



Australian Capital Territory

# Corrections and Sentencing Legislation Amendment Act 2012

A2012-34

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Australian Capital Territory

# Corrections and Sentencing Legislation Amendment Act 2012

**A2012-34**

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An Act to amend legislation about corrections management and sentencing

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Corrections and Sentencing Legislation Amendment Act 2012*.

### 2 Commencement

- (1) Parts 1 and 3 commence on the day after this Act's notification day.

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

- (2) Part 2 commences 6 months after this Act's notification day.

### 3 Legislation amended

This Act amends the *Corrections Management Act 2007* and the *Crimes (Sentence Administration) Act 2005*.

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## Part 2                      Corrections Management Act 2007

### 4                      Definitions—discipline Section 151, definition of *administrator*

*omit*

### 5                      Section 151, new definition of *initial report*

*insert*

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

### 6                      Section 151, definitions of *investigative segregation* and *investigator's report*

*substitute*

*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's report*—see section 157 (2) (b).

### 7                      Section 151, new definition of *presiding officer*

*insert*

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

**8 Report etc by corrections officer  
Section 156 (2) (e)**

*omit*

an investigator a report

*substitute*

a presiding officer a report (an *initial report*)

**9 Section 156 (3)**

*omit*

an investigator

*substitute*

the presiding officer

**10 Sections 157 and 158**

*substitute*

**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.

**11** **Disciplinary charge**  
**Section 159**

*omit*

administrator

*substitute*

presiding officer

**12 Director-general directions—investigative segregation  
Section 160 (2)**

*omit*

under any

*substitute*

under either

**13 Section 160 (2) (b) and (c)**

*substitute*

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

**14 Duration of investigative segregation  
Section 163 (5) (b)**

*omit*

the administrator

*substitute*

a presiding officer

**15 Meaning of *presiding officer*—div 10.3.1  
Section 166**

*omit*

**16 Disciplinary breach admitted by accused  
Section 167 (1)**

*omit*

the administrator

*substitute*

a presiding officer

**17 Section 167 (2) to (4)**

*omit*

administrator

*substitute*

presiding officer

**18 Meaning of *presiding officer*—div 10.3.2  
Section 169**

*omit*

**19 Disciplinary inquiry into charge  
Section 170 (3) (a) and (b), except note**

*substitute*

- (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).

**20 Presiding officer's powers after internal inquiry  
New section 171 (5A)**

*insert*

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

**21 Meaning of *review officer*—div 10.3.3  
Section 172**

*omit*

**22 Application for review of inquiry decision  
Section 173 (3)**

*omit*

a review officer

*substitute*

the director-general

**23 Sections 174 and 175**

*substitute*

**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).

**24 Section 176 heading**

*omit*

**Review officer's**

*substitute*

**Director-general's**

**25 Section 176 (1) and (2)**

*omit*

review officer

*substitute*

director-general

**26 Section 176 (2) etc**

*omit*

review officer's

*substitute*

director-general's

*in*

- section 176 (2)
- section 178 (2)
- section 179

**27 Adjudicator's powers after review  
Section 180 (1) (b)**

*omit*

a review officer

*substitute*

the director-general

**28**      **Meaning of *relevant presiding officer*—div 10.3.5**  
**Section 182, definition of *relevant presiding officer*,**  
**paragraph (c)**

*omit*

a review officer

*substitute*

the director-general

**29**      **New chapter 51**

*insert*

## **Chapter 51            Transitional—Corrections and Sentencing Legislation Amendment Act 2012**

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

- (1) This section applies if—
  - (a) before the commencement day, a report about an alleged disciplinary breach by a detainee was made by a corrections officer under section 156 (2) (e) (Report etc by corrections officer); and
  - (b) immediately before the commencement day, the alleged disciplinary breach had not been finally dealt with.
- (2) Chapter 10 (Discipline) as in force immediately before the commencement day continues to apply to the alleged disciplinary breach.

(3) In this section:

*commencement day* means the day the *Corrections and Sentencing Legislation Amendment Act 2012*, part 2 commences.

### **509 Expiry—ch 51**

This chapter expires 1 year after the commencement day.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

### **30 Dictionary, definition of *administrator***

*omit*

### **31 Dictionary, new definition of *initial report***

*insert*

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

### **32 Dictionary, definition of *investigator's report***

*substitute*

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

### **33 Dictionary, definition of *presiding officer***

*substitute*

*presiding officer*—

(a) for this Act generally—see section 151; and

(b) for chapter 11 (Disciplinary inquiries)—see section 191.

### **34 Dictionary, definition of *review officer***

*omit*

## Part 3 Crimes (Sentence Administration) Act 2005

### 35 Periodic detention—meaning of *detention period* Section 41 (2)

*substitute*

- (2) However, a period mentioned in subsection (1) is not a detention period for an offender if—
- (a) it includes any part of the following (an *excluded period*):
    - (i) Christmas Day, Good Friday or Easter Sunday during which the offender is available to perform periodic detention;
    - (ii) another day prescribed by regulation; and
  - (b) the offender has performed, or is taken to have performed, periodic detention for—
    - (i) the detention periods immediately before and after the excluded period; or
    - (ii) if the excluded period is the last detention period of the periodic detention period for the offender's sentence of imprisonment—the detention period immediately before the excluded period.

**36**      **Periodic detention—approval not to perform etc  
Section 55 (2), example**

*omit*

, for compassionate reasons or because the offender is in custody otherwise than in relation to the offender's periodic detention obligations

*substitute*

or for compassionate reasons

**37**      **New section 57A**

*insert*

**57A**      **Periodic detention—offender in custody for other reasons**

- (1) This section applies if an offender does not perform periodic detention for a detention period because the offender is, during the period, remanded in custody under a territory law or a law of the Commonwealth or another State.
- (2) The offender is taken to have performed periodic detention for the detention period.

**38**      **Section 69 heading**

*substitute*

**69**      **Board powers—repeated failures to perform periodic  
detention**

**39 New section 69 (2A) and (2B)**

*insert*

- (2A) However, if the board is satisfied that it is appropriate, having regard to the offender's health or any exceptional circumstances, the board may give the offender approval not to perform periodic detention for up to 8 detention periods, including the detention periods the offender has failed to perform (an *approved leave period*).
- (2B) For each approved leave period, an offender's periodic detention period and sentence of imprisonment are automatically extended by 1 week.

**40 Cancellation of periodic detention on further conviction etc  
Section 70 (1)**

*omit everything before paragraph (a), substitute*

- (1) This section applies if, after an offender was sentenced to serve periodic detention, the offender commits, and is convicted or found guilty of—

**41 Cancellation of parole order for non-ACT offence  
Section 150 (1)**

*omit everything before paragraph (a), substitute*

- (1) This section applies if, while an offender's parole order is in force, the offender commits, and is convicted or found guilty of—

**42 Constitution of divisions of board  
Section 182 (2)**

*substitute*

- (2) The chair must assign 3 board members to each division including at least 1 judicial member.

**43 Section 182 (3) (c)**

*substitute*

- (c) a board member may be assigned to 2 or more divisions at the same time.

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**Endnotes**

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 10 May 2012.

**2 Notification**

Notified under the Legislation Act on 15 June 2012.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Corrections and Sentencing Legislation Amendment Bill 2012, which was passed by the Legislative Assembly on 7 June 2012.

Clerk of the Legislative Assembly

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