96, an adjudicator may—
  - (a) conduct an inquiry to review the chief executive's direction; or
  - (b) refuse to review the chief executive's direction.
- (2) Chapter 11 (Disciplinary inquiries) applies, with any changes prescribed by regulation, in relation to the inquiry as if it were an inquiry under that chapter.
- (3) After completing an inquiry under this section, the adjudicator may—
  - (a) confirm the direction under review; or
  - (b) give any direction the chief executive may make under the section authorising the direction under review, either by—
    - (i) amending the direction under review; or

- (ii) setting aside the direction under review and making a direction in substitution for the direction set aside.
- (4) The adjudicator must give the detainee prompt written notice of the adjudicator's decision under this section.
- (5) If the adjudicator refuses to review the chief executive's direction, the notice must include the reasons for the refusal.

*Note* Under the *Administrative Decisions (Judicial Review) Act 1989*, a person aggrieved by an administrative decision made under an enactment may apply to the Supreme Court for a review of the decision. Subject to any order of the court, the making of the application does not affect the operation of the decision or prevent its implementation (see that Act, s 16).

## **98 Other separation of detainees**

- (1) The chief executive must provide separate accommodation for males and females.
- (2) Without limiting section 14 (Corrections policies and operating procedures), the chief executive may make a corrections policy or operating procedure in relation to the management of detainees, including provision in relation to the separation of detainees in relation to any of the following:
  - (a) the cultural background or vulnerability of detainees;
  - (b) accommodation or use of facilities;
  - (c) participation in work or other activities.

## **Part 9.3                      Monitoring**

### **99                      Monitoring—general considerations**

In exercising a function under this part, the chief executive must ensure that the following are balanced appropriately:

- (a) the need to protect the safety of detainees, corrections officers, other people who work at or visit correctional centres, and the community;
- (b) the need for security and good order at correctional centres;
- (c) the benefits of detainees maintaining contact with the community outside correctional centres;
- (d) the need to protect the privacy of detainees;
- (e) the need to prevent intimidation and corruption at correctional centres, and the commission of offences;
- (f) the need to detect prohibited things entering, at, or leaving correctional centres;
- (g) anything else the chief executive considers, on reasonable grounds, to be relevant.

### **100                      Monitoring at correctional centres**

The chief executive may arrange for any part of a correctional centre to be monitored for any activity, including the movement of anyone at the centre.

**Examples of monitoring**

direct viewing, closed-circuit television coverage and the use of other devices for detecting movement

*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).

**101 Personal monitoring devices**

- (1) The chief executive may, orally or in writing, direct a person at a correctional centre to wear a device (a *personal monitoring device*) that allows the person's location at the centre to be monitored.
- (2) To remove any doubt, a direction under this section may be given to any of the following:
  - (a) a detainee;
  - (b) a corrections officer;
  - (c) anyone working at or visiting a correctional centre.

**102 Interfering with personal monitoring devices**

- (1) A person commits an offence if the person interferes with a personal monitoring device.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (2) It does not matter whether the interference is by the person directed to wear the device or someone else.
- (3) Subsection (1) does not apply if the interference is authorised by the chief executive.
- (4) In this section:

*interfere*, with a personal monitoring device, includes damage, cause to malfunction, disable and remove but does not include the effect of normal wear and tear associated with wearing the device.



**103 Monitoring telephone calls etc**

- (1) This section applies in relation to an electronic communication with a detainee, other than a protected electronic communication.
- (2) The chief executive may do either or both of the following in relation to the communication:
  - (a) monitor the communication;
  - (b) record the communication.
- (3) The chief executive must tell the parties to the communication that the communication might be monitored and recorded.
- (4) If the communication reveals information about the commission of an offence, the chief executive must give the information to the chief police officer.
- (5) In this section:

*electronic communication* means communication by—

- (a) telephone, email or fax; or
- (b) any other electronic means.

*protected electronic communication* means an electronic communication between a detainee and any of the following:

- (a) a lawyer representing the detainee;
- (b) an official visitor;
- (c) the human rights commissioner;
- (d) the public advocate;
- (e) the ombudsman;
- (f) a person prescribed by regulation.

## 104 Monitoring ordinary mail

- (1) The chief executive may open and search a detainee's ordinary mail.
- (2) The chief executive may read a detainee's ordinary mail only if the chief executive suspects, on reasonable grounds, that the mail may—
  - (a) undermine security or good order at a correctional centre; or
  - (b) revictimise a victim; or
  - (c) circumvent any process for investigating complaints or reviewing decisions under this Act.
- (3) However, and without limiting section 14 (Corrections policies and operating procedures), the chief executive may make a corrections policy or operating procedure in relation to reading a random selection of detainees' ordinary mail.

- (4) In this section:

*ordinary mail* means mail other than protected mail.

*protected mail* means mail between a detainee and any of the following:

- (a) a lawyer representing the detainee;
- (b) an official visitor;
- (c) the human rights commissioner;
- (d) the public advocate;
- (e) the ombudsman;
- (f) a person prescribed by regulation.

*search* includes search—

- (a) with any device using electronic or other technology; and

- (b) by physical means; and
- (c) with the assistance of a corrections dog.

**105 Monitoring protected mail**

- (1) The chief executive may open and search a detainee's protected mail in the detainee's presence if the chief executive suspects, on reasonable grounds, that the mail contains—
  - (a) something that may physically harm the addressee; or
  - (b) a prohibited thing.
- (2) However, the chief executive must not read a detainee's protected mail without the detainee's written consent.
- (3) In this section:  
*search*—see section 104 (4).

**106 Mail searches—consequences**

- (1) Subject to section 127 (Seizing mail etc), a detainee's mail, once searched, must be delivered to the addressee as soon as practicable.
- (2) If a search of a detainee's mail reveals information about the commission of an offence, the chief executive must give the information to the chief police officer.

## Part 9.4 Searches

### Division 9.4.1 Searches—general

#### 107 Definitions—searches

In this Act:

**body search**, of a detainee, means a search of the detainee's body, including an examination of any orifice or cavity of the detainee's body.

**frisk search** means—

- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

**ordinary search** means a search of a person, or of articles in a person's possession, that may include—

- (a) requiring the person to remove the person's overcoat, coat or jacket and any gloves, shoes or hat; and
- (b) an examination of those items.

**scanning search** means a search of a person by electronic or other means that does not require the person to remove the person's clothing or to be touched by someone else.

#### Examples of scanning searches

- 1 passing a portable electronic or other device over a person
- 2 requiring a person to pass by or through an electronic or other device

*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).

*strip search*, of a detainee, means a search of the detainee, or of articles in the detainee's possession, that may include—

- (a) requiring the detainee to remove all of the detainee's clothing; and
- (b) an examination of the detainee's body (but not the detainee's body orifices or cavities) and of that clothing.

## **108 Intrusiveness of searches**

The person conducting a search of a person under this part must ensure, as far as practicable, that—

- (a) the search is the least intrusive kind of search that is reasonable and necessary in the circumstances; and
- (b) the search is conducted in the least intrusive way that is reasonable and necessary in the circumstances.

### **Example**

searching for a prohibited thing by a frisk search (rather than an ordinary search) with the assistance of a corrections dog

*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).

## **109 Searches of transgender and intersex detainees**

- (1) This section applies if a transgender or intersex detainee is to be subjected to a search under this part.
- (2) To remove any doubt, the detainee's sex is taken to be that entered for the detainee in the register of detainees.

*Note* For the meaning of *transgender person* and *intersex person*, see the Legislation Act, s 169A and s 169B.

## **110 Register of strip and body searches**

- (1) This section applies in relation to—

- (a) a strip search of a detainee; and
  - (b) a body search of a detainee.
- (2) The chief executive must keep a register containing the following details in relation to each search:
- (a) the name of the detainee searched;
  - (b) the reason for the search;
  - (c) when the search was conducted;
  - (d) the name of each person present at any time during the search;
  - (e) details of anything seized during the search;
  - (f) anything else prescribed by regulation.
- (3) The register may contain anything else the chief executive considers relevant.
- (4) The register must be available for inspection under chapter 7 (Inspection of correctional centres).

## **Division 9.4.2 Scanning, frisk and ordinary searches**

### **111 Scanning, frisk and ordinary searches—directions**

- (1) The chief executive may, at any time, direct a corrections officer to conduct a scanning search, frisk search or ordinary search of a detainee, another corrections officer or anyone else working at or visiting a correctional centre if the chief executive believes, on reasonable grounds, that it is prudent to conduct the search to protect—
- (a) the safety of anyone at a correctional centre; or

(b) security or good order at a correctional centre.

**Examples of other people working at correctional centre**

counsellors, psychologists, maintenance workers and volunteers

**Examples of searches**

- 1 searching a detainee returning to a correctional centre after performing community service
- 2 searching a corrections officer reporting for work
- 3 searching a person engaged to provide an educational program at a correctional centre when the person arrives at, or returns to, the centre
- 4 searching a detainee returning to the detainee's accommodation at a correctional centre after working in another part of the centre

*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).

- (2) Also, a corrections officer may conduct a scanning search, frisk search or ordinary search of a detainee if the officer suspects, on reasonable grounds, that the detainee is carrying—
- (a) a prohibited thing; or
  - (b) anything else that creates, or is likely to create, a risk to—
    - (i) the personal safety of the detainee or anyone else; or
    - (ii) security or good order at a correctional centre.

*Note* Section 126 provides for the use of force to carry out searches under this part.

**112 Scanning, frisk and ordinary searches—requirements**

- (1) A corrections officer may conduct a scanning search, frisk search or ordinary search of a person under section 111 only if—
- (a) the person is of the same sex as the officer; or
  - (b) if that is not the case—another person of the same sex as the person to be searched is present while the search is conducted.

- (2) The other person mentioned in subsection (1) must not be a detainee.

### **Division 9.4.3 Strip searches**

#### **113 Strip searches—directions**

- (1) The chief executive may direct a corrections officer to strip search a detainee only if the chief executive suspects, on reasonable grounds, that the detainee has something concealed on the detainee that—
- (a) is a prohibited thing; or
  - (b) may be used by the detainee in a way that may involve—
    - (i) intimidating anyone else; or
    - (ii) an offence or disciplinary breach; or
    - (iii) a risk to the personal safety of anyone else; or
    - (iv) a risk to security or good order at a correctional centre.

*Note* Section 126 provides for the use of force to carry out searches under this part.

- (2) To remove any doubt, a strip search of a detainee may be conducted immediately after any scanning search, frisk search or ordinary search of the detainee.

#### **114 Strip searches—presence of corrections officers**

- (1) A strip search of a detainee must be done—
- (a) by a corrections officer of the same sex as the detainee; and
  - (b) in the presence of 1 or more other corrections officers each of whom must be of the same sex as the detainee.
- (2) However, the number of corrections officers present during the search must be no more than necessary and reasonable to ensure the search is carried out as safely and effectively as possible.



- (3) The corrections officer conducting the search may direct another corrections officer present to provide assistance that the conducting officer believes, on reasonable grounds, is necessary and reasonable for the search.
- (4) A corrections officer may give directions to the detainee for the conduct of the search in accordance with this section.

**Examples**

directions that the detainee raise 1 or both arms, raise any long hair or turn in a particular direction

*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).

## **115 Strip searches—general rules**

- (1) A strip search must be conducted in a private area or an area that provides reasonable privacy for the detainee being searched.
- (2) The search must not be conducted—
  - (a) in the presence of someone of the opposite sex to the detainee; or
  - (b) in the presence or sight of someone else whose presence is not necessary for the search or the safety of everyone present.
- (3) The search must not involve—
  - (a) the removal from the detainee of more clothes than is necessary and reasonable to conduct the search; or
  - (b) the removal from the detainee of more clothes at any time than is necessary and reasonable to conduct the search; or
  - (c) without limiting paragraph (b), both the upper and lower parts of the person's body being uncovered at the same time.

- (4) Subject to section 126 (Searches—use of force), the search must not involve any touching of the detainee’s body by a corrections officer.
- (5) Each corrections officer present during the search must ensure, as far as practicable, that—
  - (a) the search is done in a way that minimises embarrassment for the detainee; and
  - (b) the search is done quickly; and
  - (c) the detainee is allowed to dress in private immediately after the search is finished.
- (6) If clothing from a detainee is seized during a strip search, the chief executive must ensure that the detainee is left with, or given, appropriate clothing to wear.

## **Division 9.4.4      Body searches**

### **116      Body searches—directions**

The chief executive may direct a doctor appointed under section 22 (Health professionals—non-therapeutic functions) to conduct a body search of a detainee if the chief executive suspects, on reasonable grounds, that the detainee—

- (a) has ingested or inserted something in the detainee’s body that may jeopardise the detainee’s health or wellbeing; or
- (b) has a prohibited thing concealed in or on the detainee’s body that may be used in a way that may pose a risk to the security or good order at a correctional centre; or
- (c) has evidence of the commission of an offence or disciplinary breach concealed in or on the detainee.

**117 Body searches—presence of nurse and corrections officers**

- (1) A nurse appointed under section 22 (Health professionals—non-therapeutic functions) must be present during the body search of a detainee.
- (2) If the doctor conducting the body search is not of the same sex as the detainee, the nurse must be of the same sex as the detainee.
- (3) The chief executive may direct 1 or more corrections officers to be present during the search, each of whom must be of the same sex as the detainee.
- (4) However, the number of corrections officers present during the search must be no more than is necessary and reasonable to ensure the search is carried out as safely and effectively as possible.
- (5) A body search must be conducted in a private area or an area that provides reasonable privacy for the detainee being searched.

**118 Body searches—assistance from corrections officer**

- (1) This section applies if the doctor conducting a body search of a detainee asks the chief executive for assistance that the doctor believes, on reasonable grounds, is necessary and reasonable for the search.
- (2) The chief executive may direct a corrections officer (the *assistant*) to assist in the conduct of the search.
- (3) However, the assistant must be of the same sex as the detainee.

