



Australian Capital Territory

# **Corrections Management Act 2007**

**A2007-15**

**Republication No 30**

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Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Corrections Management Act 2007* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 March 2016. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 2 March 2016.

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

### Kinds of republications

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

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

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

### Editorial changes

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

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

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

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$150 for an individual and \$750 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Corrections Management Act 2007

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Australian Capital Territory

# Corrections Management Act 2007

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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*.

### 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) 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;
  - (c) 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 (c)**

- 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* 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, the application of this Act is subject to the [Crimes \(Sentence Administration\) Act 2005](#), part 4.3 (Full-time detention in NSW).
- (3) Also, this Act (other than chapter 4 (Detention in police and court cells)) does not apply to a person detained under the [Children and Young People Act 2008](#).

## 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 director-general 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 director-general

- (1) The Minister may give written directions to the director-general 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 director-general 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 director-general 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 director-general.

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

- (1) The director-general may exclude from a corrections policy or operating procedure notified or available for inspection in accordance with section 14 any matter that the director-general 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 Director-general directions

- (1) The director-general may give directions in relation to a detainee.
- (2) Without limiting subsection (1), the director-general may give a direction that the director-general 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 director-general 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 Director-general delegations

- (1) The director-general may delegate any of the director-general's functions under this Act to a corrections officer.
- (2) This section does not limit the director-general'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 36C also provides for a director-general to delegate, and sub-delegate, powers given to the director-general 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 director-general 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 director-general 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 director-general 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 director-general; or
  - (c) a regulation.

## 21 Doctors—health service appointments

- (1) The director-general 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 director-general for subsection (2) (b).
- (5) The director-general must ensure that each direction under subsection (4) is complied with unless the director-general believes, on reasonable grounds, that compliance would undermine security or good order at the correctional centre.

## 22 Health practitioners—non-therapeutic functions

- (1) The director-general must appoint a health practitioner to exercise non-therapeutic functions at each correctional centre.

*Note* **Health practitioner** includes a doctor and nurse registered under the *Health Practitioner Regulation National Law (ACT)*.

- (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 practitioners—non-therapeutic functions).
- (2) The director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 director-general.
- (2) The director-general must ensure that action taken under this section is necessary and reasonable in the circumstances.

## 28 Arrangements with police

- (1) The director-general 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 director-general 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 director-general.

## Chapter 4 Detention in police and court cells etc

### 29 Definitions—ch 4

- (1) In this chapter:

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

*director-general* means—

- (a) for a detainee (other than a young detainee)—the director-general responsible for this Act; and
- (b) for a young detainee—the director-general responsible for the *Children and Young People Act 2008*.

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

*young detainee*—see the *Children and Young People Act 2008*, section 95.

- (2) In this chapter—

- (a) a reference to a *correctional centre* is, in relation to the custody or detention of a young detainee, a reference to a detention place under the *Children and Young People Act 2008*; and
- (b) a reference to a *corrections officer* is, in relation to the custody or detention of a young detainee, a reference to a youth detention officer under the *Children and Young People Act 2008*.

### 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 must not be detained continuously at a police cell for a period longer than the following period (the *allowed period*):
- (a) for a detainee (other than a young detainee)—36 hours;
  - (b) for a young detainee—12 hours.
- (3) If a person is lawfully required to remain in police custody for a period longer than the allowed period, the chief police officer may direct that the person be transferred to the custody of the director-general for the purposes of the police custody.
- (4) The direction by the chief police officer—
- (a) authorises the director-general to have custody of the person under the direction; and
  - (b) requires the director-general 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 the application of this section to a detainee (other than a young detainee), 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.
- (3) For the application of this section to a young detainee, the following provisions of the *Children and Young People Act 2008* apply as if the direction, search or seizure occurred under the relevant part in relation to a young detainee at a detention place:
  - (a) part 7.1 (Preliminary—ch 7);
  - (b) part 7.2 (Searches generally);
  - (c) part 7.3 (Scanning, frisking and ordinary searches);
  - (d) part 7.4 (Strip searches—young detainees);
  - (e) part 7.9 (Seizing property).

**31A Detention in police cells—additional provisions for young detainees**

- (1) This section applies if a young detainee is detained at a police cell under section 30.
- (2) The chief police officer must ensure that the young detainee—
  - (a) is kept separate from adult detainees; and
  - (b) has prompt access to medical and legal assistance; and
  - (c) is told, in language and a way he or she can readily understand, about the reason for the detention and the procedures that apply; and
  - (d) is able to contact and be contacted by each of the following:
    - (i) a commissioner exercising functions under the *Human Rights Commission Act 2005*;
    - (ii) the public advocate;

## (iii) the ombudsman.

*Note* The *Crimes Act 1914* (Cwlth), pt 1C contains provisions about investigation of offences (including about periods of arrest and obligations of investigating officials) that apply to offences against ACT laws punishable by imprisonment for longer than 12 months.

In particular, that Act, s 23Q provides that a person who is under arrest or a protected suspect must be treated with humanity and with respect for human dignity, and must not be subjected to cruel, inhuman or degrading treatment.

**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 director-general's custody but not admitted as a detainee at a correctional centre; and
  - (b) required to attend a court.
- (2) The director-general 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.

*Note* If the person is a young offender who is under 18 years old, he or she must not be placed in a room with an adult who is under detention (see *Children and Young People Act 2008*, s 100).
- (3) However, the person must not be detained continuously at a court cell for a period longer than the following period (the ***allowed period***):
  - (a) for a detainee (other than a young detainee)—36 hours;
  - (b) for a young detainee—12 hours.

- (4) If the person is required to remain in detention for a period longer than the allowed period for the court attendance, the director-general 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) While detained at a court cell under this section—
- (a) a detainee (other than a young detainee) is taken to be a detainee for all purposes under this Act; and
  - (b) a young detainee is taken to be a young detainee for all purposes under the *Children and Young People Act 2008*.

**33A Detention in court cells—additional provisions for young detainees**

- (1) This section applies if a young detainee is detained at a court cell under section 33.
- (2) The director-general must ensure that the young detainee—
- (a) is kept separate from adult detainees; and
  - (b) has prompt access to medical and legal assistance; and
  - (c) is told, in language and a way he or she can readily understand, about the reason for the detention and the procedures that apply; and
  - (d) is able to contact and be contacted by each of the following:
    - (i) a commissioner exercising functions under the *Human Rights Commission Act 2005*;
    - (ii) the public advocate;
    - (iii) the ombudsman.

**34 Detainees accommodated away from correctional centre**

- (1) This section applies if the director-general 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 director-general 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 director-general 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, while detained under this section—
- (a) a detainee (other than a young detainee) remains a detainee for all purposes under this Act; and



- (b) a young detainee remains a young detainee for all purposes under the *Children and Young People Act 2008*.

## 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 director-general'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 director-general'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 director-general (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 director-general 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 director-general 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 director-general 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 practitioners—non-therapeutic functions), prescribes a particular diet for a detainee, the director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 director-general may give directions for different accommodation of a non-convicted detainee if the director-general 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 director-general suspects that other remandees detained with J are highly vulnerable in comparison with J. The director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 director-general.
- (3) A detainee who sends mail must pay for the cost of any writing and other material, and postage, for the mail if the director-general 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 director-general may give directions denying or limiting the sending or receiving of an item of mail by a detainee if the director-general 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 director-general 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 director-general 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 director-general may give directions denying or limiting a visit mentioned in subsection (1) if the director-general 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 director-general 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 director-general 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 director-general may give directions denying or limiting a detainee's contact with an accredited person if the director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 practitioners; 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 practitioners for this Act;
  - (b) the provision of health service clinics for detainees;
  - (c) appointments for detainees with health practitioners;
  - (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 practitioners 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 director-general may direct that a detainee be transferred to a health facility at a correctional centre, or outside a correctional centre, if the director-general 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 director-general 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 director-general 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 practitioner in charge of the detainee's care approves the discharge; or

- (b) the director-general 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 director-general 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.

**54A Transfer to mental health facility—transfer direction**

- (1) This section applies if the director-general has made a direction under section 54 for the transfer of a detainee from a correctional centre to an approved mental health facility or approved community care facility.
- (2) The director-general must tell the director-general responsible for the [Mental Health Act 2015](#) in writing about any change in the detainee's status as a detainee.

