

1994
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Housing and Community Services)

Periodic Detention Bill 1994

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Periodic Detention Bill 1994

**A BILL
FOR**

**An Act to provide for the periodic detention of
certain offenders and for related matters**

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

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Periodic Detention Act 1994*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
- 10 (2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.
- (3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which

this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

5 “corrections officer” means a corrections officer as provided for by section 35;

“court” means the Supreme Court or the Magistrates Court;

“custodial officer” means a custodial officer as provided for by section 35;

10 “detainee” means an offender in respect of whom an order for periodic detention is in force;

“detention centre” means a place declared to be a detention centre under section 39;

15 “detention period”, in relation to a detainee, means a period that subject to any order of the Director under section 15—

(a) commences at 7.00 p.m. on the same day of the week as the date specified in the order of the court imposing the sentence as the day on which the sentence commences; and

20 (b) ends at 4.30 p.m. on the second day after the day on which the period commences;

but does not include any such period which includes the whole or any part of Christmas Day, Good Friday or Easter Sunday;

“Director” means the Director of Corrective Services under section 34;

“officer” means a corrections officer or a custodial officer;

25 “Official Visitor” means a person appointed under section 6A of the *Remand Centres Act 1976*;

“periodic detention” means periodic detention the subject of an order under section 4;

30 “working day” means a day other than Saturday, Sunday or a public holiday.

(2) A reference in this Act to an order for periodic detention shall, if the order has been varied, be read as a reference to the order as varied, unless the contrary intention appears.

PART II—PERIODIC DETENTION

Division 1—Orders and committal

Power to order periodic detention

4. (1) A court—

- 5 (a) which convicts a person of an offence against a law of the Territory; and
- (b) which, but for the option of making an order under this section, would otherwise sentence the person to a term of imprisonment of not less than 3 months but not more than 24 months;

10 may, instead of sentencing the person to imprisonment, by order—

- (c) sentence the person to complete such number of detention periods at a detention centre, as the court specifies;
- (d) require the person to report to a corrections officer at the detention centre at such date and time as the court specifies; and
- 15 (e) direct that the person be released from custody subject to any order that may be made under subsection 9 (2).

(2) The number of detention periods that a person may be required to serve under an order shall be calculated at the rate of 1 detention period for each week of the term of imprisonment to which the person would otherwise have been sentenced.

20

(3) An order for periodic detention remains in force until—

- (a) the relevant detention periods required to be served under the order, or any detention periods by which the order has been extended under section 24, have been served; or
- 25 (b) the order has been cancelled.

Circumstances in which periodic detention order may be made

5. (1) A court shall not make an order under section 4 unless satisfied that—

- (a) it is appropriate for the person to undertake such an order;
- 30 (b) there are appropriate facilities available at a detention centre for the person to undertake such an order;
- (c) such an order would not impose undue inconvenience, strain or hardship on the person; and
- (d) the person consents to undertaking such an order.

(2) For the purpose of paragraph (1) (a), the court may have regard to such matters as it considers appropriate, including—

- (a) the nature and seriousness of the offence;
- (b) the pre-sentence report, if any, in respect of the person; and
- 5 (c) the report of a corrections officer.

Detainee taken to be in lawful custody

6. A detainee shall, for the purposes of this Act—

- (a) while undertaking periodic detention at a detention centre;
- 10 (b) while working or travelling outside a detention centre pursuant to an order under this Act; or
- (c) while being transferred from 1 detention centre to another pursuant to an order under this Act;

be taken to be in lawful custody.

Identification of detainees

15 7. (1) Where a court orders that an offender serve a sentence of periodic detention, the Director may, as soon as practicable after the court so orders—

- (a) take a photograph of the offender's face; and
- 20 (b) take imprints of the fingers and palms of both hands of the offender.

(2) The failure of a detainee to comply with a reasonable request of the Director for the purposes of subsection (1) shall be taken to be a failure to serve his or her sentence in accordance with the relevant order for periodic detention

25 (3) A photograph or imprints taken under subsection (1) may be used only for the purpose of identifying the offender during the continuation of the periodic detention order and the Director shall destroy that photograph or imprints upon completion of that order.