*Note* Section 126 provides for the use of force to assist at a body search.

**119 Body searches—rules about detainee's clothing**

- (1) A body search of a detainee must not involve—

- (a) the removal of more clothes than is necessary and reasonable to conduct the search; or
  - (b) the removal of more clothes at any time than is necessary and reasonable to conduct the search; or
  - (c) without limiting paragraph (b), both the upper and lower parts of the person's body being uncovered at the same time.
- (2) A detainee who has been body searched must be allowed to dress in private immediately after the search is finished.
- (3) If clothing from a detainee is seized during a body search, the chief executive must ensure that the detainee is left with, or given, appropriate clothing to wear.

**120 Body searches—rules about touching detainee**

The doctor conducting the body search of a detainee, and the nurse present at the search, may, for the search, touch the detainee and examine the detainee's orifices and cavities, but only if the doctor or nurse is of the same sex as the detainee.

**121 Body searches—seizing things**

- (1) The doctor conducting a body search of a detainee may seize anything discovered during the search if—
- (a) seizing the thing would not be likely to cause injury to the detainee; and
  - (b) the doctor believes, on reasonable grounds, that the thing may be evidence of the commission of an offence or disciplinary breach by the detainee.
- (2) The doctor must give the thing seized to a corrections officer as soon as practicable.

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## Division 9.4.5 Searches of premises and property

### 122 Searches—premises and property

- (1) The chief executive may, at any time, direct a corrections officer to search—
  - (a) any part of a correctional centre; or
  - (b) anything at a correctional centre, including anything in the possession of anyone at a correctional centre; or
  - (c) any vehicle used for transporting a detainee.

#### Examples of searches under this section

a search of any of the following for a prohibited thing:

- any area or building or part of a building (including a cell) at a correctional centre
- any storage area, including an area used by detainees or corrections officers, at a correctional centre
- any vehicle, machinery or equipment at a correctional centre

*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).

- (2) However, this section does not authorise—
  - (a) a search of anyone at a correctional centre; or
  - (b) any clothing being worn by anyone at a correctional centre at the time of the search.
- (3) In this section:  
*search* includes search—
  - (a) with any device using electronic or other technology; and
  - (b) by physical means; and
  - (c) with the assistance of a corrections dog.

**123 Searches of detainee cells—legally privileged material**

- (1) This section applies if a detainee has legally privileged material at a correctional centre.
- (2) A corrections officer may search the detainee's cell under section 122 in the absence of the detainee if—
  - (a) the detainee removes the legally privileged material from the cell; or
  - (b) the legally privileged material is stored in accordance with a corrections policy or operating procedure made for subsection (3).
- (3) Without limiting section 14 (Corrections policies and operating procedures), a corrections policy or operating procedure may include provision for the secure storage at a correctional centre of legally privileged material for detainees.

**124 Searches of detainee cells—suspected legally privileged material**

- (1) If a corrections officer suspects, on reasonable grounds, that a detainee's cell contains legally privileged material, the officer may search the cell only if the detainee is present.
- (2) A search under subsection (1) may include an examination of any legally privileged material, and anything containing the material, found in the cell.
- (3) However, the officer may not read any legally privileged material found in the cell unless the detainee is present and—
  - (a) the detainee consents to the officer reading the material; or
  - (b) the officer suspects, on reasonable grounds, that the material contains information that—

- (i) may threaten security or good order at a correctional centre; or
  - (ii) relates to an offence or disciplinary breach.
- (4) The officer need not comply with subsection (1) or (3) if the officer believes, on reasonable grounds, that urgent circumstances exist and that complying with the subsection would create a risk of injury to the officer, the detainee or anyone else.
- (5) The chief executive must ensure that a record of action under subsection (4) is made and entered in the register of detainees.

## **Division 9.4.6      Searches—miscellaneous**

### **125      Searches—use of corrections dogs**

- (1) The chief executive may direct a corrections officer to use a corrections dog to assist the officer in conducting a search under this part.
- (2) Without limiting subsection (1), the chief executive may give the direction if the chief executive believes, on reasonable grounds, that the assistance of the dog would minimise the intrusiveness of the search of a detainee by the officer.
- (3) The corrections officer and corrections dog may enter, and remain at any place, to assist in the conduct of a search under this part.

### **126      Searches—use of force**

- (1) A corrections officer may use force—
  - (a) to carry out a search under this part; or
  - (b) to assist at a body search under section 118 (Body searches—assistance from corrections officer); or
  - (c) to prevent the loss, destruction or contamination of anything seized, or that may be seized, during the search.

- (2) However, the corrections officer may use force only in accordance with part 9.7 (Use of force).



## Part 9.5                      Seizing property

### 127                      Seizing mail etc

- (1) The chief executive may seize anything in a detainee's protected mail if the chief executive believes, on reasonable grounds, that the thing—
  - (a) may physically harm the addressee or anyone else; or
  - (b) is a prohibited thing.
- (2) The chief executive may seize other mail of a detainee, or anything in the mail, if the chief executive suspects, on reasonable grounds, that the seizure is necessary to stop—
  - (a) any of the following entering or leaving a correctional centre:
    - (i) a prohibited thing;
    - (ii) anything that may pose a risk to security or good order at a correctional centre;
    - (iii) anything that appears is being used, or is intended, for the commission of an offence or disciplinary breach; or
  - (b) threatening or otherwise inappropriate correspondence leaving a correctional centre; or
  - (c) a detainee obtaining or buying goods without the chief executive's approval.

**Example of inappropriate correspondence—par (b)**

mail addressed to a person by someone convicted of a sexual offence against the person

*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) The chief executive may seize a document only if the chief executive believes, on reasonable grounds, that the document is not legally privileged.

### **128 Seizing property—general**

- (1) The chief executive may seize—
- (a) anything found at a correctional centre, whether or not in a person's custody or possession, that the chief executive suspects, on reasonable grounds, jeopardises or is likely to jeopardise—
    - (i) security or good order at a correctional centre; or
    - (ii) the safety of anyone at a correctional centre; or
  - (b) anything found at a correctional centre, whether or not in a person's possession, that the chief executive suspects, on reasonable grounds, is being used, or is intended, for the commission of an offence or a disciplinary breach; or
  - (c) a prohibited thing found on a detainee or in a detainee's custody or possession, unless the detainee has the written approval of the chief executive to possess the thing.
- (2) To remove any doubt, this section extends to anything found in a search under part 9.4 (Searches).
- (3) The chief executive may seize a document only if the chief executive believes, on reasonable grounds, that the document is not legally privileged.

### **129 Receipt for seizure**

- (1) The chief executive must prepare a written receipt for a seizure under section 127 or section 128.

- (2) As soon as practicable after the seizure (but no later than 7 days after the day of the seizure), the chief executive must give a copy of the receipt to—
- (a) the owner of the thing seized; or
  - (b) if the owner cannot be identified after reasonable inquiries (given the thing's apparent value)—the person from whom the thing was seized.
- (3) The receipt must—
- (a) identify the thing seized; and
  - (b) outline the grounds for the seizure; and
  - (c) include a statement about the effect of section 130; and
  - (d) include anything else prescribed by regulation.
- (4) In this section:
- owner*, of a thing, includes a person entitled to possession of the thing.

### **130 Forfeiture of things seized**

- (1) A thing seized under section 127 or section 128 is forfeited to the Territory if the chief executive decides, on reasonable grounds—
- (a) that—
    - (i) after making reasonable inquiries (given the thing's apparent value), the owner of the thing cannot be found; or
    - (ii) after making reasonable efforts (given the thing's apparent value), the thing cannot be returned to the owner; or
  - (b) that—

- (i) possession of the thing by a detainee is an offence or disciplinary breach; or
  - (ii) it is necessary to keep the thing to stop it being used for the commission of an offence or disciplinary breach; or
  - (iii) the thing is inherently unsafe.
- (2) The chief executive may deal with a thing forfeited to the Territory under this section, or dispose of it, as the chief executive considers, on reasonable grounds, to be appropriate.
- (3) However, subsection (2) is subject to any order under the *Crimes Act 1900*, section 249 (Seizure of forfeited articles).

**Examples—s (2)**

- 1 giving a forfeited weapon to a police officer
- 2 keeping a forfeited electrical appliance and using it for the benefit of detainees generally
- 3 dumping a forfeited thing of little value

*Note 1* 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).

*Note 2* The *Crimes Act 1900* also provides for articles forfeited under any law in force in the ACT to be seized by a member of the police force, taken before the Magistrates Court and for the court to order disposal of the article by the public trustee (see that Act, s 249 and s 250).

*Note 3* The *Uncollected Goods Act 1996* provides generally for the disposal of uncollected goods, including goods abandoned on premises controlled by the Territory.

**131 Return of things seized but not forfeited**

- (1) If a thing seized under section 127 or section 128 is not forfeited, the chief executive must return it to its owner—
- (a) no later than the end of 6 months after the day it was seized; or

- (b) if a proceeding for an offence or disciplinary breach involving the thing is started within the 6-month period—at the end of the proceeding and any appeal from, or the review of, the proceeding.
- (2) However, if the thing was being retained as evidence of an offence or disciplinary breach and the chief executive believes, on reasonable grounds, that its retention as evidence is no longer necessary, the chief executive must return it immediately.
- (3) In this section:  
*owner*—see section 129 (4).

## Part 9.6 Alcohol and drug testing

### Division 9.6.1 General

#### 132 Definitions—*drug* and *test sample*

In this Act:

*drug*—

- (a) means—
- (i) a controlled drug under the Criminal Code, section 600; or
  - (ii) a substance prescribed by regulation for this definition; but
- (b) does not include any of the following:
- (i) a drug lawfully supplied, and taken as prescribed or directed, by a health professional;
  - (ii) a drug lawfully supplied and self-administered;
  - (iii) a drug exempted under section 133.

*test sample* means a sample of breath, saliva, urine, hair, blood, or anything else prescribed by regulation.

#### 133 When test sample *positive*

- (1) A person is taken to provide a *positive* test sample for alcohol or a drug if, when directed under this Act or the *Crimes (Sentence Administration) Act 2005*, to provide a test sample—
- (a) the person fails to provide a test sample in accordance with the direction; or

*Note* *Fail* includes refuse, see the Legislation Act, dict, pt 1.

- (b) the person provides an invalid test sample; or
  - (c) for a full-time detainee—the detainee provides a test sample that shows the detainee has taken alcohol or a drug; or
  - (d) for a detainee under periodic detention—the detainee provides a test sample that shows the detainee—
    - (i) has a blood alcohol concentration of the prescribed concentration or more; or
    - (ii) has taken a drug.
- (2) However, subsection (1) (a) does not apply if the person has a reasonable excuse for failing to provide the test sample within a reasonable time of the direction being given.

**Examples of reasonable excuse**

- 1 a medical condition that prevents the person from providing a test sample as directed
- 2 prescribed medication that may affect test results

*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) The chief executive may exempt a drug from the application of this part.
- (4) An exemption is a notifiable instrument.

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

- (5) In this section:

***invalid***—a test sample provided by a person is ***invalid*** if—

- (a) the person tampers, or attempts to tamper, with the test sample;  
or
- (b) the person otherwise changes, or attempts to change, the results of the test sample.

*prescribed concentration*, of alcohol, means—

- (a) 0.02g of alcohol per 100mL of blood; or
- (b) if a regulation prescribes another concentration—the prescribed concentration.

## **Division 9.6.2 Alcohol and drug testing—detainees**

### **134 Alcohol and drug testing of detainees**

- (1) The chief executive may direct a detainee to provide a stated kind of test sample.
- (2) The chief executive, or a doctor, or nurse, appointed under section 22 (Health professionals—non-therapeutic functions), may give a detainee a direction about the way a detainee must provide the test sample.
- (3) However—
  - (a) a direction under this section must be consistent with any requirement prescribed by an operating procedure for this section; and
  - (b) only a doctor, or nurse, appointed under section 22 (Health professionals—non-therapeutic functions) may take a blood sample.
- (4) A doctor or nurse who takes a test sample from a detainee must give the sample to a corrections officer.
- (5) The chief executive must give the detainee notice of the results of any test conducted on the test sample as soon as practicable after the chief executive receives them.

### **135 Effect of positive test sample from detainee**

- (1) This section applies if—



- (a) a detainee is directed under this Act or the *Crimes (Sentence Administration) Act 2005* to provide a test sample; and
  - (b) the test sample provided by the detainee is positive.
- (2) The chief executive may have regard to the positive test sample in making any decision in relation to the management of the detainee under this Act.

**Examples of decisions**

- 1 decisions under section 78 (Case management plans—scope etc) or section 80 (Security classification—basis etc)
- 2 decisions under chapter 10 (Discipline)

*Note 1* 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).

*Note 2* The taking (in any way) of alcohol or a drug into the body is a disciplinary breach (see s 152 (Meaning of *disciplinary breach*)). The results of the analysis of a substance under this Act, signed by an analyst, is evidence of the facts stated in the certificate (see s 226 (Evidentiary certificates)).

### **Division 9.6.3      Alcohol and drug testing—corrections officers etc**

#### **136      Alcohol and drug testing of corrections officers etc**

- (1) A regulation may make provision in relation to alcohol and drug testing of—
- (a) corrections officers; and
  - (b) public servants and other people who work at or visit correctional centres, whether as employees, contractors, volunteers or otherwise.

- (2) In particular, a regulation may make provision in relation to any of the following:
- (a) the circumstances for testing, including when and where tests may be conducted;
  - (b) the conduct of the tests.