**Examples**

- 1 the person's sentence of imprisonment ends
- 2 the person is released on parole
- 3 the person is otherwise released from detention

*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) In this section:

*approved community care facility*—see the [Mental Health Act 2015](#), dictionary.

*approved mental health facility*—see the [Mental Health Act 2015](#), dictionary.

## 55 Religious, spiritual and cultural needs

- (1) The director-general 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 director-general 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 director-general may give directions denying or limiting a detainee's access under subsection (1) or (2) if the director-general 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.

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## 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—meaning of *entitled person* and *visitable place*

In this Act:

*entitled person* means—

- (a) a detainee at a correctional centre; or
- (b) a person prescribed by regulation.

*visitable place* means—

- (a) a correctional centre; or
- (b) a place outside a correctional centre if a detainee is, or has been, directed to work or participate in an activity at the place.

*Note* At least 2 official visitors (including a visitor who is an Aboriginal or Torres Strait Islander person) must be appointed for this Act under the [Official Visitor Act 2012](#) (the *OV Act*).

The *OV Act* sets out the functions of official visitors which includes visiting visitable places, handling complaints from entitled people and reporting on those matters.

This part defines what is an *entitled person* and a *visitable place* for the *OV Act*.

## 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 director-general 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 director-general 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 admission of the detainee to the centre for 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 director-general 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 director-general may direct that 1 or more 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 practitioner appointed under section 22 (Health practitioners—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 director-general 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 director-general considers necessary or desirable.

### Examples—par (g)

- 1 corrections policies and operating procedures relevant to the detainee
- 2 the scope and effect of the director-general'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 director-general must arrange for the assistance of an interpreter in complying with subsection (1) or (2) if the director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 Act 2015* 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 director-general 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 director-general 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 director-general may allow a detainee's property to be brought into a correctional centre.
- (2) However, the director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 director-general must keep a register of detainees at a correctional centre (see s 76).



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



- (b) to which the relevant director-general has access through any arrangement with another director-general.
- (4) The director-general must ensure that a doctor appointed under section 21 (Doctors—health service appointments) assesses the report from a relevant director-general 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 director-general must ensure that the relevant director-general's report and the health schedule is available only to people authorised by the director-general.

(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 director-general* means a director-general whose administrative unit is responsible for any provision of the following Acts:

- (a) the *Children and Young People Act 2008*;
- (b) the *Disability Services Act 1991*;
- (c) the *Health Act 1993*;
- (d) the *Mental Health Act 2015*.

*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 director-general—

- (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 director-general 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 director-general.

## **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 director-general the sex the detainee chooses to be identified with; or
  - (b) if the detainee fails to make a choice under paragraph (a)—the director-general 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 director-general 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 director-general must obtain a report by a doctor appointed under section 22 (Health practitioners—non-therapeutic functions) about the detainee’s sexual identity.

- (6) The director-general must—
- (a) give the detainee written notice of a decision by the director-general 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 director-general 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 director-general 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 director-general may consider anything else the director-general 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 director-general 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 director-general 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 director-general must ensure that money belonging to a detainee is held for the detainee in a trust account.
- (2) The director-general 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 director-general may define an area at a correctional centre where detainees are prohibited (a *prohibited area*).
- (2) The director-general 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 director-general 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 director-general may define an area at a correctional centre as an area in which smoking is prohibited (a *nonsmoking area*).
- (2) The director-general 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 director-general 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 *Smoke-Free 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 director-general 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, civil union or civil partnership 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 director-general may direct that a detainee be segregated from other detainees if the director-general 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 director-general 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 director-general 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 director-general must revoke the direction if the director-general believes, on reasonable grounds, that the protection mentioned in subsection (1) is no longer necessary or prudent.
- (5) The director-general—
  - (a) may review the direction at any time, on the director-general's own initiative or on request by the detainee; and
  - (b) if the detainee is to be transferred to another correctional centre for longer than 1 day—must review the direction before the transfer; and
  - (c) must review the direction at least once every 21 days while it remains in force.
- (6) After reviewing the direction, the director-general 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 director-general 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 director-general may direct that a detainee be segregated from other detainees if the director-general believes, on reasonable grounds, that the segregation is necessary or prudent to protect the safety of the detainee.

- (2) The director-general may give the direction at any time, on the director-general's own initiative or on request by the detainee.
- (3) The director-general 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 director-general must revoke the direction if the director-general believes, on reasonable grounds, that the protection mentioned in subsection (1) is no longer necessary or prudent.
- (5) The director-general—
  - (a) may review the direction at any time, on the director-general's own initiative or on request by the detainee; and
  - (b) if the detainee is to be transferred to another correctional centre for longer than 1 day—must review the direction before the transfer; and
  - (c) must review the direction at least once every 21 days while it remains in force.
- (6) After reviewing the direction, the director-general 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 director-general 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 director-general may direct that a detainee be segregated from other detainees if the director-general 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 director-general 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 director-general must revoke the direction if the director-general believes, on reasonable grounds, that the direction is no longer necessary or prudent.
- (4) The director-general—
  - (a) may review the direction at any time, on the director-general’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) if the detainee is to be transferred to another correctional centre for longer than 1 day—must review the direction before the transfer; and
  - (d) must review the direction at least once every 21 days while it remains in force.
- (5) After reviewing the direction, the director-general 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 director-general may make more than 1 further direction under this section.
- (7) When acting under subsection (1), (3) or (4), the director-general 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 director-general'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 director-general 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 director-general's direction;  
or
  - (b) refuse to review the director-general'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 director-general 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 director-general's direction, the notice must include the reasons for the refusal.

*Note 1* 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).

*Note 2* For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

## 98 Other separation of detainees

- (1) The director-general must provide separate accommodation for males and females.
- (2) Without limiting section 14 (Corrections policies and operating procedures), the director-general 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 director-general 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 director-general considers, on reasonable grounds, to be relevant.

### 100 Monitoring at correctional centres

The director-general 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 director-general 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 director-general.
- (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 director-general may do either or both of the following in relation to the communication:
  - (a) monitor the communication;
  - (b) record the communication.
- (3) The director-general 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 director-general 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 director-general may open and search a detainee's ordinary mail.
- (2) The director-general may read a detainee's ordinary mail only if the director-general 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 director-general 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 director-general may open and search a detainee's protected mail in the detainee's presence if the director-general suspects, on reasonable grounds, that the mail contains—
  - (a) something that may physically harm the addressee; or
  - (b) a prohibited thing.
- (2) However, the director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 Meaning of *seizeable item*—div 9.4.3**

In this division:

*seizeable item* means anything 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.

#### **113A Strip searches—when may be conducted**

- (1) A detainee may be strip searched only if the director-general gives a direction in accordance with section 113B or section 113C.

*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.

#### **113B Strip searches—on suspicion**

The director-general may direct a corrections officer to strip search a detainee if the director-general suspects on reasonable grounds that the detainee has a seizeable item concealed on the detainee.

### **113C Strip searches—where prudent**

- (1) The director-general may direct a corrections officer to strip search a detainee at a correctional centre if—
  - (a) the director-general believes on reasonable grounds that it is prudent to search the detainee for a seizeable item that may be concealed on or in the detainee because the detainee—
    - (i) has recently not been under the control or immediate supervision of a corrections officer for a period; and
    - (ii) during the period, may have had an opportunity to obtain a seizeable item; and
  - (b) a scanning search may assist in detecting the item but—
    - (i) the means of conducting the search is not available at the correctional centre; or
    - (ii) if the means of conducting the search is available—the scanning search is not likely to detect more than a limited range of seizeable items; or
    - (iii) the search could only be carried out using force that would be likely to make it ineffectual; and
  - (c) a frisk search or ordinary search is not likely to detect more than a limited range of seizeable items.

**Example—par (a) (ii)**

the detainee has had a personal contact visit by someone who is not an accredited person

**Example—par (b) (ii)**

a metal detector

*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) Without limiting section 14 (Corrections policies and operating procedures), the director-general must make a corrections policy or operating procedure in relation to strip searches under this section.