Periodic detention—concurrent and cumulative sentences

30 8. (1) An order for periodic detention may require that a sentence be served by way of periodic detention wholly or partly concurrently with, or cumulatively on, another sentence or other sentences required by the same or a different order to be served by way of periodic detention.

35 (2) A court shall not make such an order unless, at all times, the sum of—

- (a) the number of detention periods remaining to be served concurrently under the order or orders; and
- (b) the number of detention periods remaining to be served, otherwise than concurrently, under the order or orders;

5 does not exceed 104.

Notice to detainee

9. (1) Where a periodic detention order has been made, the officer of the court shall forthwith serve, or cause to be served, on the detainee a notice specifying—

- 10 (a) the date on which the detainee is first to report to the detention centre;
- (b) the day of the week on which the detainee is thereafter to report, during his or her sentence; and
- 15 (c) the time and the place at which the detainee is to report on that date and on each such day.

(2) The court may order that a detainee who is in custody shall not be released until after he or she has been given a notice under subsection (1).

Service of documents

20 10. A document that is required or permitted to be served on or given to a person may be served or given—

- (a) by delivering a copy of the document to the person; or
- (b) by leaving a copy of the document at the last-known place of residence or business of the person with a person apparently resident or employed at that place and apparently over the age of 25 16 years.

Division 2—Performing periodic detention

Commencement of sentence

11. A sentence of periodic detention commences on the date specified in the order of the court under section 4.

30 Service of sentence

12. (1) A detainee shall serve his or her sentence by way of periodic detention in accordance with this Act.

35 (2) A detainee shall first report on the date and at the time and place specified in the notice to the detainee under subsection 9 (1) and thereafter during the term of the detainee's sentence on the day of the week specified in that notice as the day on which he or she is so to report and at the same

time and place unless otherwise ordered under this Act by the Director, and if otherwise so ordered, then in accordance with the order made by the Director.

5 (3) Subsection (2) ceases to apply in respect of a detainee if the order for periodic detention that was made in respect of the detainee is cancelled.

(4) Where—

(a) a detainee is required, by or under this Act, to report at a detention centre; and

10 (b) the regulations prescribe the manner in which a detainee is to report;

the detainee complies with the requirement only if he or she reports in the manner so prescribed.

Work etc.

13. (1) The Director may, by order, direct a detainee—

15 (a) to participate in any activity, attend any class or group or undergo any instruction that the Director considers conducive to the detainee's welfare or training;

20 (b) to perform, between such hours as are specified in the order, any work in a detention centre specified in the order that the Director considers suitable to the detainee's physical capacity; or

(c) to report to a corrections officer specified in the order at a place specified in the order other than a detention centre and to perform work that the Director considers suitable to the detainee's physical capacity;

25 during any detention period.

(2) The type of work referred to in paragraph (1) (b) which a detainee may be directed to perform at a place other than a detention centre shall be work—

(a) at a hospital or a charitable or educational institution;

30 (b) at the home of an old, infirm or handicapped person;

(c) at an institution for old, infirm or handicapped persons; or

(d) at any place of which the Territory or a Territory authority is the owner or occupier or which is administered by the Territory or the Territory authority.

35 (3) The Director shall not direct a detainee to perform any work referred to in subsection (2) if, in performing the work, the detainee would

take the place of any person who would otherwise be employed on that work as a regular employee.

- 5 (4) Where the Director makes an order under paragraph (1) (c) and for any reason work is not available at the place specified in that order or it is impracticable for the detainee to perform work at that place, the detainee shall report at such other place nominated, and in accordance with such instructions as may be given to him or her, by the corrections officer specified in the order.

Variation of days of attendance

- 10 14. (1) A detainee may make application in writing to the Director requesting the Director to make an order varying the day on which the detainee's detention period during the whole or part of the detainee's sentence is to commence.

- 15 (2) Where a detainee makes application under subsection (1), the Director may—

- (a) grant the application and order that the day in respect of which the application is made be varied as requested in the application; or
(b) refuse to grant the application.