## **Part 9.7**                      **Use of force**

### **137**            **Managing use of force**

- (1) The chief executive must ensure, as far as practicable, that the use of force in relation to the management of detainees is always—
  - (a) a last resort; and
  - (b) in accordance with this part.
- (2) Without limiting section 14 (Corrections policies and operating procedures), the chief executive must make a corrections policy or operating procedure in relation to the use of force, including provision in relation to the following:
  - (a) the circumstances, and by whom, force may be used;
  - (b) the kinds of force that may be used.

*Note*        The power to make a corrections policy or operating procedure includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48).

### **138**            **Authorised use of force**

- (1) A corrections officer may use force that is necessary and reasonable for this Act, including for any of the following:
  - (a) to compel compliance with a direction given in relation to a detainee by the chief executive;
  - (b) to act under section 126 (Searches—use of force);
  - (c) to prevent or stop the commission of an offence or disciplinary breach;
  - (d) to prevent the escape of a detainee;

- (e) to prevent unlawful damage, destruction or interference with property;
  - (f) to defend the officer or someone else;
  - (g) to prevent a detainee from inflicting self-harm;
  - (h) anything else prescribed by regulation.
- (2) However, a corrections officer may use force only if the officer believes, on reasonable grounds, that the purpose for which force may be used cannot be achieved in another way.

### **139 Application of force**

- (1) A corrections officer may use force under this part only if the officer—
- (a) gives a clear warning of the intended use of force; and
  - (b) allows enough time for the warning to be observed; and
  - (c) uses no more force than is necessary and reasonable in the circumstances; and
  - (d) uses force, as far as practicable, in a way that reduces the risk of causing death or grievous bodily harm.
- (2) However, the corrections officer need not comply with subsection (1) (a) or (b) if, in urgent circumstances, the officer believes, on reasonable grounds, that doing so would create a risk of injury to the officer, the detainee or anyone else.

#### **Example of urgent circumstances**

the detainee is assaulting someone or engaging in self-harm

*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).

**140 Use of restraints or weapons**

- (1) The use of force under this part includes the use of restraints and weapons.
- (2) The chief executive must ensure, as far as practicable, that the use of force involving a restraint or weapon is proportionate to the circumstances, and in particular that—
  - (a) the circumstances are sufficiently serious to justify the use; and
  - (b) the kind of restraint or weapon is appropriate in the circumstances; and
  - (c) the restraint or weapon is used appropriately in the circumstances.
- (3) The chief executive must also ensure that restraints and weapons are only used under this part—
  - (a) by corrections officers trained to use them; and
  - (b) in accordance with a corrections policy or operating procedure that applies to their use.
- (4) A health professional appointed under section 22 (Health professionals—non-therapeutic services) may administer a drug as a restraint, or direct the use of another form of restraint, if the health professional believes, on reasonable grounds, that is necessary and reasonable—
  - (a) to treat a detainee, particularly where the detainee’s behaviour cannot be controlled otherwise; or
  - (b) to prevent a detainee inflicting self-harm, or harming someone else, particularly where other forms of restraint are unlikely to be effective; or
  - (c) to prevent the escape of a detainee, particularly while being transferred to or from a correctional centre or other place.

- (5) The chief executive must ensure that firearms are not used under this part unless someone's life is under threat or a detainee or other person offers armed resistance to a corrections officer or police officer exercising a function under this Act or another Act.
- (6) In applying force under this part, a corrections officer may use a restraint or weapon, including any of the following:
  - (a) body contact;
  - (b) handcuffs, restraint jackets and other restraining devices;
  - (c) riot control equipment;
  - (d) a chemical agent;
  - (e) a gas gun;
  - (f) a firearm;
  - (g) anything else prescribed by regulation.

**141 Medical examination after use of force**

The chief executive must ensure that a doctor appointed under section 21 (Doctors—health service appointments) examines a detainee injured by the use of force under this part as soon as practicable and that appropriate health care is available to the detainee.

**142 Reporting use of force**

- (1) The chief executive must keep a record of any incident involving the use of force under this part that causes injury or death to anyone.
- (2) The record must—
  - (a) include details of the incident, including the circumstances, the decision to use force and the force used; and

- (b) be available for inspection under chapter 7 (Inspection of correctional centres).
- (3) The chief executive must give a copy of the record to an official visitor.

## Part 9.8 Access to correctional centres

### 143 Visiting conditions

- (1) The chief executive may declare conditions that apply in relation to visits to a correctional centre.

**Examples of conditions declared**

- 1 the times and duration of visits
- 2 the number of visitors allowed
- 3 the conditions for conjugal, contact and non-contact visits
- 4 the circumstances in which visitors may be monitored
- 5 a prohibition on smoking in nonsmoking areas

*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).

- (2) A declaration is a disallowable instrument.

*Note 1* The power to make an instrument includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48).

*Note 2* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

### 144 Notice of visiting conditions

- (1) The chief executive must take reasonable steps to bring the visiting conditions to the attention of visitors at a correctional centre.
- (2) Without limiting subsection (1), the chief executive must ensure that—
- (a) a notice is prominently displayed at each entrance to the centre open to visitors to the effect that visiting conditions apply at the centre; and



- (b) a copy of the visiting conditions is available for inspection on request by visitors at the centre.

#### **145 Taking prohibited things etc into correctional centre**

- (1) A person commits an offence if the person—
- (a) takes a prohibited thing into a correctional centre; or
  - (b) gives a prohibited thing to a detainee; or
  - (c) removes a prohibited thing from a correctional centre.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) Subsection (1) does not apply to any action approved by the chief executive.
- (3) In this section:

*give* includes send.

*prohibited thing* includes something the person intends a detainee to use for making a prohibited thing or use otherwise in relation to a prohibited thing.

#### **146 Directions to visitors**

- (1) The chief executive may, orally or in writing, give a direction to a visitor at a correctional centre to do, or not do, something if the chief executive believes, on reasonable grounds, that the direction is necessary and reasonable—
- (a) to ensure compliance with the visiting conditions; or
  - (b) for security or good order at a correctional centre.

- (2) A person commits an offence if the person fails to comply with a direction given to the person under this section.

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

- (3) An offence against this section is a strict liability offence.
- (4) Subsection (2) does not apply if the person takes reasonable steps to comply with the direction.

#### **147 Searches of visitors**

- (1) The chief executive may direct a corrections officer to conduct a scanning search, frisk search or ordinary search of a visitor at a correctional centre if the chief executive suspects, on reasonable grounds, that the visitor is carrying—

- (a) a prohibited thing; or
- (b) anything else that creates, or is likely to create, a risk to—
- (i) the personal safety of anyone else; or
- (ii) security or good order at a correctional centre.

- (2) Part 9.4 (Searches) and part 9.5 (Seizing property) apply as if a direction under this section, any scanning search, frisk search or ordinary search conducted under the direction, and anything found in the search, occurred under the relevant part in relation to a detainee at a correctional centre.
- (3) However, section 126 (Searches—use of force) does not apply in relation to a search of a visitor at a correctional centre.

#### **148 Directions to leave correctional centre etc**

- (1) The chief executive may direct a person at a correctional centre—
- (a) not to enter the centre; or

- (b) if the person is already in the centre—to leave the centre.
- (2) The chief executive may give the direction only if—
- (a) the chief executive suspects, on reasonable grounds, that—
- (i) the person is intoxicated; or
  - (ii) the person has possession of a prohibited thing; or
  - (iii) the direction is necessary and reasonable for security or good order at a correctional centre; or
- (b) the person contravenes a direction given to the person under section 146.
- (3) A person commits an offence if the person fails to comply with a direction given to the person under this section.

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

- (4) An offence against this section is a strict liability offence.
- (5) Subsection (3) does not apply if the person takes reasonable steps to comply with the direction.
- (6) In this section:

***intoxicated*** means under the influence of alcohol, a drug or another substance, or a combination of alcohol, drugs or substances.

**Examples of substances**

- 1 glue
- 2 petrol
- 3 another solvent

*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).

***prohibited thing***—see section 145 (3).

**149 Removing people from correctional centre**

- (1) The chief executive may direct a corrections officer to enforce a direction under section 148 if the person given the direction contravenes the direction.
- (2) The corrections officer may use force that is necessary and reasonable to enforce the direction.

## **Chapter 10      Discipline**

### **Part 10.1      General**

#### **150      Application—ch 10**

This chapter applies in relation to a disciplinary breach committed, or allegedly committed, by a detainee.

#### **151      Definitions—discipline**

In this Act:

*accused* means a detainee charged with a disciplinary breach.

*administrative penalty*—see section 184.

*administrator* means a corrections officer to whom the chief executive has given functions of an administrator under this chapter.

*charge* means a disciplinary charge.

*charge notice*—see section 159.

*disciplinary action*—see section 183.

*disciplinary breach*—see section 152.

*disciplinary charge* means a charge under section 159.

*hearing*, for an inquiry, means a hearing under part 11.3 (Disciplinary hearing procedures).

*inquiry* means an inquiry to which chapter 11 (Disciplinary inquiries) applies.

***investigative segregation*** means segregation directed under any of the following:

- (a) section 156 (Report etc by corrections officer);
- (b) section 157 (Report etc by investigator);
- (c) section 158 (Action by administrator);
- (d) section 160 (Chief executive directions—investigative segregation).

***investigator***—see section 153.

***investigator's report***—see section 157.

***privilege***, in relation to a detainee—see section 154.

***separate confinement***, of a detainee, means confinement of the detainee in a cell, away from other detainees.

## 152 Meaning of ***disciplinary breach***

For a detainee, each of the following is a ***disciplinary breach***:

- (a) contravening a direction given to the detainee by the chief executive or a corrections officer under this Act or the *Crimes (Sentence Administration) Act 2005*;

*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).

- (b) being in a prohibited area, without the chief executive's approval;
- (c) smoking in a nonsmoking area at a correctional centre;
- (d) taking (in any way) alcohol or a drug into the detainee's body;
- (e) providing a positive test sample for alcohol or a drug when directed, under this Act or the *Crimes (Sentence Administration) Act 2005*, to provide a test sample;

- (f) making, possessing, concealing, knowingly consuming or dealing with a prohibited thing, without the chief executive's approval;
- (g) gambling;
- (h) being disrespectful or abusive towards a corrections officer in a way that undermines the officer's authority;
- (i) being disrespectful or abusive towards someone in a way that is likely to provoke a person to be violent;
- (j) intentionally or recklessly engaging in conduct that endangers, or may endanger, the health or safety of the detainee or anyone else;
- (k) fighting;
- (l) assaulting someone else;
- (m) theft;
- (n) possessing stolen property;
- (o) possessing or dealing in things without the chief executive's approval;
- (p) intentionally or recklessly damaging or destroying property belonging to someone else;
- (q) interfering with property belonging to someone else, without approval by the owner of the property;
- (r) interfering with anyone's personal monitoring device without the chief executive's approval;
- (s) creating or participating in a disturbance, or other activity, likely to endanger security or good order at a correctional centre;

- (t) contravening a condition of any of the following:
  - (i) a direction under section 204 (Local leave directions);
  - (ii) a local leave permit;
  - (iii) an interstate leave permit;
- (u) doing anything for the purpose of escaping, or assisting a detainee to escape, from detention;
- (v) offering, giving or taking a bribe;
- (w) attempting, or assisting anyone else attempting, to commit another disciplinary breach;
- (x) threatening to do anything mentioned in paragraphs (j), (k), (l), (p) or (s);
- (y) anything else prescribed by regulation.

**Examples of contravening chief executive directions—par (a)**

failing to comply with a direction by the chief executive to provide a test sample or submit to a search under this Act

*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).

**153 Meaning of *investigator***

- (1) An *investigator* is—
  - (a) a corrections officer to whom the chief executive has given functions of an investigator; or
  - (b) a person engaged under subsection (2).
- (2) The chief executive may, on behalf of the Territory, engage a person (other than a corrections officer) to exercise the functions of an investigator.



- (3) The chief executive may engage a person under subsection (2) only if satisfied the person has appropriate qualifications or experience to exercise the functions of an investigator.

## 154 Meaning of *privilege*

A *privilege*, in relation to a detainee—

- (a) is any amenity, facility or opportunity the detainee may have the benefit of in detention; but
- (b) does not include anything that is, for this chapter, an entitlement for the detainee.

### Examples of privileges

- 1 using common areas at a correctional centre for mixing with other detainees
- 2 participating in activities other than those forming part of a detainee's case management plan
- 3 using phones, email or the internet other than for entitled usage
- 4 buying non-essential goods from money held in trust for a detainee
- 5 using a radio, television, CD or DVD player or other electronic equipment for recreational purposes
- 6 pursuing hobbies and crafts
- 7 keeping personal property in a cell

### Examples of entitlements

things expressed in chapter 6 (Living conditions at correctional centres) to be entitlements for detainees

*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).

## 155 Overlapping disciplinary breaches and criminal offences

- (1) This section applies if a detainee engages, or is alleged to have engaged, in conduct that is both—
- (a) a disciplinary breach; and

- (b) an offence (a *criminal offence*) against a territory law, including this Act.
- (2) The detainee must not be prosecuted for the criminal offence if an administrative penalty has been imposed on the detainee because of the disciplinary breach.
- (3) A disciplinary charge for the disciplinary breach must not be started, or further dealt with, under this chapter if a prosecution for the criminal offence has been started in a court.
- (4) Disciplinary action for the disciplinary breach must not be taken against the detainee if the detainee has been convicted or found guilty of the criminal offence by a court.

*Note*      For the kinds of disciplinary action that may be taken, see s 183.