### **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 director-general 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 director-general may direct a doctor appointed under section 22 (Health practitioners—non-therapeutic functions) to conduct a body search of a detainee if the director-general 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 practitioners—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 director-general 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 director-general for assistance that the doctor believes, on reasonable grounds, is necessary and reasonable for the search.
- (2) The director-general 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 director-general 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.

## Division 9.4.5 Searches of premises and property

### 122 Searches—premises and property

- (1) The director-general 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 director-general 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 director-general 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 director-general may give the direction if the director-general 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 director-general may seize anything in a detainee's protected mail if the director-general believes, on reasonable grounds, that the thing—
  - (a) may physically harm the addressee or anyone else; or
  - (b) is a prohibited thing.
- (2) The director-general may seize other mail of a detainee, or anything in the mail, if the director-general 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 director-general'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 director-general may seize a document only if the director-general believes, on reasonable grounds, that the document is not legally privileged.

## **128 Seizing property—general**

- (1) The director-general may seize—
- (a) anything found at a correctional centre, whether or not in a person's custody or possession, that the director-general 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 director-general 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 director-general 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 director-general may seize a document only if the director-general believes, on reasonable grounds, that the document is not legally privileged.

## **129 Receipt for seizure**

- (1) The director-general 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 director-general 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 director-general 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 director-general may deal with a thing forfeited to the Territory under this section, or dispose of it, as the director-general 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 director-general 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 director-general believes, on reasonable grounds, that its retention as evidence is no longer necessary, the director-general 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 practitioner;

(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 person serving a term of imprisonment by intensive correction—the person provides a test sample that shows the person—
    - (i) either—
      - (A) if the person is under a condition or a direction that the person not take alcohol—has taken alcohol; or
      - (B) in any other case—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 director-general 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 director-general may direct the following to provide a stated kind of test sample:
  - (a) a detainee;
  - (b) a number of randomly selected detainees at a correctional centre.
- (2) The director-general, or a doctor, or nurse, appointed under section 22 (Health practitioners—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 practitioners—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 director-general must give the detainee notice of the results of any test conducted on the test sample as soon as practicable after the director-general receives them.

(6) In this section:

*randomly selected* means chosen by a computer programmed to choose names randomly from the register of detainees.

### 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 director-general 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 director-general 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 director-general 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 director-general;
  - (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 director-general 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 director-general 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 practitioner appointed under section 22 (Health practitioners—non-therapeutic functions) may administer a drug as a restraint, or direct the use of another form of restraint, if the health practitioner 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 director-general 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 director-general 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 director-general 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 director-general must give a copy of the record to an official visitor.

## Part 9.8 Access to correctional centres

### 143 Visiting conditions

- (1) The director-general 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 director-general must take reasonable steps to bring the visiting conditions to the attention of visitors at a correctional centre.
- (2) Without limiting subsection (1), the director-general 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 director-general.
- (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 director-general may, orally or in writing, give a direction to a visitor at a correctional centre to do, or not do, something if the director-general 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 director-general may direct a corrections officer to conduct a scanning search, frisk search or ordinary search of a visitor at a correctional centre if the director-general 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 director-general 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 director-general may give the direction only if—
- (a) the director-general 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 director-general 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.

*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).

*initial report*—see section 156 (2) (e).

*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 158 (Action by presiding officer);

(c) section 160 (Director-general directions—investigative segregation).

*investigator*—see section 153.

*investigator's report*—see section 157 (2) (b).

*presiding officer* means a corrections officer to whom the director-general has given functions of a presiding officer under this Act.

*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 director-general 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 director-general'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 director-general'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 director-general'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 director-general'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 director-general directions—par (a)**

failing to comply with a direction by the director-general 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 director-general has given functions of an investigator; or
  - (b) a person engaged under subsection (2).
- (2) The director-general may, on behalf of the Territory, engage a person (other than a corrections officer) to exercise the functions of an investigator.
- (3) The director-general 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 a presiding officer a report (an *initial report*) about the alleged disciplinary breach.
- (3) A report under subsection (2) (e) must be given to the presiding officer 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 Investigation by investigator**

- (1) After being given an initial report about an alleged disciplinary breach by a detainee, the presiding officer may, if the presiding officer believes on reasonable grounds it is appropriate, refer the report to an investigator.
- (2) The investigator must—
  - (a) consider the initial report and investigate the alleged disciplinary breach by the detainee; and
  - (b) give the presiding officer a report (an *investigator's report*) about the alleged disciplinary breach.
- (3) The report must include the following:
  - (a) a copy of the initial report;
  - (b) a recommendation for any action by the presiding officer under section 158 (2);
  - (c) the investigator's reasons for the recommendation;
  - (d) anything else prescribed by regulation.
- (4) The report may include any other information the investigator considers is relevant in relation to the alleged disciplinary breach.
- (5) The corrections officer who made the initial report about the alleged disciplinary breach by the detainee must not exercise any function of an investigator in relation to the breach.

### **158 Action by presiding officer**

- (1) This section applies if a presiding officer is given—
  - (a) an initial report about an alleged disciplinary breach by a detainee; or

- (b) an investigator's report about an alleged disciplinary breach by a detainee.
- (2) After considering the report and making any further investigation the presiding officer considers appropriate, the presiding officer may, if the presiding officer believes on reasonable grounds it is appropriate, do 1 or more of the following:
- (a) take no further action in relation to the initial 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 this part;
  - (h) anything else prescribed by regulation.
- (3) A referral under subsection (2) (e) must be in writing and be accompanied by a report by the presiding officer.
- (4) The corrections officer who made the initial report or investigator's report about the alleged disciplinary breach by the detainee must not exercise any function of a presiding officer under this division in relation to the breach.

## **159 Disciplinary charge**

To charge a detainee with a disciplinary breach, the presiding officer 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 presiding officer;
- (e) the disciplinary action the presiding officer 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.

## **Division 10.2.2 Investigative segregation**

### **160 Director-general directions—investigative segregation**

- (1) Subject to section 161, the director-general 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 either of the following:
  - (a) section 156 (Report etc by corrections officer);

(b) section 158 (Action by presiding officer).

### **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 director-general must revoke a direction for investigative segregation if the director-general believes, on reasonable grounds, that the direction is no longer necessary or prudent.
- (2) The director-general—
  - (a) may review a direction for investigative segregation of a detainee at any time on the director-general's own initiative or on request by the detainee; and



- (b) if the detainee is to be transferred to another correctional centre for longer than 1 day—must review the direction before the transfer; 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 director-general 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 director-general 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 a presiding officer makes a decision under section 158 (Action by presiding officer) 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 1* 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).

*Note 2* For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

## Part 10.3 Disciplinary action and review

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

#### 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 a presiding officer 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 presiding officer—
  - (a) no later than the day after the day the presiding officer gives the accused the charge notice; or
  - (b) within any extended period allowed under subsection (3).
- (3) For subsection (2) (b), the presiding officer may extend the period within which the election must be made if the presiding officer 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 presiding officer 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**

**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 (Investigation by investigator); or
- (b) made the charge under section 158 (Action by presiding officer).

*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 what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

- (6) The presiding officer must give the director-general a copy of the notice under subsection (5).
- (7) 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**

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

- (1) An accused may apply to the director-general 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 the director-general under section 176, the making of the application does not affect the taking of disciplinary action under the decision under review.

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

- (1) On application under section 173, the director-general must conduct a further inquiry to review the decision to which the application relates.
- (2) The director-general may, on the director-general's own initiative, conduct a further inquiry to review the decision to which the notice under section 171 (5) relates.

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

### **176 Director-general's powers after further inquiry**

- (1) After completing a review under section 175, the director-general 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 director-general must give the accused prompt written notice of the director-general'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 what must be included in a statement of reasons, see the [Legislation Act](#), s 179.



## 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 judicially qualified 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).

- (4) For this section, each of the following are *judicially qualified*:

- (a) a judge or retired judge;
- (b) a magistrate or retired magistrate;
- (c) a person who has been a legal practitioner for not less than 5 years.