Variation of times of attendance

- 20 15. (1) A detainee may make application in writing to the Director requesting the Director to make an order varying—

- (a) the time at which he or she is required to report at a detention centre or place of work each detention period during the whole or part of the detainee's sentence; and
25 (b) the time at which he or she may leave a detention centre or place of work each detention period during the whole or part of the detainee's sentence.

- (2) Subject to subsection (3), where a detainee makes application under subsection (1), the Director may—

- 30 (a) grant the application and order that the times in respect of which the application is made be varied as requested in the application; or
(b) refuse to grant the application.

- 35 (3) The Director shall refuse to grant an application which has the effect of increasing or reducing the number of consecutive hours that the detainee is required to serve in a detention centre.

Variation of place at which sentence is to be served

16. (1) Subject to subsection (2), the Director may, by order, direct a detainee to serve the whole or part of the detainee's sentence at a detention centre other than a detention centre at which he or she is required to report.

- 5 (2) The Director shall not make an order under subsection (1) in respect of a detainee that could reasonably be expected to have the effect of imposing undue inconvenience, strain or hardship on him or her.

Director to give notice

- 10 17. Where the Director makes an order under section 13, 14, 15 or 16 he or she shall cause written notice of the order to be given to the detainee to whom the order relates.

Commencement of certain orders

- 15 18. An order under section 13, 14, 15 or 16 takes effect on the day on which the order is made, or if the order provides for a later date of effect, as so provided.

Effect of complying with certain orders

- 20 19. For the purposes of this Act, a detainee shall be taken to be complying with an order for periodic detention if he or she serves his or her sentence in accordance with an order of the Director made under section 13, 14, 15 or 16 in respect of the detainee and while the detainee complies with such an order that is inconsistent with a provision of an earlier order of the court or the Director in respect of the detainee, the earlier order shall, to the extent of the inconsistency, cease to have force or effect.

Complaints by detainees

- 25 20. A detainee who is aggrieved—
(a) by an order made by the Director under section 13 or 16; or
(b) by a decision of the Director to refuse to grant an application under paragraph 14 (2) (b) or 15 (2) (b);
30 may make a complaint to an Official Visitor in relation to the order or decision, as the case may be.

Transfer of unruly detainees

- 35 21. (1) Where a detainee, while in custody under this Act in a detention centre, behaves in such a manner as to disturb the peace and good conduct of the centre, the manager of the centre may, in accordance with regulations made for the purposes of this section, arrange for the detainee to be transferred to another detention centre for the remainder of the detainee's sentence.

(2) A detainee who is transferred to another detention centre pursuant to subsection (1) shall be taken to be complying with his or her sentence of periodic detention while in custody at the other detention centre.

Detainee unfit for detention

- 5 22. (1) Where the manager of a detention centre believes on reasonable grounds that a detainee reporting for periodic detention is unfit to comply with the Director's orders under section 13 because—
- (a) the detainee is under the influence of alcohol or of a drug; or
 - (b) the detainee's behaviour is potentially disruptive;
- 10 the manager may refuse to admit the detainee to the centre.

(2) Where, under subsection (1), a person has been refused admission to a detention centre, the person is to be taken to have failed to report for periodic detention.

Leave of absence

- 15 23. (1) The Director may grant leave of absence from a detention period to any detainee for health reasons or on compassionate grounds or for such other reason as the Director considers sufficient.
- (2) Leave of absence may, in accordance with the regulations, be granted either before or after the detention period to which it relates.
- 20 (3) The Magistrates Court may, on the application of a detainee whose request for leave of absence for 1 or more detention periods has been refused, direct that leave of absence be granted in respect of all or any of those detention periods.
- (4) An application under subsection (3) shall be made, in accordance with the relevant rules or regulations within 21 days after the date on which the request to which it relates was refused.
- 25 (5) Subject to any order of the court to the contrary, the making of an application does not stay the operation of section 24 with respect to any detention period to which the application relates.
- 30 (6) Leave of absence is taken to have been granted for each detention period in respect of which a direction under this section is made.
- (7) A detainee who is granted leave of absence from a period of detention shall not be taken to be serving that period of detention for the purposes of his or her sentence.