## **Part 10.2**                    **Disciplinary investigations**

### **Division 10.2.1**        **Investigation of disciplinary breaches**

#### **156**        **Report etc by corrections officer**

- (1) This section applies if a corrections officer believes, on reasonable grounds, that a detainee has committed a disciplinary breach.
- (2) The corrections officer may do 1 or more of the following if the officer believes, on reasonable grounds, that it is appropriate in the circumstances:
  - (a) counsel the detainee;
  - (b) warn the detainee about committing a disciplinary breach;
  - (c) reprimand the detainee;
  - (d) subject to section 161 (Grounds for investigative segregation), direct that the detainee be segregated from other detainees for the purposes of this part;
  - (e) give an investigator a report about the alleged disciplinary breach.
- (3) A report under subsection (2) (e) must be given to an investigator as soon as possible, and must set out the following:
  - (a) details of the alleged disciplinary breach;
  - (b) the officer's reasons for believing the detainee has committed the disciplinary breach;
  - (c) if subsection (2) (d) applies—
    - (i) details of the segregation directed; and
    - (ii) the officer's reasons for the direction; and

- (iii) a recommendation about the detainee's segregation;
- (d) anything else prescribed by regulation.

### **157 Report etc by investigator**

- (1) This section applies if an investigator is given a report by a corrections officer under section 156 about an alleged disciplinary breach by a detainee.
- (2) After considering the report and making any investigation the investigator considers appropriate, the investigator may do 1 or more of the following if the investigator believes, on reasonable grounds, that it is appropriate in the circumstances:
  - (a) take no further action in relation to the report;
  - (b) counsel the detainee;
  - (c) warn the detainee about committing a disciplinary breach;
  - (d) reprimand the detainee;
  - (e) refer the allegation to the chief police officer;
  - (f) subject to section 161 (Grounds for investigative segregation), direct that the detainee be segregated from other detainees for the purposes of this part;
  - (g) give an administrator a report (an *investigator's report*) about the alleged disciplinary breach.
- (3) An investigator's report must be given to an administrator as soon as possible, and must set out the following:
  - (a) details (or a copy) of the corrections officer's report;
  - (b) details of any referral of the allegation to the chief police officer;
  - (c) if subsection (2) (f) applies—

- (i) details of the segregation directed; and
  - (ii) the investigator's reasons for the direction; and
  - (iii) a recommendation about the detainee's segregation;
  - (d) a recommendation for any action by the administrator under section 158;
  - (e) anything else prescribed by regulation.
- (4) A referral under subsection (2) (e) must be in writing and be accompanied by the investigator's report.
- (5) A corrections officer who is also an investigator must not exercise any function as an investigator in relation to any report made by the officer under section 156.

## **158 Action by administrator**

- (1) This section applies if an administrator is given a report under section 157 about an alleged disciplinary breach by a detainee.
- (2) After considering the report and making any further investigation the administrator considers appropriate, the administrator may do 1 or more of the following if the administrator believes, on reasonable grounds, that it is appropriate in the circumstances:
- (a) take no further action in relation to the report;
  - (b) counsel the detainee;
  - (c) warn the detainee about committing a disciplinary breach;
  - (d) reprimand the detainee;
  - (e) refer the allegation to—
    - (i) the chief police officer; or
    - (ii) the director of public prosecutions;
  - (f) charge the detainee under section 159 (Disciplinary charge);

- (g) subject to section 161 (Grounds for investigative segregation), direct that the detainee be segregated from other detainees for the purposes of this part;
  - (h) anything else prescribed by regulation.
- (3) A referral under subsection (2) (e) must be in writing and be accompanied by the investigator's report.
- (4) A corrections officer who is also an administrator, or who is or has been an investigator, must not exercise any function as an administrator under this section in relation to any report made by the officer under section 156 or section 157.

## **159 Disciplinary charge**

To charge a detainee with a disciplinary breach, the administrator must give the detainee written notice of the charge (a *charge notice*), including details of the following:

- (a) the disciplinary breach charged;
- (b) a brief statement of the conduct to which the charge applies and when, or the period during which, it happened or is alleged to have happened;
- (c) the option of having the charge dealt with by consent under division 10.3.1 (Disciplinary action—with accused's consent);
- (d) the election available under section 167 (Disciplinary breach admitted by accused) to accept the disciplinary action proposed by the administrator;
- (e) the disciplinary action the administrator believes, on reasonable grounds, would be appropriate if the charge were dealt with under section 168 (Presiding officer's powers—breach admitted by accused).

*Note* If a form is approved under s 228 for a disciplinary charge, the form must be used.

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## **Division 10.2.2      Investigative segregation**

### **160      Chief executive directions—investigative segregation**

- (1) Subject to section 161, the chief executive may direct that a detainee be segregated from other detainees for the purposes of this part.
- (2) To remove any doubt, this section is additional to, and does not limit, the power to direct that a detainee be segregated from other detainees under any of the following:
  - (a) section 156 (Report etc by corrections officer);
  - (b) section 157 (Report etc by investigator);
  - (c) section 158 (Action by administrator).

### **161      Grounds for investigative segregation**

- (1) This section applies to a direction for investigative segregation.
- (2) The direction may be given only if the person giving the direction believes, on reasonable grounds, that segregation of the detainee is necessary or prudent for the purposes of this part.
- (3) Without limiting subsection (2), the direction may be given if the person giving the direction believes, on reasonable grounds, that the opportunity for the detainee to associate with anyone else creates, or is likely to create, a risk of—
  - (a) harm, or threatened harm, to the detainee or anyone else; or
  - (b) the perverting, or attempted perverting, of an investigation, under this part; or
  - (c) undermining security or good order at a correctional centre.

### **162      Notice of investigative segregation**

The person giving a direction for investigative segregation of a detainee must give the detainee prompt notice of the direction, why

it was given, when it takes effect and the provisions for its duration and review under this part.

### **163 Duration of investigative segregation**

- (1) The chief executive must revoke a direction for investigative segregation if the chief executive believes, on reasonable grounds, that the direction is no longer necessary or prudent.
- (2) The chief executive—
  - (a) may review a direction for investigative segregation of a detainee at any time on the chief executive's own initiative or on request by the detainee; and
  - (b) must review the direction before any transfer of the detainee to another correctional centre; and
  - (c) must review the direction at least once every 7 days while it remains in force.
- (3) After reviewing a direction for investigative segregation, the chief executive may—
  - (a) confirm the direction; or
  - (b) make a direction or further direction under section 160 (1); or
  - (c) revoke the direction under subsection (1).
- (4) To remove any doubt, the chief executive may make more than 1 direction under section 160 (1) in relation to a detainee for the same investigation.
- (5) Subject to this section and section 94 (Segregated detainees removed to NSW), a direction, or further direction, for investigative segregation ends at the end of the earlier of the following days:
  - (a) the 7th day after the day the direction is given;



- (b) the day the administrator makes a decision under section 158 (Action by administrator) in relation to the alleged disciplinary breach to which the direction applies (other than a decision to direct investigative segregation of the detainee).

**164 Application for review of investigative segregation directions**

- (1) A detainee may apply to an adjudicator for a review of a direction for investigative segregation of the detainee.
- (2) The application must be made no later than 7 days after the day the person making the direction gives the detainee notice under section 162 of the direction.

*Note* If a form is approved under s 228 for an application under this section, the form must be used.

- (3) Subject to any decision by the adjudicator under section 165, the making of the application does not affect the segregation of the detainee under the direction.

**165 Review of investigative segregation directions**

- (1) On application under section 164, an adjudicator may—
- (a) conduct an inquiry to review the direction for investigative segregation of the detainee; or
- (b) refuse to review the direction.
- (2) Chapter 11 (Disciplinary inquiries) applies to the inquiry, with any changes prescribed by regulation, as if it were an inquiry under that chapter.
- (3) After completing an inquiry under this section, the adjudicator may—
- (a) confirm the direction under review; or
- (b) amend the direction under review; or

- (c) set aside the direction under review; or
  - (d) set aside the direction under review and make a substitute direction that the detainee be segregated from other detainees for the purposes of this part.
- (4) The adjudicator must give the detainee prompt written notice of the adjudicator's decision under this section.
- (5) If the adjudicator refuses to review the direction, the notice must include the reasons for the refusal.

*Note*      Under the *Administrative Decisions (Judicial Review) Act 1989*, a person aggrieved by an administrative decision made under an enactment may apply to the Supreme Court for a review of the decision. Subject to any order of the court, the making of the application does not affect the operation of the decision or prevent its implementation (see that Act, s 16).

## **Part 10.3            Disciplinary action and review**

### **Division 10.3.1      Disciplinary action—with accused's consent**

#### **166            Meaning of *presiding officer*—div 10.3.1**

In this division:

*presiding officer* means a corrections officer to whom the chief executive has given functions of a presiding officer under this division.

#### **167            Disciplinary breach admitted by accused**

- (1) An accused may elect to have a disciplinary charge against the detainee dealt with under this division by giving the administrator a written notice in which the accused—
  - (a) admits the disciplinary breach charged; and
  - (b) accepts the proposed disciplinary action stated in the charge notice.

##### **Example of election**

a signed admission and acceptance on the charge notice

*Note 1* 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).

*Note 2* If a form is approved under s 228 for an election under this section, the form must be used.

- (2) The election must be given to the administrator—
  - (a) no later than the day after the day the administrator gives the accused the charge notice; or

(b) within any extended period allowed under subsection (3).

- (3) For subsection (2) (b), the administrator may extend the period within which the election must be made if the administrator believes, on reasonable grounds, that is appropriate.

*Note* An extension of the time for making an election may be given even though the relevant time has ended (see Legislation Act, s 151C (Power to extend time)).

- (4) The administrator must give the accused written notice of a decision under subsection (3).

### **168 Presiding officer's powers—breach admitted by accused**

- (1) This section applies if the accused elects under section 167 to have a disciplinary charge dealt with under this division.
- (2) A presiding officer may, without further investigation or inquiry, counsel the accused and take disciplinary action against the accused in accordance with division 10.3.5 (Disciplinary action).
- (3) However, the only disciplinary action the presiding officer may take under this section is the disciplinary action stated as the appropriate action in the charge notice.
- (4) The presiding officer must give the accused written notice of a decision made under this section.

## **Division 10.3.2 Internal disciplinary inquiry**

### **169 Meaning of *presiding officer*—div 10.3.2**

In this division:

*presiding officer* means a corrections officer to whom the chief executive has given functions of a presiding officer under this division.

## **170 Disciplinary inquiry into charge**

- (1) This section applies if an accused—
  - (a) is given a charge notice; and
  - (b) does not elect under section 167 to have the charge dealt with under division 10.3.1 (Disciplinary action—with accused's consent).
- (2) A presiding officer must conduct an inquiry into the disciplinary breach charged.
- (3) A corrections officer must not exercise any function of a presiding officer under this division in relation to the disciplinary charge if the officer—
  - (a) made a report under either of the following sections in relation to the alleged disciplinary breach to which the charge relates:
    - (i) section 156 (Report etc by corrections officer);
    - (ii) section 157 (Report etc by investigator); or
  - (b) made the charge under section 158 (Action by administrator).

*Note* Ch 11 (Disciplinary inquiries) applies in relation to an inquiry under this division (see s 190).

## **171 Presiding officer's powers after internal inquiry**

- (1) This section applies if a presiding officer has completed an inquiry under section 170.
- (2) If the presiding officer is satisfied, on the balance of probabilities, that a disciplinary breach charged has been proven, the presiding officer may take disciplinary action against the accused in accordance with division 10.3.5 (Disciplinary action).
- (3) The presiding officer must dismiss the charge—

- (a) if not satisfied, on the balance of probabilities, that the disciplinary breach charged has been proven; or
  - (b) if satisfied, on reasonable grounds, that it would otherwise be appropriate to do so.
- (4) If the presiding officer believes, on reasonable grounds, that it is necessary or desirable to do so, the presiding officer may refer the charge to—
- (a) the chief police officer; or
  - (b) the director of public prosecutions.
- (5) The presiding officer must give the accused prompt written notice of the presiding officer's decision under this section, including—
- (a) a statement of the reasons for the decision; and
  - (b) a statement about the effect of division 10.3.3.
- Note 1* If a form is approved under s 228 for the notice, the form must be used.
- Note 2* For the meaning of a statement of reasons, see the Legislation Act, s 179.
- (6) A referral under subsection (4) must be in writing and be accompanied by a report by the presiding officer.

### **Division 10.3.3 Internal review of inquiry decision**

#### **172 Meaning of *review officer*—div 10.3.3**

In this division:

*review officer* means a corrections officer to whom the chief executive has given functions of a review officer under this division.

### **173 Application for review of inquiry decision**

- (1) An accused may apply to the chief executive for a review of a decision by a presiding officer under section 171 in relation to the accused.

#### **Example of application for review**

a signed application on the presiding officer's notice under section 171

*Note 1* 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).

*Note 2* If a form is approved under s 228 for an application under this section, the form must be used.

- (2) The application must be made no later than 7 days after the day the accused is given notice of the decision under section 171.
- (3) Subject to any decision by a review officer under section 176, the making of the application does not affect the taking of disciplinary action under the decision under review.

### **174 Chief executive to assign review officer**

- (1) On application under section 173, the chief executive must assign a review officer, or review officers, to review the decision to which the application relates.
- (2) A corrections officer must not exercise any function of a review officer under this division in relation to a disciplinary charge if the officer—
  - (a) made a report under either of the following sections in relation to the alleged disciplinary breach to which the charge relates:
    - (i) section 156 (Report etc by corrections officer);
    - (ii) section 157 (Report etc by investigator); or
  - (b) made the charge under section 158 (Action by administrator);  
or

- (c) conducted an inquiry as presiding officer under section 170 (Disciplinary inquiry into charge) in relation to the charge.

### **175 Review of inquiry decision**

A review officer assigned under section 174 to review a decision under section 171 (Presiding officer's powers after internal inquiry) must conduct a further inquiry to review the decision.

*Note* Ch 11 (Disciplinary inquiries) applies in relation to an inquiry under this division (see s 190).