### 178 Application for review by adjudicator

- (1) An accused may apply to an adjudicator for a review of a decision under section 176 (Director-general'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 director-general'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 director-general's decision; or
  - (b) refuse to review the director-general'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 director-general'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 what must be included in 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 the director-general 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 what must be included in 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) the director-general 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 director-general 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 director-general 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 director-general 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 director-general 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 director-general;
  - (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 self-incrimination 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 director-general.
- (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 self-incrimination 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 (1) (Territory courts may take evidence and submissions from participating States);
- (b) section 32 (1) (Territory courts may take evidence and submissions from place other than participating State).
- (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 director-general may direct that a full-time detainee be taken from a correctional centre to any place in the ACT for any purpose the director-general 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 director-general 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 director-general may give a full-time detainee a written permit (a *local leave permit*) to be absent from a correctional centre for any purpose the director-general 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 director-general 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 director-general*, 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 director-general 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) For subsection (2) (c), the director-general may, before the permit ends (a *current permit*), decide to extend the current permit for an additional period (an *extension period*) if—
  - (a) the date the extension period ends is within 7 days after the day the current permit ends; and
  - (b) the director-general is satisfied that—
    - (i) an extension of the current permit is for a purpose for which an interstate leave permit may be granted under this section; and
    - (ii) appropriate measures are in place to allow the detainee to remain at a particular place in the State to which the permit applies.
- (4) The director-general may make a decision under subsection (3) more than once.

*Note* The director-general may also direct a full-time detainee to be removed to a NSW correctional centre under the *Crimes (Sentence Administration) Act 2005*, s 26 (Full-time detention in ACT or NSW).

- (5) If the director-general delegates the function mentioned in subsection (3), a delegate who extends a permit that has previously been extended at least 3 times must tell the director-general about the delegate's decision.

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

- (6) 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 director-general believes, on reasonable grounds, is appropriate.
- (7) 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 director-general 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 director-general 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 director-general 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 director-general, 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 director-general's custody; and
  - (b) if under escort by an escort officer—also taken to be in the escort officer's custody.

### 217A Power of court to bring detainee before it—civil proceeding

- (1) For a civil proceeding, a court may order the director-general to bring a person lawfully detained in a correctional centre or other place before the court, if the person consents, and to return the person to the centre or other place in accordance with the order.
- (2) In this section:  
*civil proceeding*—see the *Evidence Act 2011*, dictionary.  
*court* includes the ACAT.

**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—work health and safety**

- (1) The director-general 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 *Work Health and Safety Act 2011* in relation to work by workers.
- (2) In particular, the director-general 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 *Work Health and Safety Act 2011* 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.

## 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 director-general 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 director-general may, in writing, authorise the divulging of protected information about a person if the director-general 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 director-general, 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 director-general, 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 director-general 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 disapplied (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](#).

## 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 police officer
- civil partnership
- civil union
- director-general (see s 163)
- doctor
- domestic partner (see s 169 (1))
- found guilty
- Governor
- health practitioner
- 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 servant
- 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 184.

**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 159.

**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 director-general**, for part 12.2 (Interstate leave)—see section 206.

**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.

**director-general**, for chapter 4 (Detention in police and court cells etc)—see section 29.

**disciplinary action**—see section 183.

**disciplinary breach**—see section 152.

**disciplinary charge**—see section 151.

**drug**—see section 132.

**engage in conduct** means—

- (a) do an act; or
- (b) omit to do an act.

**entitled person**—see section 57.

**escape**, for part 12.2 (Interstate leave)—see section 206.

**escort officer**, in relation to a person, means—

- (a) a police officer; or

- (b) a corrections officer whose functions include 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 service**—

- (a) means a service provided to someone (the **service user**) for any of the following purposes:
  - (i) assessing, recording, maintaining or improving the physical, mental or emotional health, comfort or wellbeing of the service user;
  - (ii) diagnosing or treating an illness, disability, disorder or condition of the service user; and
- (b) includes a service provided by a health practitioner in the practitioner's capacity as a health practitioner.

**hearing**, for an inquiry—see section 151.

**initial report**—see section 156 (2) (e).

**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 153.

*investigator's report*—see section 157 (2) (b).

*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 an official visitor for this Act appointed under the [Official Visitor Act 2012](#), section 10.

*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.

*personal monitoring device*—see section 101.

*police cell*, for Chapter 4 (Detention in police and court cells etc)—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 this Act generally—see section 151; and
- (b) for chapter 11 (Disciplinary inquiries)—see section 191.

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

**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.

**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.

**seizeable item**, for division 9.4.3 (Strip searches)—see section 113.

**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.

***visitable place***—see section 57.

***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.

***young detainee***, for chapter 4 (Detention in police and court cells etc)—see the [Children and Young People Act 2008](#), section 95.

## Endnotes

### 1 About the endnotes

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

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

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

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

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

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

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Corrections Management Act 2007 A2007-15**

notified LR 18 June 2007  
s 1, s 2 commenced 18 June 2007 (LA s 75 (1))  
s 230 commenced 1 August 2007 (LA s 75AA)  
sch 1 pt 1.2, pt 1.3 commenced 1 August 2007 (s 2 and [CN2007-6](#))  
remainder commenced 18 December 2007 (s 2 and LA s 79)

as amended by

#### **Civil Partnerships Act 2008 A2008-14 sch 1 pt 1.6**

notified LR 15 May 2008  
s 1, s 2 commenced 15 May 2008 (LA s 75 (1))  
sch 1 pt 1.6 commenced 19 May 2008 (s 2 and [CN2008-8](#))

#### **Children and Young People Act 2008 A2008-19 sch 1 pt 1.1**

notified LR 17 July 2008  
s 1, s 2 commenced 17 July 2008 (LA s 75 (1))  
sch 1 pt 1.1 commenced 9 September 2008 (s 2 and [CN2008-13](#))

#### **Children and Young People (Consequential Amendments) Act 2008 A2008-20 sch 2 pt 2.4**

notified LR 17 July 2008  
s 1, s 2 commenced 17 July 2008 (LA s 75 (1))  
s 3 commenced 18 July 2008 (s 2 (1))  
sch 2 pt 2.4 commenced 9 September 2008 (s 2 (3) and see [Children and Young People Act 2008 A2008-19](#), s 2 and [CN2008-13](#))

#### **Crimes Legislation Amendment Act 2008 A2008-44 sch 1 pt 1.2**

notified LR 9 September 2008  
s 1, s 2 commenced 9 September 2008 (LA s 75 (1))  
sch 1 pt 1.2 commenced 30 May 2009 (s 2 and [CN2009-4](#))

#### **Corrections Management Amendment Act 2008 A2008-49**

notified LR 15 September 2008  
s 1, s 2 commenced 15 September (LA s 75 (1))  
remainder commenced 16 September 2008 (s 2)

**Work Safety Legislation Amendment Act 2009 A2009-28 sch 2 pt 2.2**

notified LR 9 September 2009

s 1, s 2 commenced 9 September 2009 (LA s 75 (1))

sch 2 pt 2.2 commenced 1 October 2009 (s 2 and see [Work Safety Act 2008](#) A2008-51, s 2 (1) (b) and [CN2009-11](#))

**Smoking (Prohibition in Enclosed Public Places) Amendment Act 2009 A2009-51 sch 1 pt 1.1**

notified LR 18 December 2009

s 1, s 2 commenced 18 December 2009 (LA s 75 (1))

sch 1 pt 1.1 commenced 9 December 2010 (s 2 (1) (b) and [CN2010-4](#))

**Health Practitioner Regulation National Law (ACT) Act 2010 A2010-10 sch 2 pt 2.4**

notified LR 31 March 2010

s 1, s 2 commenced 31 March 2010 (LA s 75 (1))

sch 2 pt 2.4 commenced 1 July 2010 (s 2 (1) (a))

**Justice and Community Safety Legislation Amendment Act 2010 (No 2) A2010-30 sch 1 pt 1.5**

notified LR 31 August 2010

s 1, s 2 commenced 31 August 2010 (LA s 75 (1))

s 3 commenced 1 September 2010 (s 2 (1))

sch 1 pt 1.5 commenced 28 September 2010 (s 2 (2))

**Justice and Community Safety Legislation Amendment Act 2010 (No 3) A2010-40 sch 2 pt 2.4**

notified LR 5 October 2010

s 1, s 2 commenced 5 October 2010 (LA s 75 (1))

s 3 commenced 6 October 2010 (s 2 (1))

sch 2 pt 2.4 commenced 2 November 2010 (s 2 (2))

**Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.37**

notified LR 30 June 2011

s 1, s 2 commenced 30 June 2011 (LA s 75 (1))

sch 1 pt 1.37 commenced 1 July 2011 (s 2 (1))

## Endnotes

3 Legislation history

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### **Statute Law Amendment Act 2011 (No 3) A2011-52 sch 3 pt 3.13**

notified LR 28 November 2011

s 1, s 2 commenced 28 November 2011 (LA s 75 (1))

sch 3 pt 3.13 commenced 12 December 2011 (s 2)

### **Work Health and Safety (Consequential Amendments) Act 2011 A2011-55 sch 1 pt 1.3**

notified LR 14 December 2011

s 1, s 2 commenced 14 December 2011 (LA s 75 (1))

sch 1 pt 1.3 commenced 1 January 2012 (s 2 and see [Work Health and Safety Act 2011](#) A2011-35, s 2 and [CN2011-12](#))

### **Corrections and Sentencing Legislation Amendment Act 2011 A2011-57 pt 2**

notified LR 14 December 2011

s 1, s 2 commenced 14 December 2011 (LA s 75 (1))

pt 2 commenced 15 December 2011 (s 2)

### **Official Visitor Act 2012 A2012-33 sch 1 pt 1.2**

notified LR 15 June 2012

s 1, s 2 commenced 15 June 2012 (LA s 75 (1))

sch 1 pt 1.2 commenced 1 September 2013 (s 2 as amended by [A2013-22](#) s 4)

### **Corrections and Sentencing Legislation Amendment Act 2012 A2012-34 pt 2**

notified LR 15 June 2012

s 1, s 2 commenced 15 June 2012 (LA s 75 (1))

pt 2 commenced 15 December 2012 (s 2 (2))

### **Civil Unions Act 2012 A2012-40 sch 3 pt 3.7**

notified LR 4 September 2012

s 1, s 2 commenced 4 September 2012 (LA s 75 (1))

sch 3 pt 3.7 commenced 11 September 2012 (s 2)

### **Statute Law Amendment Act 2013 A2013-19 sch 3 pt 3.7**

notified LR 24 May 2013

s 1, s 2 commenced 24 May 2013 (LA s 75 (1))

sch 3 pt 3.7 commenced 14 June 2013 (s 2)

**Official Visitor Amendment Act 2013 A2013-22 sch 1 pt 1.2**

notified LR 17 June 2013  
s 1, s 2 commenced 17 June 2013 (LA s 75 (1))  
sch 1 pt 1.2 commenced 1 September 2013 (s 2 and see [Official Visitor Act 2012 A2012-33 s 2](#) as amended by this Act)

**Marriage Equality (Same Sex) Act 2013 A2013-39 sch 2 pt 2.6**

notified LR 4 November 2013  
s 1, s 2 commenced 4 November 2013 (LA s 75 (1))  
sch 2 pt 2.6 commenced 7 November 2013 (s 2 and [CN2013-11](#))  
*Note* The High Court held this Act to be of no effect (see *Commonwealth v Australian Capital Territory* [2013] HCA 55)

**Corrections and Sentencing Legislation Amendment Act 2014 A2014-6 pt 3**

notified LR 27 March 2014  
s 1, s 2 commenced 27 March 2014 (LA s 75 (1))  
pt 3 commenced 28 March 2014 (s 2)

**Statute Law Amendment Act 2014 A2014-18 sch 1 pt 1.1, sch 3 pt 3.5**

notified LR 20 May 2014  
s 1, s 2 commenced 20 May 2014 (LA s 75 (1))  
sch 1 pt 1.1, sch 3 pt 3.5 commenced 10 June 2014 (s 2 (1))

**Mental Health (Treatment and Care) Amendment Act 2014 A2014-51 sch 1 pt 1.2 (as am by A2015-38 amdt 2.54)**

notified LR 12 November 2014  
s 1, s 2 commenced 12 November 2014 (LA s 75 (1))  
sch 1 pt 1.2 commenced 1 March 2016 (s 2 (as am by [A2015-38 amdt 2.54](#)))

**Corrections Management Amendment Act 2015 A2015-37**

notified LR 1 October 2015  
s 1, s 2 commenced 1 October 2015 (LA s 75 (1))  
s 3 commenced 2 October 2015 (LA s 75AA)  
s 6 commenced 2 October 2015 (s 2 (1))  
remainder commenced 12 November 2015 (s 2 (2))

## Endnotes

3 Legislation history

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**Mental Health Act 2015 A2015-38 sch 2 pt 2.2, sch 2 pt 2.4 div 2.4.4**

notified LR 7 October 2015

s 1, s 2 commenced 7 October 2015 (LA s 75 (1))

sch 2 pt 2.2 (amdt 2.54) commenced 8 October 2015 (s 2 (2))

sch 2 pt 2.4 div 2.4.4 commenced 1 March 2016 (s 2 (1) and see  
Mental Health (Treatment and Care) Amendment Act 2014 [A2014-51](#),  
s 2 (as am by [A2015-38](#) amdt 2.54))

*Note* Sch 2 pt 2.2 (amdt 2.54) only amends the [Mental Health  
\(Treatment and Care\) Amendment Act 2014](#) A2014-51

**Statute Law Amendment Act 2015 (No 2) A2015-50 sch 3 pt 3.8**

notified LR 25 November 2015

s 1, s 2 commenced 25 November 2015 (LA s 75 (1))

sch 3 pt 3.8 commenced 9 December 2015 (s 2)

**Crimes (Sentencing and Restorative Justice) Amendment Act 2016  
A2016-4 sch 1 pt 1.5**

notified LR 24 February 2016

s 1, s 2 commenced 24 February 2016 (LA s 75 (1))

sch 1 pt 1.5 commenced 2 March 2016 (s 2 (1))



## 4 Amendment history

### Commencement

s 2 om LA s 89 (4)

### Application of Act—*detainees*

s 6 am [A2008-19](#) amdt 1.1  
(1) note 2 exp 2 June 2011 (s 501 (2), (4) (LA s 88 declaration applies))  
am [A2016-4](#) amdt 1.9

### Correctional centres—minimum living conditions

s 12 am [A2011-22](#) amdt 1.113

### Ministerial directions to director-general

s 13 hdg am [A2011-22](#) amdt 1.113  
s 13 am [A2011-22](#) amdt 1.113

### Corrections policies and operating procedures

s 14 am [A2011-22](#) amdt 1.113

### Exclusions from notified corrections policies and operating procedures

s 15 am [A2011-22](#) amdt 1.113

### Director-general directions

s 16 hdg am [A2011-22](#) amdt 1.113  
s 16 am [A2011-22](#) amdt 1.113

### Director-general directions

s 17 hdg am [A2011-22](#) amdt 1.113  
s 17 am [A2011-22](#) amdt 1.113, amdt 1.114; [A2014-18](#) amdt 3.18

### Corrections officers—appointment

s 19 am [A2011-22](#) amdt 1.113

### Corrections officers—functions

s 20 am [A2011-22](#) amdt 1.113

### Doctors—health service appointments

s 21 am [A2011-22](#) amdt 1.113

### Health practitioners—non-therapeutic functions

s 22 hdg sub [A2010-10](#) amdt 2.15  
s 22 am [A2010-10](#) amdt 2.15; [A2011-22](#) amdt 1.113

### Identity cards

s 23 am [A2010-10](#) amdt 2.20; [A2011-22](#) amdt 1.113

### Declaration of emergency

s 26 am [A2011-22](#) amdt 1.113

### Emergency powers

s 27 am [A2011-22](#) amdt 1.113

## Endnotes

### 4 Amendment history

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#### **Arrangements with police**

s 28 am [A2011-22](#) amdt 1.113

#### **Definitions—ch 4**

s 29 am [A2008-19](#) amdt 1.3  
def **chief executive** ins [A2008-19](#) amdt 1.2  
om [A2011-22](#) amdt 1.109  
def **director-general** ins [A2011-22](#) amdt 1.110  
def **young detainee** ins [A2008-19](#) amdt 1.2