Extension of detention

5 **24. (1)** Where a detainee fails to report as required for a detention period and has not been granted leave of absence in respect of that period, the detainee's sentence is extended by 1 detention period for each detention period for which the detainee has failed to report.

(2) The term of a sentence may not be extended under subsection (1) by more than 2 detention periods.

(3) Subsection (1) does not have effect until the detainee has been given written notice to the effect that—

- 10 **(a)** the detainee has failed to report, as required by or under this Act;
- (b)** that subsection operates to extend the term of the detainee's sentence as a result of the failure to report; and
- (c)** the detainee may apply to the Director for leave of absence under section 23 with respect to any 1 or more of the detention periods concerned.
- 15

Variation of sentence on compassionate grounds

20 **25.** Where, on application by the Director or a detainee, the court that made the order for periodic detention in respect of the detainee is satisfied that the detainee is unlikely to be able to serve the remainder of his or her sentence within a reasonable time having regard to—

- (a)** the health of the detainee;
- (b)** any other compassionate grounds;
- (c)** the number of detention periods remaining to be served by the detainee; or
- 25 **(d)** the length of time during which it appears that the detainee will be unable to serve periodic detention;

the court may vary the sentence by cancelling the remaining detention periods that were to be served by the detainee.

Directions

30 **26. (1)** The Director or manager of a detention centre may, subject to any regulations made for the purposes of this subsection, give directions (not inconsistent with a provision of this Act or a regulation or order in force under this Act) to any detainee for the purpose of securing the enforcement or observance of the provisions of this Act, a regulation or rule or an order in force under this Act.

35

(2) Notwithstanding anything in subsection (1), the Director or the manager of a periodic detention centre may, subject to any regulations made

for the purposes of this subsection, give directions in an emergency or in any other prescribed circumstances to any detainee.

Compensation

27. (1) In this section—

5 “Compensation Act” means the *Workers’ Compensation Act 1951*;

“overtime” has the same meaning as in the Compensation Act.

(2) While a detainee is working pursuant to an order of the Director under paragraph 13 (1) (b) or (c), the Compensation Act applies in relation to the detainee as if—

10 (a) the detainee were employed by the Territory under a contract of service;

(b) paragraphs (a), (b) and (c) of the definition of “worker” in subsection 6 (1) of the Compensation Act were omitted;

15 (c) for subparagraph 1 (c) (i) of Schedule 1 to the Compensation Act there were substituted the following subparagraph:

“(i) of the amount referred to in subparagraph (b) (i); or”; and

(d) subparagraphs 2 (b) (i) and (ii) of Schedule 1 to the Compensation Act were omitted.

20 (3) Notwithstanding clause 1A of Schedule 1 to the Compensation Act, for the purposes of the application of that Act in accordance with subsection (2), the prescribed amount applicable to a detainee in respect of a week, for the purposes of paragraph 1 (b) of that Schedule, shall be taken to be—

25 (a) in the case of a detainee who, immediately before the day on which the liability of the Territory under the Compensation Act to pay compensation to or in respect of him or her arose—

(i) was carrying on a business or profession on his or her own account; or

30 (ii) was unemployed and was not carrying on a business or profession on his or her own account but who, at any time during the period of 12 months ending immediately before the day on which that liability arose, was employed or was carrying on a business or profession on his or her own account;

35 the amount calculated by dividing by 52 the amount that is equal to the income of the detainee during the period of 12 months ending immediately before the day on which that liability arose;

- 5 (b) in the case of a detainee who was unemployed immediately before the day on which the liability of the Territory under the Compensation Act to pay compensation to or in respect of him or her arose, not being a detainee referred to in paragraph (a)—nil; and
- (c) in any other case—an amount equal to the income of the detainee in respect of the period of 7 days ending immediately before the day on which the liability of the Territory under the Compensation Act to pay compensation to or in respect of him or her arose.
- 10 (4) A reference in paragraph (3) (c) to income, in relation to a detainee shall not be read as including a reference to—
- (a) a payment in respect of overtime;
- (b) an allowance that is intermittent or is payable in respect of special expenses incurred or likely to be incurred by the detainee; or
- 15 (c) where the detainee had more than 1 occupation during the period of 7 days referred to in that paragraph—income derived by him or her from an occupation other than his or her principal occupation.
- (5) Where—
- 20 (a) the Territory would, but for this subsection, be liable under the Compensation Act to pay an amount of compensation to, or in respect of, a detainee in relation to a period, being the whole or a part of a period during which the detainee is totally incapacitated for work; and
- 25 (b) a person who is an employer of the detainee is liable, by reason of the detainee's total incapacity for work, to make a payment to the detainee by way of salary or wages in relation to that first-mentioned period;