### **176 Review officer's powers after further inquiry**

- (1) After completing a review under section 175, the review officer may—
- (a) confirm the decision under review; or
  - (b) exercise any function of a presiding officer under section 171 in relation to the accused, either by—
    - (i) amending the decision under review; or
    - (ii) setting aside the decision under review and making a decision in substitution for the decision set aside.
- (2) The review officer must give the accused prompt written notice of the review officer's decision under this section, including—
- (a) a statement of the reasons for the decision; and
  - (b) a statement about the effect of division 10.3.4.

*Note 1* If a form is approved under s 228 for the notice, the form must be used.

*Note 2* For the meaning of a statement of reasons, see the Legislation Act, s 179.



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## Division 10.3.4 External review of inquiry decisions

### 177 Appointment of adjudicator

- (1) The Minister may appoint at least 1 adjudicator.

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

- (2) A person may be appointed as an adjudicator only if the person is a magistrate and consents, in writing, to be appointed as an adjudicator.

*Note* The appointment of a magistrate to another position under a law of the Territory requires consultation between the Attorney-General and the Chief Magistrate (see the *Magistrates Court Act 1930*, s 7G (Magistrates not to do other work)).

- (3) The Legislation Act, division 19.3.3 (Appointments—Assembly consultation) does not apply to an appointment of an adjudicator under subsection (1).

### 178 Application for review by adjudicator

- (1) An accused may apply to an adjudicator for a review of a decision under section 176 (Review officer's powers after further inquiry) in relation to the accused.

#### **Example of application for review**

a signed application on the review officer's notice under section 176

*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).

- (2) The application must be made no later than 7 days after the day the accused is given notice of the review officer's decision under section 176.

- (3) Subject to any decision by the adjudicator under section 180, the making of the application does not affect the taking of disciplinary action under the decision under review.

### **179 Review by adjudicator**

- (1) On application under section 178, an adjudicator may—
- (a) conduct an inquiry to review the review officer's decision; or
  - (b) refuse to review the review officer's decision.

*Note* Ch 11 (Disciplinary inquiries) applies in relation to an inquiry under this division (see s 190).

- (2) If the adjudicator refuses to review the review officer's decision, the adjudicator must give the accused prompt written notice of the refusal, including—
- (a) a statement of the reasons for the refusal; and
  - (b) notice that a person aggrieved by the decision may apply for a review of the decision under the *Administrative Decisions (Judicial Review) Act 1989*.

*Note 1* If a form is approved under s 228 for the notice, the form must be used.

*Note 2* For the meaning of a statement of reasons, see the Legislation Act, s 179.

*Note 3* Under the *Administrative Decisions (Judicial Review) Act 1989*, a person aggrieved by an administrative decision made under an enactment may apply to the Supreme Court for a review of the decision. Subject to any order of the Court, the making of the application does not affect the operation of the decision or prevent its implementation (see that Act, s 16).

### **180 Adjudicator's powers after review**

- (1) After completing a review under section 179, the adjudicator may—
- (a) confirm the decision under review; or

- (b) exercise any function of a review officer under section 176 in relation to the accused, either by—
  - (i) amending the decision under review; or
  - (ii) setting aside the decision under review and making a decision in substitution for the decision set aside.
- (2) The adjudicator must give the accused prompt written notice of the adjudicator's decision under this section, including—
  - (a) a statement of the reasons for the decision; and
  - (b) notice that a person aggrieved by the decision may apply for a review of the decision under the *Administrative Decisions (Judicial Review) Act 1989*.

*Note 1* If a form is approved under s 228 for the notice, the form must be used.

*Note 2* For the meaning of a statement of reasons, see the Legislation Act, s 179.

*Note 3* Under the *Administrative Decisions (Judicial Review) Act 1989*, a person aggrieved by an administrative decision made under an enactment may apply to the Supreme Court for a review of the decision. Subject to any order of the Court, the making of the application does not affect the operation of the decision or prevent its implementation (see that Act, s 16).

## **Division 10.3.5      Disciplinary action**

### **181      Application—div 10.3.5**

This division applies to a detainee against whom disciplinary action may be taken under this chapter.

**182 Meaning of *relevant presiding officer*—div 10.3.5**

In this division:

*relevant presiding officer* means any of the following:

- (a) a presiding officer under division 10.3.1 (Disciplinary action—  
with accused’s consent);
- (b) a presiding officer under division 10.3.2 (Internal disciplinary  
inquiry);
- (c) a review officer under division 10.3.3 (Internal review of  
inquiry decision);
- (d) an adjudicator under division 10.3.4 (External review of  
inquiry decisions).

**183 Disciplinary action by relevant presiding officer**

- (1) As disciplinary action against a detainee, a relevant presiding officer  
may do 1 or more of the following (each of which is *disciplinary  
action*):
  - (a) warn the detainee about committing a disciplinary breach;
  - (b) reprimand the detainee;
  - (c) impose an administrative penalty, or a combination of  
administrative penalties, on the detainee;
  - (d) give the detainee a direction under section 185 (Reparation).
- (2) The relevant presiding officer must ensure that the disciplinary  
action against a detainee for a disciplinary breach is proportionate to  
the breach.
- (3) Without limiting section 14 (Corrections policies and operating  
procedures), the chief executive must make a corrections policy and  
operating procedure providing for matters to be considered when

deciding whether disciplinary action is proportionate to a disciplinary breach.

**184 Administrative penalties**

Each of the following is an *administrative penalty*:

- (a) a financial penalty not exceeding \$500;
- (b) a withdrawal of privileges for not longer than 180 days;
- (c) a requirement to perform extra work;
- (d) separate confinement for 1 of the following:
  - (i) 3 days;
  - (ii) 7 days;
  - (iii) 28 days;
- (e) anything declared by regulation to be an administrative penalty.

**185 Reparation**

- (1) This section applies if a relevant presiding officer finds that—
  - (a) a charge for a disciplinary breach by a detainee is proven; and
  - (b) a person (the *injured person*) suffered loss as a direct result of the breach.
- (2) The relevant presiding officer may direct the detainee to make reparation for the injured person's loss by payment of an amount or otherwise.
- (3) An amount directed to be paid must not exceed—
  - (a) \$100; or
  - (b) if a higher amount is prescribed by regulation—the prescribed amount.

- (4) An amount payable under a direction is payable out of any money held by the chief executive for the detainee.
- (5) In this section:
  - loss*—
  - (a) see the Criminal Code, section 300; and
  - (b) includes out-of-pocket or other expense incurred.

**186 Maximum administrative penalties**

- (1) This section applies if—
  - (a) a detainee is charged with 2 or more disciplinary breaches; and
  - (b) the charges arise out of the same conduct.
- (2) The total of the administrative penalties imposed for the breaches must not, for any particular kind of penalty, be more than the maximum penalty that may be imposed for any 1 of those breaches.

**187 Separate confinement conditions**

- (1) This section applies if separate confinement is imposed on a detainee as an administrative penalty for a disciplinary breach.
- (2) The chief executive must ensure that—
  - (a) a doctor appointed under section 21 (Doctors—health service appointments) examines the detainee as soon as practicable after the separate confinement starts and ends; and
  - (b) a corrections officer monitors the detainee’s condition in separate confinement at least daily.

**188 Privileges and entitlements—impact of discipline**

To remove any doubt—

- (a) anything expressed in chapter 6 (Living conditions at correctional centres) to be an entitlement for this chapter is not affected by anything that happens under this chapter, including—
  - (i) investigative segregation; and
  - (ii) disciplinary action; and
- (b) anything else mentioned in chapter 6 is, for this chapter, a privilege.

**189 Record of disciplinary action**

- (1) The chief executive must keep a record of any disciplinary action taken against a detainee.
- (2) The record must include details of the following:
  - (a) the detainee's name;
  - (b) the disciplinary breach;
  - (c) a brief statement of the conduct to which the disciplinary breach applies and when, or the period during which, it happened;
  - (d) the disciplinary action taken against the detainee;
  - (e) anything else prescribed by regulation.
- (3) The record must also include details of any finding by a relevant presiding officer that a disciplinary breach is proven against the detainee if the relevant presiding officer decides not to take disciplinary action against the detainee.
- (4) The record must be available for inspection under chapter 7 (Inspection of correctional centres).

## **Chapter 11 Disciplinary inquiries**

### **Part 11.1 Conduct of disciplinary inquiries—general**

#### **190 Application—ch 11**

This chapter applies to an inquiry under any of the following:

- (a) division 10.3.2 (Internal disciplinary inquiry);
- (b) division 10.3.3 (Internal review of inquiry decision);
- (c) division 10.3.4 (External review of inquiry decisions).

#### **191 Meaning of *presiding officer*—ch 11**

In this chapter:

*presiding officer*, for an inquiry, means the relevant presiding officer under division 10.3.5 (Disciplinary action) for the inquiry.



## **Part 11.2                      Disciplinary inquiry procedures**

### **192                      Nature of disciplinary inquiries**

- (1) To remove any doubt, an inquiry is an administrative process.
- (2) At an inquiry—
  - (a) the rules of natural justice apply; and
  - (b) the laws of evidence do not apply; and
  - (c) evidence must not be given on oath or by affidavit; and
  - (d) the question whether a detainee has committed a disciplinary breach must be decided on the balance of probabilities.

### **193                      Application of Criminal Code, ch 7**

To remove any doubt, an inquiry is not a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note*                      That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to an inquiry.

### **194                      Notice of disciplinary inquiry etc**

- (1) The presiding officer for an inquiry in relation to an accused must give the accused written notice of the inquiry.
- (2) The notice must include the following:
  - (a) a statement about where and when the inquiry is to start;
  - (b) details of the disciplinary charge or disciplinary action to which the inquiry relates;
  - (c) the closing date for the accused to give the presiding officer submissions to the inquiry;

- (d) a statement about the effect of section 192 (Nature of disciplinary inquiries);
  - (e) a statement about the effect of subsections (3) and (4);
  - (f) a statement to the effect that the presiding officer may hold a hearing for the inquiry in accordance with part 11.3 (Disciplinary hearing procedures).
- (3) The accused may make submissions to the presiding officer for the inquiry in any form acceptable to the presiding officer.

**Example of acceptable form**

an audio recording or a document written for a detainee

*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) The presiding officer must consider any submission given to the presiding officer by the accused before the closing date for submissions stated in the notice of the inquiry given to the accused.

**195 Conduct of disciplinary inquiries**

- (1) An inquiry must be conducted with as little formality and technicality, and as quickly as the requirements of this Act and a proper consideration of the charge allow.
- (2) The presiding officer at an inquiry may hold a hearing for the inquiry.
- (3) A hearing for an inquiry must be held in accordance with part 11.3.
- (4) Proceedings at an inquiry are not open to the public, unless the presiding officer decides otherwise in a particular case.
- (5) A decision of the presiding officer at an inquiry is not invalid only because of any informality or lack of form.

**196 Presiding officer may require official reports**

- (1) For an inquiry, the presiding officer may, by written notice given to any of the following, require the person to give the presiding officer a written report about the accused:
  - (a) the chief executive;
  - (b) if the accused has been detained at a NSW correctional centre—the commissioner of corrective services under the *Crimes (Administration of Sentences) Act 1999* (NSW);
  - (c) the director of public prosecutions;
  - (d) a corrections officer;
  - (e) a public servant.
- (2) The person given the notice must comply with it.

**197 Presiding officer may require information and documents**

- (1) For an inquiry, the presiding officer may, by written notice given to a person, require the person—
  - (a) to provide stated information to the presiding officer relevant to the inquiry; or
  - (b) to produce to the presiding officer a stated document or thing relevant to the inquiry.
- (2) This section does not require a person to give information, or produce a document or other thing, to the presiding officer if the Minister certifies in writing that giving the information, or producing the document or other thing—
  - (a) may endanger a detainee or anyone else; or

(b) is contrary to the public interest.

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

**198 Possession of inquiry documents etc**

The presiding officer may have possession of a document or other thing produced to the presiding officer for an inquiry for as long as the presiding officer considers necessary for the inquiry.

**199 Record of inquiry**

The presiding officer for an inquiry must keep a written record of proceedings at the inquiry.

## **Part 11.3                      Disciplinary hearing procedures**

### **200                      Notice of disciplinary hearing**

- (1) The presiding officer for an inquiry must give written notice of a hearing for the inquiry to each of the following:
  - (a) the accused to whom the inquiry relates;
  - (b) the chief executive.
- (2) The notice must include the following:
  - (a) a statement about where and when the hearing is to be held;
  - (b) a statement about the accused's entitlements under section 201 and section 202.
- (3) To remove any doubt, the hearing may be held at the correctional centre where the accused is detained.

### **201                      Appearance at disciplinary hearing**

- (1) The accused is entitled to be present at a hearing for an inquiry in relation to the accused.
- (2) For the hearing, the presiding officer may, by written notice given to the accused or anyone else, require the person to appear before the presiding officer, at a stated time and place, to do either or both of the following:
  - (a) answer questions;
  - (b) produce a stated document or other thing relevant to the inquiry.
- (3) A person is taken to have complied with a notice under subsection (2) (b) if the person gives the document or thing to the

presiding officer before the time stated in the notice for its production.

- (4) The presiding officer at a hearing for an inquiry may require the accused, or a witness, appearing before the presiding officer to do 1 or more of the following:
  - (a) answer a question relevant to the inquiry;
  - (b) produce a document or other thing relevant to the inquiry.
- (5) The presiding officer at the hearing may disallow a question put to a person if the presiding member considers the question—
  - (a) is unfair, unduly prejudicial or vexatious; or
  - (b) involves an abuse of the inquiry process.

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

- (6) The presiding officer may allow a corrections officer or anyone else to be present, and to be heard, at a disciplinary hearing.