#### **Detention in police cells**

s 30 am [A2008-19](#) amdt 1.4, amdt 1.5; [A2011-22](#) amdt 1.113

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

s 31 am [A2008-19](#) amdt 1.6, amdt 1.7

#### **Detention in police cells—additional provisions for young detainees**

s 31A ins [A2008-19](#) amdt 1.8  
am [A2008-44](#) amdt 1.14

#### **Detention in court cells**

s 33 am [A2008-19](#) amdts 1.9-1.12; [A2011-22](#) amdt 1.113,  
amdt 1.114

#### **Detention in court cells—additional provisions for young detainees**

s 33A ins [A2008-19](#) amdt 1.13  
am [A2011-22](#) amdt 1.113

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

s 34 am [A2008-19](#) amdt 1.14; [A2011-22](#) amdt 1.113

#### **Escort officer functions etc**

s 35 am [A2011-22](#) amdt 1.113, amdt 1.114

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

s 38 am [A2011-22](#) amdt 1.113

#### **Food and drink**

s 40 am [A2010-10](#) amdt 2.20; [A2011-22](#) amdt 1.113

#### **Clothing**

s 41 am [A2011-22](#) amdt 1.113

#### **Personal hygiene**

s 42 am [A2011-22](#) amdt 1.113

#### **Sleeping areas**

s 43 am [A2011-22](#) amdt 1.113

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

s 44 am [A2011-22](#) amdt 1.113

#### **Access to open air and exercise**

s 45 am [A2011-22](#) amdt 1.113

**Communication with family and others**

s 46 am [A2011-22](#) amdt 1.113

**Telephone calls**

s 47 am [A2011-22](#) amdt 1.113

**Mail**

s 48 am [A2011-22](#) amdt 1.113

**Visits by family members etc**

s 49 am [A2011-22](#) amdt 1.113

**Contact with accredited people**

s 50 am [A2011-22](#) amdt 1.113

**Visits—protected communications**

s 51 am [A2011-22](#) amdt 1.113

**News and educational services**

s 52 am [A2011-22](#) amdt 1.113

**Health care**

s 53 am [A2010-10](#) amdt 2.20; [A2011-22](#) amdt 1.113

**Transfers to health facilities**

s 54 am [A2010-10](#) amdt 2.20; [A2011-22](#) amdt 1.113

**Transfer to mental health facility—transfer direction**

s 54A ins [A2014-51](#) amdt 1.5  
am [A2015-38](#) amdt 2.68

**Religious, spiritual and cultural needs**

s 55 am [A2011-22](#) amdt 1.113

**Official visitors—meaning of *entitled person and visitable place***

s 57 sub [A2012-33](#) amdt 1.16  
am [A2013-22](#) amdt 1.6, amdt 1.7

**Frequency of visits by official visitors**

s 58 sub [A2012-33](#) amdt 1.16  
om [A2013-22](#) amdt 1.8

**Complaints to official visitors**

s 59 am [A2011-22](#) amdt 1.113  
om [A2012-33](#) amdt 1.16

**Investigation etc by official visitors**

s 60 am [A2011-22](#) amdt 1.113  
om [A2012-33](#) amdt 1.16

**Official visitors—ending appointments**

s 61 am [A2010-30](#) amdt 1.19  
om [A2012-33](#) amdt 1.16

## Endnotes

4 Amendment history

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

s 62 am [A2011-22](#) amdt 1.113

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

s 63 am [A2016-4](#) amdt 1.10

### **Authority for detention**

s 64 am [A2011-22](#) amdt 1.113

### **Identification of detainees**

s 65 am [A2010-10](#) amdt 2.16; [A2011-22](#) amdt 1.113; [A2013-19](#) amdt 3.41

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

s 66 am [A2011-22](#) amdt 1.113, amdt 1.114

### **Initial assessment**

s 67 am [A2011-22](#) amdt 1.113

### **Health assessment**

s 68 am [A2015-38](#) amdt 2.68

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

s 69 am [A2011-22](#) amdt 1.113

### **Strip search on admission**

s 70 am [A2011-22](#) amdt 1.113

### **Property of detainees**

s 71 am [A2011-22](#) amdt 1.113

### **Security classification**

s 72 am [A2011-22](#) amdt 1.113

### **Case management plan**

s 73 am [A2011-22](#) amdt 1.113

### **Entries in register of detainees**

s 74 am [A2011-22](#) amdt 1.113

### **Compliance with director-general's directions**

s 75 hdg am [A2011-22](#) amdt 1.114

s 75 am [A2011-22](#) amdt 1.113, amdt 1.114

### **Register of detainees**

s 76 am [A2011-22](#) amdt 1.113; [A2016-4](#) amdt 1.11

### **Health reports**

s 77 am [A2008-20](#) amdt 2.14; [A2011-22](#) amdt 1.113, amdt 1.114; [A2015-38](#) amdt 2.68

### **Case management plans—scope etc**

s 78 am [A2011-22](#) amdt 1.113

**Transgender and intersex detainees—sexual identity**

s 79 am [A2010-10](#) amdt 2.20; [A2011-22](#) amdt 1.113

**Security classification—basis etc**

s 80 am [A2011-22](#) amdt 1.113

**Prohibited things**

s 81 am [A2011-22](#) amdt 1.113

**Possession of prohibited things**

s 82 am [A2011-22](#) amdt 1.113

**Trust accounts for detainees**

s 84 am [A2011-22](#) amdt 1.113

**Prohibited areas**

s 85 am [A2011-22](#) amdt 1.113

**Nonsmoking areas**

s 86 am [A2009-51](#) amdt 1.1; [A2011-22](#) amdt 1.113

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

s 87 am [A2008-14](#) amdt 1.17; [A2011-22](#) amdt 1.113; [A2012-40](#) amdt 3.25; [A2013-39](#) amdt 2.11 ([A2013-39](#) never effective (see *Commonwealth v Australian Capital Territory* [2013] HCA 55))

**Segregation—safety and security**

s 90 am [A2011-22](#) amdt 1.113, amdt 1.114; [A2011-57](#) s 4

**Segregation—protective custody**

s 91 am [A2011-22](#) amdt 1.113, amdt 1.114; [A2011-57](#) s 5

**Segregation—health**

s 92 am [A2011-22](#) amdt 1.113, amdt 1.114; [A2011-57](#) s 6

**Application for review of segregation directions**

s 96 am [A2011-22](#) amdt 1.113, amdt 1.114

**Review of segregation directions**

s 97 am [A2011-22](#) amdt 1.113, amdt 1.114; [A2015-50](#) amdt 3.56

**Other separation of detainees**

s 98 am [A2011-22](#) amdt 1.113

**Monitoring—general considerations**

s 99 am [A2011-22](#) amdt 1.113

**Monitoring at correctional centres**

s 100 am [A2011-22](#) amdt 1.113

**Personal monitoring devices**

s 101 am [A2011-22](#) amdt 1.113

## Endnotes

4 Amendment history

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### **Interfering with personal monitoring devices**