30 the Territory shall not be liable to pay that amount under the Compensation Act but shall pay to the employer so much of that amount as does not exceed the amount payable to the detainee by the employer and the balance (if any) of that amount shall be taken to be compensation payable by the Territory under the Compensation Act to or in respect of the detainee in relation to that first-mentioned period.

Division 3—Cancellation of orders

35 **Cancellation on subsequent conviction**

28. Where a detainee is convicted of an offence and sentenced on that conviction to a term of imprisonment the court before which he or she is convicted may cancel the order for periodic detention that was made in respect of him or her.

Cancellation otherwise than on subsequent conviction

5 **29. (1)** Subject to this section, where an order for periodic detention is in force in respect of a detainee, the court that made the order may, on application by the detainee or the Director, cancel the order if it appears to the court that there are good grounds for doing so.

(2) Without limiting the generality of subsection (1), the court may, on the application of the Director, cancel the order if the court is satisfied that the person is not serving his or her sentence in accordance with the order.

10 **(3)** Without limiting the generality of subsection (1), the court shall, on the application of the Director, cancel the order if satisfied that—

(a) the person has, for 3 or more detention periods, whether consecutive or not, failed to report, as required by or under this Act; and

15 **(b)** the failures to report occurred otherwise than on leave of absence under section 23.

(4) Before hearing an application to cancel an order under this section the court shall—

(a) in the case of an application by the Director—

20 **(i)** cause the detainee to be served with a summons for his or her appearance together with a copy of the application; or

(ii) where the court considers it necessary to secure the appearance of the detainee other than by way of summons—instead of issuing a summons, issue a warrant for the apprehension of the detainee; and

25 **(b)** in the case of an application by a detainee—cause the Director to be served with a copy of the application.

(5) Notwithstanding the issue of a summons under subparagraph (4)

(a) (i), the court may issue a warrant at any time before or after the time mentioned in the summons for the appearance of the detainee.

30 **(6)** The court may refuse to cancel the order under subsection (3) if it is satisfied that—

(a) leave of absence should have been granted under section 23 with respect to 1 or more detention periods; and

35 **(b)** the total number of detention periods for which the person has failed to report as referred to in subsection (3) would, had the leave of absence been granted with respect to those detention periods, be less than 3;

in which case it shall make a determination to that effect.

(7) Where the court makes a determination under subsection (6), leave of absence under section 23 is taken to have been granted in accordance with the terms of the determination.

5 (8) In proceedings on an application under this section, a certificate purporting to be signed by the Director and certifying any of the following:

- (a) that a person is a detainee;
- (b) particulars of a periodic detention order;
- 10 (c) particulars of any failure by a detainee to serve his or her sentence in accordance with the order;

is evidence of the matters certified.

(9) A certificate referred to in subsection (8) shall not be admitted in evidence, unless the court is satisfied that reasonable efforts have been made to serve a copy of that certificate on the detainee concerned.

15 (10) The court shall not cancel an order under this section if it considers that the grounds for cancellation of the order would constitute a sufficient reason for an order to be made under section 25, had an application been made by the detainee or the Director under that section.

Certain effects of cancellation of order for periodic detention

20 30. (1) Where an order for periodic detention is cancelled under section 28 or 29—

- (a) any order that was made under section 13, 14, 15 or 16, in respect of the detainee, ceases to have effect; and
- 25 (b) any remaining periods of detention to which the order applied shall be served as a separate term of imprisonment imposed at the time of the cancellation.

30 (2) Where an order for periodic detention is cancelled under section 28 because of a subsequent conviction, the person in respect of whom the order was made is liable to serve any remaining periods of detention to which the order applied by way of full-time imprisonment (subject to any parole order made under the *Parole Act 1976*).