## **202 Rights of accused at disciplinary hearing**

- (1) An accused who appears at a hearing for an inquiry in relation to the accused—
  - (a) is entitled to be heard, to examine and cross-examine witnesses, and to make submissions for the inquiry; and
  - (b) is not entitled to be represented by a lawyer or anyone else, without the presiding officer's consent.
- (2) In deciding whether to grant leave for legal representation, the presiding officer must have regard to the following:
  - (a) the seriousness of the disciplinary breach charged;
  - (b) the administrative penalty likely to be imposed for the disciplinary breach charged;

- (c) the likely procedural complexities;
- (d) the accused's capacity for selfrepresentation;
- (e) the need for a fair and prompt resolution of the charge.

**Example—par (c)**

the extent of cross-examination that might be required

*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) However, the presiding officer may, by written order, exclude the accused from a hearing for the inquiry if the accused—
  - (a) unreasonably interrupts, interferes with or obstructs the hearing; or
  - (b) contravenes a reasonable direction by the presiding officer about the conduct of the hearing.
- (4) If the accused fails to attend a hearing for the inquiry, the presiding officer may conduct the hearing, and make a decision on the charge, in the accused's absence.

**203 Appearance at disciplinary hearing—audiovisual or audio link**

- (1) This section applies if, in relation to a hearing for an inquiry, or part of the hearing, the presiding officer has given a direction under either of the following sections of the *Evidence (Miscellaneous Provisions) Act 1991*:
  - (a) section 20 (Territory courts may take evidence and submissions from outside ACT);
  - (b) section 32 (Use of link in proceedings).
- (2) A person may appear and take part in the hearing in accordance with the direction, if the person—

- (a) is required or entitled to appear personally, whether as the accused or as a witness; or
  - (b) is entitled to appear for someone else.
- (3) A person who appears at the hearing under this section is taken to be before the presiding officer.



## **Chapter 12      Full-time detainees—leave**

### **Part 12.1      Local leave**

#### **204      Local leave directions**

- (1) The chief executive may direct that a full-time detainee be taken from a correctional centre to any place in the ACT for any purpose the chief executive considers appropriate.

**Example**

a direction that a detainee be taken to a place to assist police or a criminal justice entity in relation to the administration of justice

*Note 1* 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).

*Note 2* Power given under an Act to make a statutory instrument (including a direction) includes power to amend or revoke the instrument (see Legislation Act, s 46 (1)).

- (2) The direction is subject to the following conditions:
- (a) any condition prescribed by regulation;
  - (b) any other condition, consistent with the conditions (if any) prescribed by regulation, that—
    - (i) the chief executive believes, on reasonable grounds, is necessary and reasonable; and
    - (ii) is stated in the permit.

**Example of condition stated in direction**

a condition that an escort officer escorts the detainee

## 205 Local leave permits

- (1) The chief executive may give a full-time detainee a written permit (a *local leave permit*) to be absent from a correctional centre for any purpose the chief executive considers appropriate.

### Examples of purposes

- 1 to attend a health or rehabilitation service
- 2 to take part in work or work-related activities
- 3 for compassionate reasons

*Note 1* 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).

*Note 2* If a form is approved under s 228 for this provision, the form must be used.

*Note 3* Power given under an Act to make a statutory instrument (including a direction) includes power to amend or revoke the instrument (see Legislation Act, s 46 (1)).

- (2) The permit must include the following:
- (a) the purpose for which the leave is granted;
  - (b) the period, not longer than 7 days, for which leave is granted.
- (3) The permit is subject to the following conditions:
- (a) any condition prescribed by regulation;
  - (b) any other condition, consistent with the conditions (if any) prescribed by regulation, that—
    - (i) the chief executive believes, on reasonable grounds, is necessary and reasonable; and
    - (ii) is stated in the permit.

### Example of condition stated in permit

a condition prohibiting association with a particular person or being near a particular place

## **Part 12.2 Interstate leave**

### **Division 12.2.1 General**

#### **206 Definitions—pt 12.2**

In this part:

*corresponding chief executive*, of a participating State, means the person responsible for the administration of correctional centres (however described) for full-time detention in the participating State.

*corresponding leave law* means a law of a State or another Territory declared to be a corresponding leave law under section 207.

*escape*, in relation to an interstate detainee, includes fail to return to lawful custody at the end of the period to which the detainee's interstate leave permit applies.

*interstate detainee* means a person to whom an interstate leave permit under a corresponding leave law applies.

*participating State* means a State or another Territory where a corresponding leave law is in force.

#### **207 Declaration of corresponding leave laws**

- (1) The Minister may declare that a law of a State or another Territory is a corresponding leave law.
- (2) The Minister may make the declaration only if satisfied that the law substantially corresponds to this part.
- (3) A declaration under this section is a notifiable instrument.

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

## Division 12.2.2 ACT permits for interstate leave

### 208 Interstate leave permits

- (1) The chief executive may, by written notice (an *interstate leave permit*) given to a full-time detainee, give the detainee leave to travel to and from, and remain in, a participating State.
- (2) An interstate leave permit must include the following details:
  - (a) the State or Territory to which the permit applies;
  - (b) the purpose for which the leave is granted;
  - (c) the period, not longer than 7 days, for which leave is granted.

*Note 1* If a form is approved under s 228 for this provision, the form must be used.

*Note 2* Power given under an Act to make a statutory instrument (including an interstate leave permit) includes power to amend or revoke the instrument (see Legislation Act, s 46 (1)).

- (3) An interstate leave permit may be issued—
  - (a) for a full-time detainee with a high security classification—only if the leave is to enable the detainee to receive a health service or for a compassionate reason; or
  - (b) in any other case—for any purpose the chief executive believes, on reasonable grounds, is appropriate.
- (4) An interstate leave permit is subject to the following conditions:
  - (a) any condition prescribed by regulation;
  - (b) any other condition, consistent with the conditions (if any) prescribed by regulation, that—
    - (i) the chief executive believes, on reasonable grounds, is necessary and reasonable; and
    - (ii) is stated in the permit.

**Examples of conditions stated in interstate leave permits**

- 1 a condition that an escort officer stated in the permit escort the detainee
- 2 a condition prohibiting association with a particular person or being near a particular place
- 3 a condition that an indigenous detainee travelling interstate to mark the birth or death of a relative be escorted by an indigenous elder or relative

*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).

**209 Effect of ACT permit for interstate leave**

- (1) An interstate leave permit for a full-time detainee authorises the detainee to be absent from a correctional centre in accordance with the permit—
  - (a) unescorted; or
  - (b) if the permit is subject to a condition that an escort officer must escort the detainee—while under escort by the escort officer.
- (2) If an interstate leave permit is subject to a condition that the full-time detainee be escorted by an escort officer, the permit authorises the escort officer to escort the detainee in accordance with the permit—
  - (a) to and within the participating State stated in the permit (whether or not through any other jurisdiction); and
  - (b) back to the correctional centre.

## **210 Notice to participating States**

The chief executive must give written notice of an interstate leave permit given to a full-time detainee, and the period of the permit, to each of the following:

- (a) the corresponding chief executive of the participating State to which the permit applies;
- (b) the chief of police (however described) of the participating State to which the permit applies;
- (c) the chief of police (however described) of any other State or Territory through which the detainee may travel under the permit.

## **211 Powers of escort officers**

- (1) An escort officer escorting a full-time detainee under an interstate leave permit may, to keep custody of the detainee under the permit or to arrest the detainee if the detainee has escaped—
  - (a) give the detainee any direction that the officer believes, on reasonable grounds, is necessary and reasonable; and
  - (b) use force in accordance with part 9.7 (Use of force).
- (2) An escort officer escorting a full-time detainee under an interstate leave permit may conduct a scanning search, frisk search or ordinary search of the detainee if the officer suspects, on reasonable grounds, the detainee may be carrying a prohibited thing.
- (3) Part 9.4 (Searches) and part 9.5 (Seizing property) apply, with any necessary changes and any changes prescribed by regulation, in relation to a search under this section.

## **212 Liability for damage etc**

- (1) The Territory is liable for any damage or loss sustained by anyone in a participating State that is caused by the conduct of a full-time

detainee or an escort officer while in the participating State under an interstate leave permit.

- (2) This section does not affect any right the Territory may have against the detainee or escort officer for the damage or loss.

### **Division 12.2.3 Interstate leave under corresponding leave laws**

#### **213 Effect in ACT of interstate leave permit under corresponding leave law**

- (1) This section applies to a person (an *interstate escort officer*) who is authorised under an interstate leave permit issued under a corresponding leave law to escort an interstate detainee to or from, or in, the ACT.
- (2) The interstate escort officer is authorised, in the ACT, to escort the interstate detainee in accordance with the interstate leave permit.

#### **214 Powers of interstate escort officers**

- (1) This section applies if an interstate escort officer uses force, a weapon, or a means of restraint, in the ACT for—
  - (a) keeping custody of an interstate detainee under an interstate leave permit; or
  - (b) arresting an interstate detainee who has escaped.
- (2) The use of force, weapon or means of restraint is lawful in the ACT if it would have been lawful in the participating State where the interstate permit was issued.

#### **215 Escape of interstate detainee**

- (1) This section applies to an interstate detainee in the ACT under an interstate leave permit issued under a corresponding leave law.

- (2) If the interstate detainee escapes from lawful custody, the detainee may be arrested without warrant by—
  - (a) an interstate escort officer for the detainee; or
  - (b) a police officer.
- (3) A police officer who arrests the detainee may return the detainee to an interstate escort officer for the detainee.

*Note* A police officer may also arrest without a warrant a person who has escaped from lawful custody or who is unlawfully at large (see *Crimes Act 1900*, s 212 and s 214).

## **216 Return of escaped interstate detainee**

- (1) This section applies if, in the ACT, an interstate detainee attempts to escape or is arrested after an escape.
- (2) The interstate detainee may be taken before a magistrate.
- (3) Despite the terms of the interstate detainee's interstate leave permit, the magistrate may by warrant (a *return warrant*)—
  - (a) order the return of the detainee to the participating State where the permit was issued; and
  - (b) order the interstate detainee to be delivered into the custody of a police officer or interstate escort officer for that purpose.
- (4) If a return warrant is issued for the interstate detainee, the detainee may be kept in detention until the earlier of the following events:
  - (a) the detainee is delivered into the custody of a police officer or interstate escort officer in accordance with the warrant;
  - (b) the end of 14 days after the day the warrant was issued.



- (5) The return warrant ends if the interstate detainee is not delivered into the custody of a police officer or interstate escort officer, in accordance with the warrant, before the end of 14 days after the day the warrant is issued.

## Chapter 13 Miscellaneous

### 217 Lawful temporary absence from correctional centre

- (1) This section applies to a detainee who is absent from a correctional centre under any of the following:
  - (a) a direction by the chief executive, including a direction under—
    - (i) section 54 (Transfers to health facilities);
    - (ii) section 204 (Local leave directions);
  - (b) a local leave permit;
  - (c) an interstate leave permit;
  - (d) any other authority (however described) prescribed by regulation.
- (2) To remove any doubt, the detainee is—
  - (a) taken to be in the chief executive's custody; and
  - (b) if under escort by an escort officer—also taken to be in the escort officer's custody.

### 218 Detainee's work—no employment contract etc

- (1) To remove any doubt, any work by a detainee under this Act, whether at a correctional centre or elsewhere, is taken not to create a contract of employment or a contract for services.
- (2) In particular, a contract of employment is taken not to exist between the following in relation to work by a detainee:
  - (a) the detainee and the Territory;

- (b) the detainee and a person involved in the work;
- (c) the Territory and a person involved in the work.

### **219 Detainee's work—occupational health and safety**

- (1) The chief executive must ensure, as far as practicable, that the conditions in relation to work by a detainee, whether at a correctional centre or elsewhere, comply with requirements under the *Occupational Health and Safety Act 1989* in relation to work by employees.
- (2) In particular, the chief executive must ensure that arrangements in relation to a detainee's work take account, as far as practicable, of the need—
  - (a) to secure the health, safety and welfare of the detainee; and
  - (b) to protect people at or near the workplace from risks to health or safety arising out of the activities of the detainee.
- (3) A regulation may provide for the application of the *Occupational Health and Safety Act 1989* in relation to work by a detainee, including for changes to that Act in its application in relation to the work.

### **220 Personal injury management—detainees etc**

- (1) This section applies if—
  - (a) a detainee suffers injury that arises out of, or in the course of, the detainee's detention; or
  - (b) an offender, who is directed to do community service work under the *Crimes (Sentence Administration) Act 2005*, section 91, suffers injury that arises out of, or in the course of, the work.

- (2) A regulation may make provision in relation to the injury, including provision in relation to the following:
  - (a) injury management;
  - (b) vocational rehabilitation;
  - (c) compensation for a permanent injury;
  - (d) death benefits.
- (3) In this section:

*injury* includes—

  - (a) disease; and
  - (b) aggravation, acceleration and recurrence of an injury or disease.

**221      Random testing of detainees—statistical purposes**

- (1) The chief executive may direct a number of randomly selected detainees at a correctional centre to provide test samples for detecting alcohol or drug abuse.
- (2) The chief executive must ensure that—
  - (a) no record is made that identifies the donor of a test sample; and
  - (b) the results of any tests conducted on the test samples are used only for statistical purposes.
- (3) In this section:

*random selection* means selection by a computer programmed to select names randomly from the register of detainees.

**222 Confidentiality**

- (1) In this section:

***corresponding corrections law*** means a law of a State or another Territory declared to be a corresponding corrections law under section 225.

***court*** includes a tribunal.

*Note* A ***tribunal*** includes any entity authorised to hear, receive and examine evidence (see Legislation Act, dict, pt 1).

***divulge*** includes communicate.

***person to whom this section applies*** means a person who—

- (a) exercises, or has exercised, a function under this Act; or
- (b) is, or has been, otherwise involved in the administration of this Act.