s 102 am [A2011-22](#) amdt 1.113

### **Monitoring telephone calls etc**

s 103 am [A2011-22](#) amdt 1.113

### **Monitoring ordinary mail**

s 104 am [A2011-22](#) amdt 1.113

### **Monitoring protected mail**

s 105 am [A2011-22](#) amdt 1.113

### **Mail searches—consequences**

s 106 am [A2011-22](#) amdt 1.113

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

s 110 am [A2011-22](#) amdt 1.113

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

s 111 am [A2011-22](#) amdt 1.113

### **Meaning of *seizeable item*—div 9.4.3**

s 113 sub [A2008-49](#) s 4

### **Strip searches—when may be conducted**

s 113A ins [A2008-49](#) s 4  
am [A2011-22](#) amdt 1.113

### **Strip searches—on suspicion**

s 113B ins [A2008-49](#) s 4  
am [A2011-22](#) amdt 1.113

### **Strip searches—where prudent**

s 113C ins [A2008-49](#) s 4  
am [A2011-22](#) amdt 1.113

### **Strip searches—general rules**

s 115 am [A2011-22](#) amdt 1.113

### **Body searches—directions**

s 116 am [A2010-10](#) amdt 2.20; [A2011-22](#) amdt 1.113

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

s 117 am [A2010-10](#) amdt 2.20; [A2011-22](#) amdt 1.113

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

s 118 am [A2011-22](#) amdt 1.113

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

s 119 am [A2011-22](#) amdt 1.113

### **Searches—premises and property**

s 122 am [A2011-22](#) amdt 1.113

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

s 124 am [A2011-22](#) amdt 1.113

**Searches—use of corrections dogs**

s 125 am [A2011-22](#) amdt 1.113

**Seizing mail etc**

s 127 am [A2011-22](#) amdt 1.113, amdt 1.114

**Seizing property—general**

s 128 am [A2011-22](#) amdt 1.113

**Receipt for seizure**

s 129 am [A2011-22](#) amdt 1.113

**Forfeiture of things seized**

s 130 am [A2011-22](#) amdt 1.113

**Return of things seized but not forfeited**

s 131 am [A2011-22](#) amdt 1.113

**Definitions—*drug* and *test sample***

s 132 am [A2010-10](#) amdt 2.20

**When test sample *positive***

s 133 am [A2011-22](#) amdt 1.113; [A2016-4](#) amdt 1.12

**Alcohol and drug testing of detainees**

s 134 am [A2010-10](#) amdt 2.20; [A2011-22](#) amdt 1.113; [A2015-37](#) s 4, s 5

**Effect of positive test sample from detainee**

s 135 am [A2011-22](#) amdt 1.113

**Managing use of force**

s 137 am [A2011-22](#) amdt 1.113

**Authorised use of force**

s 138 am [A2011-22](#) amdt 1.113

**Use of restraints or weapons**

s 140 am [A2010-10](#) amdt 2.17; [A2011-22](#) amdt 1.113

**Medical examination after use of force**

s 141 am [A2011-22](#) amdt 1.113

**Reporting use of force**

s 142 am [A2011-22](#) amdt 1.113

**Visiting conditions**

s 143 am [A2011-22](#) amdt 1.113

**Notice of visiting conditions**

s 144 am [A2011-22](#) amdt 1.113

## Endnotes

### 4 Amendment history

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

s 145 am [A2011-22](#) amdt 1.113

#### **Directions to visitors**

s 146 am [A2011-22](#) amdt 1.113

#### **Searches of visitors**

s 147 am [A2011-22](#) amdt 1.113

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

s 148 am [A2011-22](#) amdt 1.113

#### **Removing people from correctional centre**

s 149 am [A2011-22](#) amdt 1.113

#### **Definitions—discipline**

s 151 def **administrator** am [A2011-22](#) amdt 1.113  
om [A2012-34](#) s 4

def **initial report** ins [A2012-34](#) s 5

def **investigative segregation** am [A2011-22](#) amdt 1.113  
sub [A2012-34](#) s 6

def **investigator's report** sub [A2012-34](#) s 6

def **presiding officer** ins [A2012-34](#) s 7

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

s 152 am [A2011-22](#) amdt 1.113, amdt 1.114

#### **Meaning of investigator**

s 153 am [A2011-22](#) amdt 1.113

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

s 156 am [A2012-34](#) s 8, s 9

#### **Investigation by investigator**

s 157 sub [A2012-34](#) s 10

#### **Action by presiding officer**

s 158 sub [A2012-34](#) s 10

#### **Disciplinary charge**

s 159 am [A2012-34](#) s 11

#### **Director-general directions—investigative segregation**

s 160 hdg am [A2011-22](#) amdt 1.113

s 160 am [A2011-22](#) amdt 1.113; [A2012-34](#) s 12, s 13

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

s 163 am [A2011-22](#) amdt 1.113, amdt 1.114; [A2011-57](#) s 7;  
[A2012-34](#) s 14

#### **Review of investigative segregation directions**

s 165 am [A2015-50](#) amdt 3.56



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

s 166 am [A2011-22](#) amdt 1.113  
om [A2012-34](#) s 15

**Disciplinary breach admitted by accused**

s 167 am [A2012-34](#) s 16, s 17

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

s 169 am [A2011-22](#) amdt 1.113  
om [A2012-34](#) s 18

**Disciplinary inquiry into charge**

s 170 am [A2012-34](#) s 19

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

s 171 am [A2012-34](#) s 20; ss renum R18 LA; [A2015-50](#) amdt 3.57

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

s 172 am [A2011-22](#) amdt 1.113  
om [A2012-34](#) s 21

**Application for review of inquiry decision**

s 173 am [A2011-22](#) amdt 1.113; [A2012-34](#) s 22

**Director-general to assign review officer**

s 174 hdg am [A2011-22](#) amdt 1.113  
s 174 am [A2011-22](#) amdt 1.113  
om [A2012-34](#) s 23

**Review of inquiry decision**

s 175 sub [A2012-34](#) s 23

**Director-general's powers after further inquiry**

s 176 hdg am [A2012-34](#) s 24  
s 176 am [A2012-34](#) s 25, s 26; [A2015-50](#) amdt 3.57

**Appointment of adjudicator**

s 177 am [A2014-18](#) amdt 1.1, amdt 1.2

**Application for review by adjudicator**

s 178 am [A2012-34](#) s 26

**Review by adjudicator**

s 179 am [A2012-34](#) s 26; [A2015-50](#) amdt 3.57

**Adjudicator's powers after review**

s 180 am [A2012-34](#) s 27; [A2015-50](#) amdt 3.57

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

s 182 am [A2012-34](#) s 28

**Disciplinary action by relevant presiding officer**

s 183 am [A2011-22](#) amdt 1.113

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### Reparation

s 185 am [A2011-22](#) amdt 1.113

### Separate confinement conditions

s 187 am [A2011-22](#) amdt 1.113

### Record of disciplinary action

s 189 am [A2011-22](#) amdt 1.113

### Presiding officer may require official reports

s 196 am [A2011-22](#) amdt 1.113

### Notice of disciplinary hearing

s 200 am [A2011-22](#) amdt 1.113

### Appearance at disciplinary hearing—audiovisual or audio link

s 203 am [A2010-40](#) amdt 2.4

### Local leave directions

s 204 am [A2011-22](#) amdt 1.113

### Local leave permits

s 205 am [A2011-22](#) amdt 1.113

### Definitions—pt 12.2

s 206 def *corresponding chief executive* om [A2011-22](#) amdt 1.113  
def *corresponding director-general* ins [A2011-22](#)  
amdt 1.113

### Interstate leave permits

s 208 am [A2011-22](#) amdt 1.113; [A2015-37](#) s 6; ss renum R25 LA

### Notice to participating States

s 210 am [A2011-22](#) amdt 1.113

### Lawful temporary absence from correctional centre

s 217 am [A2011-22](#) amdt 1.113, amdt 1.114

### Power of court to bring detainee before it—civil proceeding

s 217A ins [A2014-6](#) s 9

### Detainee's work—work health and safety

s 219 hdg sub [A2009-28](#) amdt 2.3; [A2011-55](#) amdt 1.4  
s 219 am [A2009-28](#) amdt 2.4, amdt 2.5; [A2011-22](#) amdt 1.113;  
[A2011-55](#) amdt 1.5

### Random testing of detainees—statistical purposes

s 221 am [A2011-22](#) amdt 1.113  
om [A2015-37](#) s 7

### Confidentiality

s 222 am [A2011-22](#) amdt 1.113

**Evidentiary certificates**

s 226 am [A2011-22](#) amdt 1.113

**Legislation amended—sch 1**

s 230 om LA s 89 (3)

**Transitional**

ch 50 hdg om [A2011-52](#) amdt 3.57

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

s 500 om [A2011-52](#) amdt 3.57

**Application of Act to transitional detainees**

s 501 exp 2 June 2011 (s 501 (4) (LA s 88 declaration applies))

**Application of Act to transitional interstate leave permits**

s 502 exp 2 June 2011 (s 502 (3) (LA s 88 declaration applies))

**Application of Act to certain transitional remandees**

s 503 exp 18 December 2009 (s 503 (6) (LA s 88 declaration applies))

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

s 504 exp 18 December 2009 (s 504 (4) (LA s 88 declaration applies))

**Construction of outdated references**

s 505 om [A2011-52](#) amdt 3.57

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

s 506 exp 18 December 2009 (s 506 (4) (LA s 88 declaration applies))