35 (3) The term of imprisonment that a person is liable to serve for the purposes of this section shall be calculated at the rate of 1 week for each detention period that the person would otherwise have been required to serve under an order if it had not been cancelled.

Application of Parole Act

31. The *Parole Act 1976* applies in relation to a term of imprisonment required to be served by a person as a result of the cancellation of a periodic detention order under section 28 or 29 as if—

- 5 (a) for the purposes of section 7 of that Act, the court had made an order sentencing the person to the relevant term of imprisonment; or
- (b) for the purposes of section 8 of that Act, a reference in that section to a previous sentence included that term of imprisonment.

10 **Application of Crimes Act**

32. Part V of the *Crimes Act 1900* applies in relation to a person serving a term of imprisonment as a result of the cancellation of a periodic detention order under section 28 or 29.

Division 4—Miscellaneous

15 **Offences**

33. (1) A detainee who—

- (a) contravenes—
- (i) an order or direction given by the Director; or
- 20 (ii) a direction given by the manager of a detention centre or by an officer;
- (b) contravenes the standing orders concerning the good order, discipline and security of a detention centre; or
- 25 (c) makes, conceals or has in his or her possession, without authority, a tool, weapon, knife, key or other implement or thing capable of being used, to effect the escape of the person;

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

(2) It is a defence to a prosecution for an offence against paragraph (1)

(a) if the detainee establishes that—

- 30 (a) he or she has a reasonable excuse for the contravention; and
- (b) he or she had made known that excuse to the person who gave the order or direction within a reasonable time.

35 (3) It is a defence to a prosecution for an offence involving an order made under this Act if the detainee establishes that the terms of the order were not communicated to him or her in sufficient time to enable compliance

with the order, but the terms of such an order shall be deemed to have been communicated to a detainee upon whom a notice of the order was duly served.

5 (4) It is a defence to a prosecution for an offence involving a direction given under this Act if the detainee establishes that—

- (a) the direction was not communicated to him or her in sufficient time to enable compliance with the direction; or
- 10 (b) the direction was inconsistent with another direction given to him or her under this Act and he or she was obeying that other direction.

15 (5) It is a defence to a prosecution for an offence against a provision of this Act, a regulation or an order made under this Act or a standing order concerning the good order, discipline and security of a periodic detention centre if he or she was obeying a direction or an instruction given to him or her under this Act and that he or she could not, at the same time that he or she was obeying the direction or the instruction, as the case may be, comply with the provision, regulation, order or standing order.

PART III—CORRECTIVE SERVICES ADMINISTRATION

Division 1—Officers

20 Director of Corrective Services

34. (1) There shall be a Director of Corrective Services.

(2) The Chief Executive shall create and maintain an office in the Government Service the duties of which include performing the functions of Director of Corrective Services.

25 (3) The Director shall be the public servant for the time being performing the functions of the appropriate Government Service office referred to in subsection (2).

Officers

35. (1) There shall be—

- 30 (a) a manager of each detention centre who shall have responsibility for the administration of the centre;
- (b) 1 or more custodial officers who shall have responsibility for assisting the manager of each detention centre; and
- 35 (c) 1 or more corrections officers who shall have responsibility for the supervision of detainees serving periodic detention.

(2) The Chief Executive shall create and maintain an office in the Government Service the duties of which include performing the functions of the office referred to in paragraph (1) (a).

5 (3) The manager of a detention centre shall be the public servant for the time being performing the functions of the Government Service office referred to in subsection (2).

(4) The Chief Executive shall create and maintain 1 or more offices in the Government Service the duties of which include performing the functions of an office referred to in paragraph (1) (b).

10 (5) A custodial officer shall be any public servant for the time being performing the functions of a Government Service office referred to in subsection (4).

15 (6) The Chief Executive shall create and maintain 1 or more offices in the Government Service the duties of which include performing the functions of an office referred to in paragraph (1) (c).

(7) A corrections officer shall be any public servant for the time being performing the functions of a Government Service office referred to in subsection (6).