***produce*** includes allow access to.

***protected information*** means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of—

- (a) the exercise of a function under this Act by the person or someone else; or
- (b) the involvement of the person, or someone else, in the administration of this Act.

- (2) A person to whom this section applies commits an offence—

- (a) if the person—
  - (i) makes a record of protected information about someone else; and
  - (ii) is reckless about whether the information is protected information about someone else; or

- (b) if the person does something that divulges protected information about someone else and is reckless about whether—
  - (i) the information is protected information about someone else; and
  - (ii) doing the thing would result in the information being divulged to someone else.

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

- (3) Subsection (2) does not apply if the record is made, or the information is divulged, by the person as follows:
  - (a) under this Act or another territory law;
  - (b) in relation to the exercise of a function under this Act or another territory law;
  - (c) for the *Crimes (Sentencing) Act 2005*, section 136 (Information exchanges between criminal justice entities);
  - (d) to a person exercising a function under, or otherwise involved in the administration of, a corresponding corrections law;
  - (e) to a law enforcement agency;  
*Note* **Law enforcement agency** is defined in the dictionary.
  - (f) to an entity prescribed by regulation;
  - (g) otherwise in relation to the administration of this Act or another territory law.
- (4) Subsection (2) does not apply to the divulging of protected information about someone—
  - (a) with the person's consent; or
  - (b) if authorised by the chief executive under subsection (5); or

- (c) if the information only tells someone of the place where a detainee is held in detention; or
  - (d) if the information is disclosed under a regulation.
- (5) The chief executive may, in writing, authorise the divulging of protected information about a person if the chief executive believes, on reasonable grounds, that divulging the information is—
- (a) necessary to protect someone whose life or safety is in danger; or
  - (b) otherwise in the public interest.

## **223 Protection from liability**

- (1) This section applies to a person who—
- (a) exercises, or has exercised, a function under this Act; or
  - (b) is, or has been, otherwise involved in the administration of this Act.
- (2) The person does not incur civil liability for an act or omission done honestly and without recklessness for this Act.

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

- (3) Any civil liability that would, apart from this section, attach to the person attaches instead to the Territory.

## **224 Corrections dogs**

A regulation may make provision in relation to the use of corrections dogs.

### **Examples of provision made by regulation**

- 1 the training and approval of dogs for exercising functions under this Act

2 approvals for corrections officers to use corrections dogs

*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).

## **225 Declaration of corresponding corrections law**

- (1) The Minister may declare that a law of a State or another Territory is a corresponding corrections law.
- (2) The Minister may make the declaration only if satisfied that the law substantially corresponds to this Act or a part of this Act.
- (3) A declaration is a notifiable instrument.

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

## **226 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 a detainee, 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 did, or did not, occupy a position under this Act;
  - (b) that a stated person was, or was not, a detainee;
  - (c) that a stated instrument under this Act was, or was not, in force;
  - (d) that a stated disciplinary breach by a stated detainee was, or was not, admitted by the detainee or found proven at an inquiry for chapter 10 (Discipline);
  - (e) 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 appointed under subsection (8), 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, an instrument mentioned in subsection (2) (c), or certificate mentioned in subsection (5), 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 instrument or certificate on the person concerned.
- (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.

**227      Determination of fees**

- (1) The Minister may determine fees for this Act.

*Note*      The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

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

**228      Approved forms**

- (1) The Minister may approve forms for this Act (other than forms for use in or in relation to a court).

- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

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

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

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

**229      Regulation-making power**

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

- (2) In particular, a regulation may deal with any of the following:

- (a) the administration of correctional centres;
- (b) the detention of people in police and court cells;
- (c) the escorting of detainees;
- (d) living conditions at correctional centres, including the treatment of detainees;
- (e) the inspection of correctional centres and investigation of complaints by detainees;

- (f) the admission of detainees to correctional centres;
  - (g) the management and security of correctional centres, particularly in relation to any of the following:
    - (i) the assessment of risks and measures to contain risks;
    - (ii) the classification and management of detainees;
    - (iii) work or activities by detainees;
    - (iv) correctional centre routine;
    - (v) detainees' money or property;
    - (vi) communications by detainees with other people, whether by phone or mail or any other means;
    - (vii) the movement or segregation of detainees;
    - (viii) requirements for the wearing of uniforms by detainees;
    - (ix) searches of people or property and the seizure of property;
    - (x) alcohol or drug testing;
    - (xi) the use of force;
    - (xii) the analysis of things seized under this Act;
    - (xiii) access to correctional centres;
    - (xiv) good order and discipline;
    - (xv) release procedures;
  - (h) leave for detainees to be absent from correctional centres.
- (3) For chapter 10 (Discipline), a detainee's entitlements in relation to chapter 6 (Living conditions at correctional centres) include anything expressed to be an entitlement in a regulation made for a provision of chapter 6.

- (4) A regulation is taken to be consistent with this Act to the extent that it is capable of operating concurrently with this Act.
- (5) A regulation may apply, adopt or incorporate a law of another jurisdiction or an instrument, or a provision of a law of another jurisdiction or instrument, as in force from time to time.

*Note 1* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disappplied (see s 47 (7)).

*Note 2* A notifiable instrument must be notified under the Legislation Act.

- (6) A regulation may create offences and fix maximum penalties of not more than 20 penalty units for the offences.

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

## **230 Legislation amended—sch 1**

This Act amends the legislation mentioned in schedule 1.

## Chapter 50 Transitional

### 500 Meaning of *commencement day*—ch 50

In this chapter:

*commencement day* means the day this chapter commences.

### 501 Application of Act to transitional detainees

- (1) To remove any doubt, this Act applies to a person who is a detainee because of any of the following provisions of the *Crimes (Sentence Administration) Act 2005*:
  - (a) section 330 (Full-time imprisonment—sentenced offenders);
  - (b) section 331 (Full-time imprisonment—remandees);
  - (c) section 331A (Full-time imprisonment—other detainees).
- (2) When this section expires, the following note also expires:
  - section 6, note 2.
- (3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (4) This section expires on the expiry of the *Crimes (Sentence Administration) Act 2005*, chapter 16 (Transitional—general).

### 502 Application of Act to transitional interstate leave permits

- (1) A permit in force immediately before the commencement day under the Prisoners Interstate Leave Act, section 6 (Grants of interstate leave of absence permits) is taken, on and after the commencement day, to be an interstate leave permit under this Act.
- (2) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

(3) This section expires on the expiry of the *Crimes (Sentence Administration) Act 2005*, chapter 16 (Transitional—general).

(4) In this section:

*Prisoners Interstate Leave Act* means the *Prisoners Interstate Leave Act 1997* (repealed) as applied by the *Crimes (Sentence Administration) Act 2005*, section 605 (Old custody law continues).

### 503 Application of Act to certain transitional remandees

(1) The removal of a detainee from a remand centre under the Remand Centres Act, section 14 (Removal of detainee to hospital) before the commencement day is, for any period for which the detainee remains removed from the remand centre on or after the commencement day, taken to be a transfer directed under this Act, section 54 (5) (Transfers to health facilities).

(2) A pending complaint under the Remand Centres Act, section 25 (Complaints by detainees) is taken, on and after the commencement day, to be a complaint made under this Act, section 59 (Complaints to official visitors).

(3) For subsection (2), a complaint is *pending* if an official visitor has not, before the commencement day, completed an inquiry and made any recommendation or report in relation to the complaint under the Remand Centres Act, section 25.

(4) A release in force immediately before the commencement day under the Remand Centres Act, section 28 (Temporary release of detainees within ACT) is taken, for any period of the release on or after the commencement day, to be a local leave permit under this Act.

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

(6) This section expires 2 years after the commencement day.

- (7) In this section:

*Remand Centres Act* means the *Remand Centres Act 1976* (repealed) as applied by the *Crimes (Sentence Administration) Act 2005*, section 605 (Old custody law continues).

**504 Transitional arrangements with NSW—Rehabilitation of Offenders (Interim) Act, s 94**

- (1) This section applies to an arrangement in force immediately before the commencement day under the Rehabilitation of Offenders (Interim) Act, section 94 (Chief Minister may make arrangements with NSW).
- (2) The arrangement is taken, on and after the commencement day, to be an arrangement under this Act, section 25 (Correctional centres—arrangements with NSW).
- (3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (4) This section expires 2 years after the commencement day.
- (5) In this section:

*Rehabilitation of Offenders (Interim) Act* means the *Rehabilitation of Offenders (Interim) Act 2001* (repealed) as applied by the *Crimes (Sentence Administration) Act 2005*, section 605 (Old custody law continues).

**505 Construction of outdated references**

- (1) In any Act, instrument made under an Act or a 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 a 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 a 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 corresponding thing under this Act, if the context allows and if otherwise appropriate.
- (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 10 years after the commencement day.
- (6) 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).

*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).

**506 Crimes (Sentence Administration) Act 2005, ch 17  
(Transitional—interim custody arrangements)—definition  
of Corrections Management Act 2007**

- (1) This section applies to the *Crimes (Sentence Administration) Act 2005*, section 603 (Definitions—ch 17), definition of *Corrections Management Act 2007*, (the *interim definition*).
- (2) The interim definition applies to this Act.
- (3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (4) This section expires 2 years after the commencement day.

**507 Transitional regulations**

- (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 *Sentencing Legislation Amendment Act 2006* or the *Crimes (Sentence Administration) 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.
- (4) This section expires 2 years after the commencement day.

## Schedule 1 Amendments of other legislation

### Part 1.1 Crimes Act 1900

[1.1] Dictionary, definition of *corrections officer*  
*omit*

### Part 1.2 Crimes (Sentencing) Act 2005

[1.2] Sections 41 and 42  
*substitute*

#### 40A Pre-sentence report matters

For this part, each of the following is a *pre-sentence report matter* in relation to the offender:

- (a) the offender's age;
- (b) the offender's social history and background (including cultural background);
- (c) the offender's medical and psychiatric history;
- (d) the offender's educational background;
- (e) the offender's employment history;
- (f) the extent to which the offender is complying, or has complied, with any sentence;
- (g) the offender's financial circumstances;
- (h) any special needs of the offender;

- (i) any courses, programs, treatment, therapy or other assistance that is available to the offender and from which the offender may benefit;
- (j) any risk assessments made of the likelihood that the offender will commit further offences or of things (including circumstances) that may make the offender more likely to commit further offences;
- (k) the opinion of the assessor preparing a pre-sentence report for the offender in relation to an offence, and the basis for the opinion, about the following:
  - (i) the offender's attitude to the offence;
  - (ii) the need to protect victims of the offence from violence or harassment by the offender;
  - (iii) anything that may make the offender more likely to commit further offences;

**Examples—par (iii)**

- 1 dependence on alcohol or a controlled drug
- 2 a gambling addiction
- 3 association with particular people

*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).

- (iv) the likelihood that the offender may commit further offences;
- (v) whether it would be appropriate to refer the offender for restorative justice under the *Crimes (Restorative Justice) Act 2004*.

## **41 Pre-sentence reports—order**

- (1) Before sentencing the offender, a court may—

(a) order the chief executive to prepare a report (a *pre-sentence report*) for the offender; and

(b) adjourn the proceeding for the report to be prepared.

*Note* If a form is approved under the *Court Procedures Act 2004* for an order under this section, the form must be used (see that Act, s 8 (2)).

(2) However, the court must order the chief executive to prepare a pre-sentence report before sentencing the offender to serve all or any part of a sentence by—

(a) periodic detention; or

(b) community service work under a good behaviour order; or

(c) undertaking a rehabilitation program under a good behaviour order.

(3) The court order for the preparation of a pre-sentence report may state 1 or more pre-sentence report matters, or any other matter, that the report must address.

(4) Subsection (2) (c) does not apply if relevant sentencing information, under section 97 (Rehabilitation programs—suitability), is already before the court.

(5) The chief executive must arrange for an assessor to prepare a pre-sentence report ordered by the court.

(6) In this part:

*assessor* means a public servant whose functions include preparing pre-sentence reports.

## 42 Pre-sentence reports by assessors

(1) A pre-sentence report must address—

(a) each pre-sentence report matter, or any other matter, stated in the court order for the report; and

- (b) any other pre-sentence report matter, or any other matter, that, on investigation, appears to the assessor to be relevant.
- (2) If a court order directs that a pre-sentence report deal with an offender's suitability for a deferred sentence, the report must also—
- (a) address the matters mentioned in section 116 (1) (Deferred sentence orders—eligibility); and
  - (b) include the assessor's recommendation about—
    - (i) the offender's suitability for a deferred sentence; and
    - (ii) any condition that might be included in a deferred sentence order.
- (3) If a court order directs that a pre-sentence report deal with an offender's suitability for serving all or any part of a sentence by periodic detention, the report must also—
- (a) address the matters mentioned in section 79 (Periodic detention—pre-sentence report matters); and
  - (b) include the assessor's recommendation about—
    - (i) the offender's suitability for serving all or any part of a sentence by periodic detention; and
    - (ii) any condition that might be appropriate for the offender's periodic detention.
- (4) If a court order directs that a pre-sentence report deal with an offender's suitability for serving all, or any part, of a sentence by community service work under a good behaviour order, the report must also—
- (a) address the matters mentioned in section 90 (Community service—pre-sentence report matters); and
  - (b) include the assessor's recommendation about—

- (i) the offender's suitability for serving all or any part of a sentence by community service work under a good behaviour order; and
  - (ii) any condition that might be appropriate for a community service condition.
- (5) If a court order directs that a pre-sentence report deal with an offender's suitability for serving all, or any part, of a sentence by undertaking a rehabilitation program under a good behaviour order, the report must also—
  - (a) address the matters mentioned in section 98 (Rehabilitation programs—pre-sentence report matters); and
  - (b) include the assessor's recommendation about—
    - (i) the offender's suitability for serving all or any part of a sentence by undertaking a rehabilitation program under a good behaviour order; and
    - (ii) any condition that might be appropriate for a rehabilitation program condition.