**Transitional regulations**

s 507 exp 18 December 2009 (s 507 (4) (LA s 88 declaration applies))

**Transitional—Corrections and Sentencing Legislation Amendment Act 2012**

ch 51 hdg ins [A2012-34](#) s 29  
exp 15 December 2013 (s 509)

**Alleged disciplinary breaches not finally dealt with before commencement day**

s 508 ins [A2012-34](#) s 29  
exp 15 December 2013 (s 509)

**Expiry—ch 51**

s 509 ins [A2012-34](#) s 29  
exp 15 December 2013 (s 509)

## Endnotes

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### Consequential amendments

sch 1 om LA s 89 (3)

### Dictionary

dict

am [A2008-14](#) amdt 1.18; [A2010-10](#) amdt 2.18; [A2010-30](#) amdt 1.20; [A2011-22](#) amdt 1.111, amdt 1.112; [A2012-40](#) amdt 3.26; [A2013-19](#) amdt 3.42; [A2012-33](#) amdt 1.17; [A2013-22](#) amdt 1.9; [A2013-39](#) amdt 2.12, amdt 2.13 ([A2013-39](#) never effective (see *Commonwealth v Australian Capital Territory* [2013] HCA 55)); [A2014-18](#) amdt 3.19

def **administrator** om [A2012-34](#) s 30

def **administrative penalty** sub [A2013-19](#) amdt 3.43

def **charge notice** sub [A2013-19](#) amdt 3.44

def **corresponding chief executive** om [A2011-22](#) amdt 1.113

def **corresponding corrections law** om [A2013-19](#) amdt 3.45

def **corresponding director-general** ins [A2011-22](#) amdt 1.113

def **detention period** om [A2016-4](#) amdt 1.13

def **disciplinary action** sub [A2013-19](#) amdt 3.46

def **disciplinary breach** sub [A2013-19](#) amdt 3.46

def **director-general** ins [A2011-52](#) amdt 3.58

def **entitled person** ins [A2012-33](#) amdt 1.18

def **health professional** om [A2010-10](#) amdt 2.19

def **health service** sub [A2010-10](#) amdt 2.19

def **initial report** ins [A2012-34](#) s 31

def **investigator** sub [A2013-19](#) amdt 3.47

def **investigator's report** sub [A2012-34](#) s 32

def **official visitor** om [A2012-33](#) amdt 1.19  
ins [A2013-22](#) amdt 1.10

def **periodic detention** om [A2016-4](#) amdt 1.13

def **presiding officer** sub [A2012-34](#) s 33

def **privilege** sub [A2013-19](#) amdt 3.48

def **review officer** om [A2012-34](#) s 34

def **seizable item** ins [A2008-49](#) s 5

def **visitable place** ins [A2012-33](#) amdt 1.20

def **young detainee** ins [A2011-52](#) amdt 3.58

## 5 Earlier republications

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

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

Republication No and date	Effective	Last amendment made by	Republication for
R1 18 Dec 2007	18 Dec 2007– 18 May 2008	not amended	new Act
R2 19 May 2008	19 May 2008– 8 Sept 2008	<a href="#">A2008-14</a>	amendments by <a href="#">A2008-14</a>
R3 9 Sept 2008	9 Sept 2008– 15 Sept 2008	<a href="#">A2008-44</a>	amendments by <a href="#">A2008-19</a> and <a href="#">A2008-20</a>
R4 16 Sept 2008	16 Sept 2008– 29 May 2009	<a href="#">A2008-49</a>	amendments by <a href="#">A2008-49</a>
R5 30 May 2009	30 May 2009– 30 Sept 2009	<a href="#">A2008-49</a>	amendments by <a href="#">A2008-44</a>
R6 1 Oct 2009	1 Oct 2009– 18 Dec 2009	<a href="#">A2009-28</a>	amendments by <a href="#">A2009-28</a>
R7 19 Dec 2009	19 Dec 2009– 30 June 2010	<a href="#">A2009-51</a>	commenced expiry
R8 1 July 2010	1 July 2010– 27 Sept 2010	<a href="#">A2010-10</a>	amendments by <a href="#">A2010-10</a>
R9 28 Sept 2010	28 Sept 2010– 1 Nov 2010	<a href="#">A2010-30</a>	amendments by <a href="#">A2010-30</a>
R10 2 Nov 2010	2 Nov 2010– 8 Dec 2010	<a href="#">A2010-40</a>	amendments by <a href="#">A2010-40</a>
R11 9 Dec 2010	9 Dec 2010– 2 June 2011	<a href="#">A2010-40</a>	amendments by <a href="#">A2009-51</a>

## Endnotes

### 5 Earlier republications

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R12 3 June 2011	3 June 2011– 30 June 2011	<a href="#">A2010-40</a>	expiry of transitional provisions (s 501, s 502)
R13 1 July 2011	1 July 2011– 11 Dec 2011	<a href="#">A2011-22</a>	amendments by <a href="#">A2011-22</a>
R14 12 Dec 2011	12 Dec 2011– 14 Dec 2011	<a href="#">A2011-52</a>	amendments by <a href="#">A2011-52</a>
R15 15 Dec 2011	15 Dec 2011– 31 Dec 2011	<a href="#">A2011-57</a>	amendments by <a href="#">A2011-57</a>
R16 1 Jan 2012	1 Jan 2012– 10 Sept 2012	<a href="#">A2011-57</a>	amendments by <a href="#">A2011-55</a>
R17 11 Sept 2012	11 Sept 2012– 14 Dec 2012	<a href="#">A2012-40</a>	amendments by <a href="#">A2012-40</a>
R18 15 Dec 2012	15 Dec 2012– 13 June 2013	<a href="#">A2012-40</a>	amendments by <a href="#">A2012-34</a>
R19 14 June 2013	14 June 2013– 31 Aug 2013	<a href="#">A2013-19</a>	amendments by <a href="#">A2013-19</a>
R20 1 Sept 2013	1 Sept 2013– 6 Nov 2013	<a href="#">A2013-22</a>	amendments by <a href="#">A2012-33</a> and <a href="#">A2013-22</a>
R21 7 Nov 2013	never effective	<a href="#">A2013-39</a> (never effective)	amendments by <a href="#">A2013-39</a>
R21 (RI) 24 Feb 2014	7 Nov 2013– 15 Dec 2013	<a href="#">A2013-39</a> (never effective)	reissue because of High Court decision in relation to <a href="#">A2013-39</a>
R22 16 Dec 2013	never effective	<a href="#">A2013-39</a> (never effective)	removed from LR because of High Court decision in relation to <a href="#">A2013-39</a>
R22 (RI) 24 Feb 2014	16 Dec 2013– 27 Mar 2014	<a href="#">A2013-39</a> (never effective)	expiry of transitional provisions (ch 51) and reissue because of High Court decision in relation to <a href="#">A2013-39</a>

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R23 28 Mar 2014	28 Mar 2014– 9 June 2014	<a href="#">A2014-6</a>	amendments by <a href="#">A2014-6</a>
R24 10 June 2014	10 June 2014– 1 Oct 2015	<a href="#">A2014-18</a>	amendments by <a href="#">A2014-18</a>
R25 2 Oct 2015	2 Oct 2015– 7 Oct 2015	<a href="#">A2015-37</a>	amendments by <a href="#">A2015-37</a>
R26 8 Oct 2015	8 Oct 2015– 11 Nov 2015	<a href="#">A2015-37</a>	updated endnotes as amended by <a href="#">A2015-38</a>
R27 12 Nov 2015	12 Nov 2015– 8 Dec 2015	<a href="#">A2015-38</a>	amendments by <a href="#">A2015-37</a>
R28 9 Dec 2015	9 Dec 2015– 29 Feb 2016	<a href="#">A2015-50</a>	amendments by <a href="#">A2015-50</a>
R29 1 Mar 2016	1 Mar 2016– 1 Mar 2016	<a href="#">A2015-50</a>	amendments by <a href="#">A2014-51</a> and <a href="#">A2015-38</a>

## Endnotes

6 Expired transitional or validating provisions

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### **6 Expired transitional or validating provisions**

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see *Legislation Act 2001*, s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation ‘exp’ followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

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