Delegation by Director

20 36. The Director may delegate in writing any of the Director's powers under this Act to an officer.

Reports etc.

25 37. An officer shall, as required by the Director, prepare reports and returns and keep records and give such reports, returns and records to the Director or to a specified person or body.

Division 2—Management of detention centres

Interpretation

38. In this Division, unless the contrary intention appears—

“detainee” means a periodic detainee who is serving a detention period;

30 “medical practitioner” means a registered medical practitioner within the meaning of the *Medical Practitioners Act 1930*;

“officer” means—

(a) the manager of a detention centre;

(b) a corrections officer;

35 (c) a custodial officer; or

- (d) a medical practitioner, dentist, nurse, health worker, teacher or public servant who works at such a centre.

Declaration of centres

- 5 **39.** The Minister may, by notice in the *Gazette*, declare a place to be a detention centre.

Manager's responsibilities

- 10 **40. (1)** Subject to this Act, the regulations and standing orders, the manager of a detention centre is responsible for the management, good order and security of the centre and the welfare of detainees at the centre.
- (2)** The manager of a detention centre shall take reasonable steps to ensure that officers at the centre have access to information concerning their functions and the rights and obligations of detainees under this Act.
- (3)** The manager of a detention centre shall give all necessary directions to ensure that officers act lawfully in performing their functions.

15 Delegation by manager

- 41.** The manager of a detention centre may delegate in writing any of the manager's powers under this Part to a custodial officer.

Absence of manager

- 20 **42.** Where the manager of a detention centre is not on duty at the centre and—
- (a) no delegation under section 41 is in force; or
- (b) a delegate of the manager is not on duty at the centre;

the functions of the manager shall be performed in accordance with standing orders.

25 Officers subject to Director's directions

- 43.** The Director may give directions to the manager of a detention centre in relation to the manner in which the manager discharges his or her responsibilities.

Powers and duties of officers

- 30 **44. (1)** An officer at a detention centre—
- (a) shall not jeopardise the security or good order of the centre; and
- (b) shall report immediately to the manager of the centre anything which might reasonably be thought to jeopardise the security or the good order of the centre.

(2) An officer (not being a person described in paragraph (d) of the definition of "officer") may give such directions to a detainee as are necessary for the management, good order or security of a centre.

5 (3) A corrections officer may give directions to a detainee concerning the manner in which the detainee is to comply with an order in force under this Act.

(4) A direction under subsection (2) or (3) shall not unreasonably interfere with work being done by a detainee, education being undertaken by a detainee or the practice by a detainee of a religion.

10 **Entitlements of detainees**

45. A detainee is entitled during a detention period—

- (a) to wear his or her own clothing; and
- (b) to receive necessary health services.

Discipline

15 46. The manager of a detention centre may arrange for a detainee to be confined to sleeping quarters if the manager believes on reasonable grounds that it is necessary to do so—

- (a) to maintain security, discipline or order in the detention centre; or
- (b) for the health of the detainee or other detainees.

20 **Use of force**

47. (1) The manager of a detention centre may use or direct the use of such force as is necessary and reasonable to maintain security and good order at the centre.

25 (2) An officer other than the manager may use such force as is necessary and reasonable to compel a detainee to obey a lawful direction, if the officer believes on reasonable grounds that it is necessary to do so to prevent—

- (a) the detainee or another person being killed or seriously injured; or
- (b) serious damage to property.

30 (3) If an officer uses force to compel a detainee to obey a direction, the officer shall report the fact to the manager as soon as possible.

(4) The manager shall report to the Director as soon as possible—

- (a) the use of force by the manager to compel a detainee to obey a direction; or
- 35 (b) the use of force reported to the manager by another officer.

Medical treatment

48. (1) The manager of a detention centre may arrange for a medical practitioner to examine a detainee subject to the detainee consenting to such examination.

5 (2) Where a medical practitioner considers it necessary that a detainee be removed from a detention centre to receive medical treatment in a hospital or from a medical practitioner, he or she shall notify the manager of the centre in writing of the fact and of the hospital to which, or the medical practitioner to whom, the detainee should, in the opinion of the first-
10 mentioned medical practitioner, be removed.

