

2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Sentencing Legislation Amendment Bill 2006

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended—sch 1 and sch 2	2
4 Crimes (Sentencing) Regulation 2006—sch 3	2
5 Crimes (Sentence Administration) Regulation 2006—sch 4	3
6 Legislation repealed	4
Schedule 1 Consequential amendments	5
Part 1.1 Administrative Decisions (Judicial Review) Act 1989	5

J2005-58

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

Contents

		Page
Part 1.2	Bail Act 1992	7
Part 1.3	Children and Young People Act 1999	12
Part 1.4	Clinical Waste Act 1990	19
Part 1.5	Confiscation of Criminal Assets Act 2003	20
Part 1.6	Coroners Act 1997	22
Part 1.7	Crimes Act 1900	26
Part 1.8	Crimes (Child Sex Offenders) Act 2005	31
Part 1.9	Crimes (Forensic Procedures) Act 2000	35
Part 1.10	Crimes (Restorative Justice) Act 2004	37
Part 1.11	Crimes (Sentencing) Act 2005	40
Part 1.12	Crimes (Sentence Administration) Act 2005	49
Part 1.13	Director of Public Prosecutions Act 1990	72
Part 1.14	Domestic Violence and Protection Orders Act 2001	73
Part 1.15	Drugs of Dependence Act 1989	73
Part 1.16	Electoral Act 1992	75
Part 1.17	Evidence (Miscellaneous Provisions) Act 1991	77
Part 1.18	Firearms Act 1996	78
Part 1.19	Firearms Regulation 1997	79
Part 1.20	Food Act 2001	79
Part 1.21	Hawkers Act 2003	79
Part 1.22	Health Professionals Regulation 2004	80
Part 1.23	Judicial Commissions Act 1994	80
Part 1.24	Juries Act 1967	80
Part 1.25	Land (Planning and Environment) Act 1991	82
Part 1.26	Legislation Act 2001	83
Part 1.27	Magistrates Court Act 1930	85
Part 1.28	Mental Health (Treatment and Care) Act 1994	100

		Page
Part 1.29	Prohibited Weapons Act 1996	101
Part 1.30	Road Transport (Alcohol and Drugs) Act 1977	102
Part 1.31	Royal Commissions Act 1991	103
Part 1.32	Security Industry Regulation 2003	103
Part 1.33	Spent Convictions Act 2000	104
Part 1.34	Supreme Court Act 1933	106
Part 1.35	Supreme Court Rules 1937	107
Part 1.36	Taxation Administration Act 1999	108
Part 1.37	Victims of Crime (Financial Assistance) Act 1983	110
Part 1.38	Victims of Crime (Financial Assistance) Regulation 1998	113
Part 1.39	Workers Compensation Act 1951	113
Schedule 2	Crimes Act 1900—other amendments	114
Schedule 3	New Crimes (Sentencing) Regulation	125
Schedule 4	New Crimes (Sentence Administration) Regulation	127
Dictionary		130

2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Sentencing Legislation Amendment Bill 2006

A Bill for

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

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

1 **1 Name of Act**

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

3 **2 Commencement**

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

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

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

11 **3 Legislation amended—sch 1 and sch 2**

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

14 **4 Crimes (Sentencing) Regulation 2006—sch 3**

15 (1) The provisions set out in schedule 3 are taken, on the
16 commencement of this section, to be a regulation made under the
17 *Crimes (Sentencing) Act 2005*, section 139 (Regulation-making
18 power).

19 (2) To remove any doubt and without limiting subsection (1), the
20 provisions set out in schedule 3 may be amended or repealed as if
21 they had been made as a regulation by the Executive under the
22 *Crimes (Sentencing) Act 2005*, section 139.

23 (3) To remove any doubt, the regulation mentioned in subsection (1) is
24 taken—

25 (a) to have been notified under the Legislation Act on the day this
26 Act is notified; and

- 1 (b) to have commenced on the commencement of the *Crimes*
2 *(Sentencing) Act 2005*; and
- 3 (c) not to be required to be presented to the Legislative Assembly
4 under the Legislation Act, section 64 (1).
- 5 (4) This section is a law to which the Legislation Act, section 88
6 (Repeal does not end effect of transitional laws etc) applies.
- 7 (5) This section expires on the day it commences.
- 8 **5 Crimes (Sentence Administration) Regulation 2006—**
9 **sch 4**
- 10 (1) The provisions set out in schedule 4 are taken, on the
11 commencement of this section, to be a regulation made under the
12 *Crimes (Sentence Administration) Act 2005*, section 325
13 (Regulation-making power).
- 14 (2) To remove any doubt and without limiting subsection (1), the
15 provisions set out in schedule 4 may be amended or repealed as if
16 they had been made as a regulation by the Executive under the
17 *Crimes (Sentence Administration) Act 2005*, section 325.
- 18 (3) To remove any doubt, the regulation mentioned in subsection (1) is
19 taken—
- 20 (a) to have been notified under the Legislation Act on the day this
21 Act is notified; and
- 22 (b) to have commenced on the commencement of the *Crimes*
23 *(Sentence Administration) Act 2005*; and
- 24 (c) not to be required to be presented to the Legislative Assembly
25 under the Legislation Act, section 64 (1).
- 26 (4) This section is a law to which the Legislation Act, section 88
27 (Repeal does not end effect of transitional laws etc) applies.
- 28 (5) This section expires on the day it commences.