**[1.3] Section 43 (5) (b)**

*omit*

section 41 (2) (c)

*substitute*

section 41 (2)

**[1.4] Section 79**

*omit*

section 42 (3) (c) (ii) (Pre-sentence reports—contents)

*substitute*

section 42 (3) (Pre-sentence reports by assessors)

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**[1.5] Section 90**

*omit*

section 42 (3) (c) (iii) (Pre-sentence reports—contents)

*substitute*

section 42 (4) (Pre-sentence reports by assessors)

**[1.6] Section 98**

*omit*

section 42 (3) (c) (iv) (Pre-sentence reports—contents)

*substitute*

section 42 (5) (Pre-sentence reports by assessors)

**[1.7] Section 134 (5) (b)**

*omit*

subsection (3)

*substitute*

subsection (4)

**[1.8] Dictionary, definition of *assessor***

*omit*

section 41 (5)

*substitute*

section 41 (6)

**[1.9] Dictionary, new definition of *pre-sentence report matter***

*insert*

***pre-sentence report matter***, for part 4.2 (Pre-sentence reports)—see section 40A.

**[1.10] Dictionary, definition of *pre-sentence report order***

*omit*

## **Part 1.3 Crimes (Sentence Administration) Act 2005**

**[1.11] Section 9 (4)**

*substitute*

- (4) This Act applies in relation to the person as a full-time detainee, with any changes prescribed by regulation.

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

*substitute*

- (2) A reference in this section to a court sentencing an offender to imprisonment includes an entity prescribed by regulation.

**[1.13] Section 36 (2) (a)**

*omit*

detention at a correctional centre

*substitute*

detention at a NSW correctional centre

**[1.14] Section 36 (3) (b)**

*substitute*

- (b) the following provisions of the *Corrections Management Act 2007* apply in relation to the detainee:

- (i) section 94 (Segregated detainees removed to NSW);



- (ii) a provision prescribed by regulation.

*Note* The *Crimes (Administration of Sentences) Act 1999* (NSW), s 44 makes provision for ACT law to apply in relation to the full-time detainee.

**[1.15] New section 61 (2) (e)**

*insert*

- (e) section 75 (Board powers—management of periodic detention).

**[1.16] Section 75 (1) (c) and (d)**

*substitute*

- (c) change the offender's periodic detention obligations by imposing an additional condition on, or amending a condition of, the offender's periodic detention;
- (d) give the offender approval not to perform periodic detention for up to 8 detention periods if satisfied that is appropriate having regard to the offender's health or any exceptional circumstances;
- (e) if subsection (3) applies—cancel the offender's periodic detention;
- (f) if subsection (3A) applies—refer the offender to the offender's sentencing court to be dealt with under section 82A (Re-sentencing offender etc—referral to court).

**[1.17] Section 75 (3)**

*substitute*

- (2A) For each detention period for which an offender has the board's approval not to perform periodic detention, the periodic detention period of the offender's sentence of imprisonment, and the term of the sentence, are automatically extended by 1 week.

- (3) This subsection applies if the board decides any of the following:
- (a) that the periodic detention should be cancelled on the offender's application;
  - (b) that periodic detention is, or would be, no longer suitable for the offender.

**Examples of unsuitability—par (b)**

the indicators set out in the *Crimes (Sentencing) Act 2005*, table 79, the offender's health or exceptional circumstances

*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).

- (3A) This subsection applies if the board decides that the offender is, for any reason, unlikely to be able to serve the remainder of the offender's periodic detention period by periodic detention, having regard particularly to—
- (a) the offender's health; and
  - (b) any exceptional circumstances affecting the offender.

**[1.18] New section 82A**

*in division 5.4.4, insert*

**82A Re-sentencing offender etc—referral to court**

- (1) This section applies if the board refers an offender to the sentencing court under section 75 (Board powers—management of periodic detention).
- (2) The Court may—
  - (a) if satisfied that the offender should serve the remainder of the offender's sentence in accordance with section 79 (4) (Periodic detention—effect of suspension or cancellation etc)—cancel the offender's periodic detention; or

- (b) in any other case—re-sentence the offender for the offence (the *relevant offence*) for which the offender was ordered to serve periodic detention.
- (3) The *Crimes (Sentencing) Act 2005* applies to the re-sentencing in the same way that it applies to the sentencing of an offender on a conviction for the relevant offence.

**[1.19] Section 603 (1), definition of *interim custody period***

*after*

*Corrections Management Act 2006*

*insert*

, chapter 3

**[1.20] New sections 607A and 607B**

*insert*

**607A Reference to full-time detention in NSW**

- (1) To remove any doubt, section 36 (2) (a) operates in relation to the interim custody period as if the reference to full-time detention at a correctional centre were a reference to full-time detention at a NSW correctional centre.
- (2) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

**607B References in territory laws to *Corrections Management Act 2007* etc in relation to interim custody period**

- (1) A reference in a territory law to the *Corrections Management Act 2007* is, in relation to the interim custody period, taken to be a reference to that Act as defined in this Act, section 603.
- (2) A reference in a territory law to any of the following things is, in relation to the interim custody period, taken to be a reference to the

thing that would be the corresponding thing under this Act, section 604 (Application of new sentencing law—interim custody period):

- (a) a correctional centre;
  - (b) a corrections officer;
  - (c) an escort officer;
  - (d) frisk search;
  - (e) positive, in relation to a test sample;
  - (f) test sample.
- (3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

**[1.21] Section 612**

*substitute*

**612 Expiry—ch 17**

This chapter expires 2 years after the commencement of the *Corrections Management Act 2007*, section 506 (which relates to the meaning of the *Corrections Management Act 2007* in the interim custody period).

**[1.22] Dictionary, definitions of *correctional centre* and *corrections officer***

*substitute*

*correctional centre*—see the *Corrections Management Act 2007*, dictionary.

*corrections officer*—see the *Corrections Management Act 2007*, dictionary.

**[1.23] Dictionary, definition of *drug***

*substitute*

*drug*—see the *Corrections Management Act 2007*, section 132.

**[1.24] Dictionary, definition of *escort officer***

*substitute*

*escort officer*—see the *Corrections Management Act 2007*, dictionary.

## **Part 1.4 Evidence (Miscellaneous Provisions) Act 1991**

**[1.25] Section 16, definition of *territory court*, paragraph (g)**

*omit*

chapter 10 (Conduct of disciplinary inquires)

*substitute*

chapter 11 (Disciplinary inquiries)

## **Part 1.5 Listening Devices Act 1992**

**[1.26] New section 3B**

*in part 1, insert*

### **3B Application of Act to corrections management**

- (1) This section applies in relation to an electronic communication, other than a protected electronic communication, between a detainee in a correctional centre and someone else.

(2) This Act does not apply to any of the following under the *Corrections Management Act 2007*:

- (a) the listening to or recording of the communication;
- (b) the communication or publication of the communication.

(3) In this section:

*detainee*—see the *Corrections Management Act 2007*, section 6.

*electronic communication*—see the *Corrections Management Act 2007*, section 103 (Monitoring telephone calls etc).

*protected electronic communication*—see the *Corrections Management Act 2007*, section 103 (Monitoring telephone calls etc).

## Part 1.6 Magistrates Court Act 1930

### [1.27] Section 154D (1)

*omit*

registrar

*substitute*

court

### [1.28] Section 158 (a)

*omit*

detained under the warrant

*substitute*

so imprisoned

**Part 1.7**                      **Security Industry Regulation**  
**2003**

**[1.29] Section 6 (3), definition of *custodial officer*, paragraph (a)**

*substitute*

- (a) a corrections officer; or

## Dictionary

(see s 3)

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

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

- chief executive (see s 163)
- chief police officer
- doctor
- domestic partner (see s 169 (1))
- Governor
- human rights commissioner
- in relation to
- intersex person (see s 169B)
- judge
- Legislative Assembly
- magistrate
- NSW correctional centre
- nurse
- ombudsman
- police officer
- public advocate
- public employee
- public servant
- quarter
- sentence administration board
- transgender person (see s 169A (1) and (2))
- tribunal.



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**accredited person**, in relation to a detainee, means each of the following:

- (a) if the detainee is a sentenced offender—anyone involved in relation to the administration of the sentence;
- (b) a lawyer representing the detainee;
- (c) an official visitor;
- (d) the human rights commissioner;
- (e) the public advocate;
- (f) the ombudsman;
- (g) a person prescribed by regulation.

*Note* Territory laws apply to a delegate of a person in the exercise of a delegation as if the delegate were the person who appointed the delegate (see Legislation Act, s 239 (2)).

**accused**—see section 151.

**activity**—see the *Crimes (Sentence Administration) Act 2005*, dictionary.

**adjudicator** means a person who is appointed as an adjudicator under section 177.

**administrative penalty**—see section 151.

**administrator**, in relation to a disciplinary breach—see section 151.

**admission**, of a detainee to a correctional centre—see section 63.

**body search**, of a detainee—see section 107.

**case management plan**, for a detainee, means the detainee's case management plan maintained under section 78.

**charge**—see section 151.

**charge notice**—see section 151.

**conduct** means an act or omission.

**correctional centre** means a place declared to be a correctional centre under section 24.

**corrections dog** means a dog approved under the regulations to exercise functions as a corrections dog under this Act.

**corrections officer** means a person who is appointed as a corrections officer under section 19.

**corrections policy** means a corrections policy under section 14.

**corresponding chief executive**, for part 12.2 (Interstate leave)—see section 206.

**corresponding corrections law**—see section 225.

**corresponding leave law**, for part 12.2 (Interstate leave)—see section 206.

**court cell**, for chapter 4 (Detention in police and court cells etc)—see section 29.

**detainee**—see section 6.

**detention period**, for an offender's periodic detention—see the *Crimes (Sentence Administration) Act 2005*, section 41.

**disciplinary action**—see section 151.

**disciplinary breach**—see section 151.

**disciplinary charge**—see section 151.

**drug**—see section 132.

**engage in conduct** means—

- (a) do an act; or
- (b) omit to do an act.

**escape**, for part 12.2 (Interstate leave)—see section 206.

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**escort officer**, in relation to a person, means—

- (a) a police officer; or
- (b) a corrections officer whose functions including escorting the person.

**family member**, of a detainee, means any of the following:

- (a) the detainee's domestic partner;
- (b) a parent, step-parent or grandparent of the detainee;
- (c) a child, step-child or grandchild of the detainee;
- (d) a brother, sister, step-brother or step-sister of the detainee;
- (e) a guardian or carer of the detainee.

**frisk search**—see section 107.

**full-time detainee**—see the *Crimes (Sentence Administration) Act 2005*, section 22 (1).

**health facility** means a hospital or other facility where health services are provided.

**health professional** means a health professional registered under the *Health Professions Act 2004*.

**health service**—see the *Health Professions Act 2004*, section 15.

**hearing**, for an inquiry—see section 151.

**inquiry**—see section 151.

**interstate detainee**, for part 12.2 (Interstate leave)—see section 206.

**interstate escort officer**—see section 213.

**interstate leave permit**—see section 208.

**investigative segregation**—see section 151.

**investigator**—see section 151.

**investigator's report**—see section 151.

**law enforcement agency**—see the *Spent Convictions Act 2000*, dictionary.

**legally privileged**—a thing is **legally privileged** if client legal privilege attaches to the thing.

**local leave permit**—see section 205.

**mail** means postal mail.

**nonsmoking area**, at a correctional centre—see section 86.

**offender**—see the *Crimes (Sentence Administration) Act 2005*, dictionary.

**official visitor** means a person who is appointed as an official visitor under section 57.

**operating procedure** means an operating procedure under section 14.

**ordinary search**—see section 107.

**participating State**, for part 12.2 (Interstate leave)—see section 206.

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

**personal monitoring device**—see section 101.

**police cell**, for 0 (Detention in police and court cells)—see section 29.

**positive**, for a test sample for alcohol or a drug—see section 133.

**possession**, of a thing, includes the following:

- (a) receiving or obtaining possession of the thing;
- (b) having control over the disposition of the thing (whether or not having custody of the thing);
- (c) having joint possession of the thing.

***presiding officer***—

- (a) for division 10.3.1 (Disciplinary action—with accused's consent)—see section 166; or
- (b) for division 10.3.2 (Internal disciplinary inquiry)—see section 169; or
- (c) for chapter 11 (Disciplinary inquiries)—see section 191.

***privilege***, in relation to a detainee—see section 151.

***prohibited area***, at a correctional centre—see section 85.

***prohibited thing*** means a thing declared to be a prohibited thing under section 81.

***protected mail***—see section 104 (4).

***register of detainees*** means the register kept under section 76.

***relevant presiding officer***, for division 10.3.5 (Disciplinary action)—see section 182.

***remandee***—see the *Crimes (Sentence Administration) Act 2005*, dictionary.

***review officer***, for division 10.3.3 (Internal review of inquiry decision)—see section 172.

***scanning search***—see section 107.

***security classification***, for a detainee, means the detainee's security classification under section 80.

***segregation***, of a detainee—see section 88.

***sentence***—see the *Crimes (Sentence Administration) Act 2005*, dictionary.

***separate confinement***, of a detainee—see section 151.

***strip search***, of a detainee—see section 107.

***test sample***—see section 132.

*visiting conditions*, at a correctional centre, means conditions declared under section 143 (Visiting conditions) in relation to the centre.

*visitor*, in relation to a correctional centre, includes a person wishing to enter the centre as a visitor.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 14 December 2006.

**2 Notification**

Notified under the Legislation Act on 18 June 2007.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Corrections Management Bill 2007, which originated in the Legislative Assembly as the Corrections Management Bill 2006 and was passed by the Assembly on 31 May 2007.

Clerk of the Legislative Assembly

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