(3) Where—

- (a) the manager is of the opinion that a detainee is in need of immediate medical treatment in a hospital; and
15 (b) no medical practitioner is available to give a notification under subsection (2);

the manager shall cause the detainee to be removed to a hospital.

(4) Where, during a detention period, a detainee is removed under this section for the purposes of receiving medical treatment, the whole or part of that detention period during which the detainee is away for that purpose
20 from the relevant detention centre shall be taken to be served by the detainee as part of that sentence.

Official Visitors—duties

49. (1) An Official Visitor shall visit each detention centre, as far as practicable, at least once each week in order to inspect the centre and inquire
25 into complaints from detainees.

(2) Where, after inspecting a detention centre, an Official Visitor is not satisfied that the centre is being conducted in accordance with the provisions of this Act, he or she shall report the matter to the Minister.

Complaints by detainees

30 50. (1) Where a detainee is not satisfied with his or her treatment at the detention centre or the manner in which the detention centre is conducted—

- (a) the detainee; or
(b) a person acting on behalf of, and at the request of, the detainee;
35 may make a complaint to an Official Visitor.

(2) A complaint under subsection (1) or section 20 may, at the request of the detainee, be made in the absence of any person other than the complainant and the Official Visitor.

5 (3) An Official Visitor shall inquire into a complaint made under subsection (1) or section 20 and may—

- (a) make a recommendation concerning the complaint to the Director; and
- (b) make such report (if any) to the Minister concerning the complaint as he or she considers necessary.

10 **Notification of complaints etc.**

51. A custodial officer shall take all steps necessary to ensure that the Director or the Official Visitor, as the case requires, is informed as soon as practicable of a complaint of a detainee under section 20 or 50, as the case requires.

15 **Inspection of centres**

52. A Judge, magistrate or a member of the Legislative Assembly nominated by the Assembly may inspect a detention centre at any time.

Offences by persons other than detainees

20 53. A person shall not—
(a) enter, or remain in, a detention centre without lawful excuse; or
(b) unlawfully convey an article into or out of a detention centre or to or from a detainee.

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

Standing orders

25 54. (1) The Director may, from time to time, in writing, issue such orders and instructions as are necessary for the day-to-day administration of detention centres.

(2) The Director shall—
30 (a) cause orders and instructions issued under subsection (1), other than those dealing with the security of a detention centre, to be available for inspection at a detention centre at all reasonable times; and
35 (b) cause all orders and instructions issued under subsection (1) to be available for inspection at any time by a person referred to in section 52.

PART IV—MISCELLANEOUS

Exercise of prerogative of mercy and operation of other laws not affected

55. Nothing in this Act affects—

- 5
- (a) the exercise of the Crown prerogative of mercy;
 - (b) the operation of section 557 or 558 of the *Crimes Act 1900*; or
 - (c) the operation of any Act, or of any other law in force in the Territory, relating to the release of offenders.

Regulations

10 56. The Executive may make regulations for the purposes of this Act and, in particular, may make regulations—

- (a) in relation to—
- (i) the functions of custodial officers or corrections officers;
 - (ii) offences in relation to misconduct by detainees at a detention centre;
 - (iii) the health, welfare and living conditions of detainees at detention centres; or
 - (iv) the security and good order of detention centres; and
- 15
- (b) prescribing penalties not exceeding 10 penalty units for offences against the regulations.
- 20

PART V—AMENDMENT OF OTHER LAWS

Division 1—*Crimes Act 1900*

Principal Act

57. In this Division, “Principal Act” means the *Crimes Act 1900*.

25 Insertion

58. After section 151 of the Principal Act the following section is inserted in Part V:

Interpretation

30 “151A. For the purposes of this Part, a person who is serving a sentence by way of periodic detention shall not be deemed by reason only of that fact to be in lawful custody.”.

Division 2—Remand Centres Act 1976

Principal Act

59. In this Part, “Principal Act” means the *Remand Centres Act 1976*.

Official Visitors—appointment and remuneration

5 60. Section 6A of the Principal Act is amended by adding at the end of subsection (1) “and the *Periodic Detention Act 1994*”.