- 1 **6 Legislation repealed**
- 2 (1) The following Acts are repealed:
- 3 • *Community Based Sentences (Transfer) Act 2003* A2003-5
- 4 • *Corrections Reform Amendment Act 2004* A2004-61
- 5 • *Custodial Escorts Act 1998* A1998-66
- 6 • *Parole Orders (Transfer) Act 1983* A1983-10
- 7 • *Periodic Detention Act 1995* A1995-3
- 8 • *Prisoners (International Transfer) Act 1999* A1999-9
- 9 • *Prisoners Interstate Leave Act 1997* A1997-99
- 10 • *Prisoners (Interstate Transfer) Act 1993* A1993-70
- 11 • *Rehabilitation of Offenders (Interim) Act 2001* A2001-82
- 12 • *Remand Centres Act 1976* A1976-48
- 13 • *Removal of Prisoners Act 1968* A1968-82
- 14 • *Supervision of Offenders (Community Service Orders) Act 1985*
- 15 A1985-10.
- 16 (2) The following regulations are repealed:
- 17 • *Community Based Sentences (Transfer) Regulation 2004*
- 18 SL2004-51
- 19 • *Custodial Escorts Regulation 2002* SL2002-11
- 20 • *Periodic Detention Regulation 1995* SL1995-34
- 21 • *Rehabilitation of Offenders (Interim) Regulation 2001*
- 22 SL2001-39
- 23 • *Remand Centres Regulation 1976* SL1976-17.
- 24 (3) All other registrable instruments under an Act mentioned in
- 25 subsection (1) are repealed.

1 **Schedule 1** **Consequential amendments**
2 (see s 3)

3 **Part 1.1** **Administrative Decisions**
4 **(Judicial Review) Act 1989**

5 **[1.1] Schedule 1, new item 4**

6 *insert*

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

7 **[1.2] Schedule 1, items 4 to 17**

8 *renumber as items 5 to 18*

1 **[1.3] Schedule 2, new item 2.6**

2 *insert*

3 **2.6 Certain decisions under the Crimes (Sentence**
4 **Administration) Act**

- 5 (1) A decision by the chief executive under any of the following
6 provisions of the *Crimes (Sentence Administration) Act 2005*:
- 7 • section 25 (Full-time detention—chief executive directions)
 - 8 • section 28 (Work and activities by full-time detainee)
 - 9 • section 44 (Periodic detention—chief executive directions)
 - 10 • section 53 (Periodic detention—activities and work)
 - 11 • section 55 (Periodic detention—approval not to perform etc)
 - 12 • section 58 (Failing to perform periodic detention—extension of
13 periodic detention period)
 - 14 • section 59 (Failing to perform periodic detention—referral to
15 board)
 - 16 • section 60 (Offender not fit for periodic detention—extension of
17 periodic detention period)
 - 18 • section 87 (Good behaviour—chief executive directions)
 - 19 • section 91 (Community service work—chief executive
20 directions)
 - 21 • section 92 (Community service work—failure to report etc)
 - 22 • section 100 (Rehabilitation programs—chief executive
23 directions)
 - 24 • section 138 (Parole—chief executive directions)
 - 25 • section 302 (Release on licence—chief executive directions)
 - 26 • section 321 (Chief executive directions—general).
- 27 (2) A decision by a work supervisor under the *Crimes (Sentence*
28 *Administration) Act 2005*, section 54 (3) or (4) (Periodic
29 detention—activities or work outside correctional centres).

1 **Part 1.2** **Bail Act 1992**

2 **[1.4] Section 2, note 1**

3 *substitute*

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

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

11 **[1.5] Section 8A**

12 *substitute*

13 **8A Entitlement to bail—breach of sentence obligations**

14 (1) This section applies to a person arrested, or otherwise brought
15 before the court or a magistrate, in relation to a breach, or
16 anticipated breach, of—

17 (a) a deferred sentence obligation under the *Crimes (Sentencing)*
18 *Act 2005*; or

19 (b) any of the following obligations under the *Crimes (Sentence*
20 *Administration) Act 2005*:

21 (i) a periodic detention obligation;

22 (ii) a good behaviour obligation;

23 (iii) a parole obligation;

24 (iv) a release on licence obligation.

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

4 **Examples**

5 1 Martin has been found guilty of armed robbery and sentenced to periodic
6 detention. He has breached his periodic detention obligations and is arrested and
7 brought before a magistrate under the *Crimes (Sentence Administration)*
8 *Act 2005*, section 65 (Arrest warrant—breach of periodic detention obligations).
9 There is no presumption in relation to bail because the offence of armed robbery
10 is an offence to which division 2.2 (Presumption for bail) does not apply.

11 2 Joe has been found guilty of threatening to kill. Joe had, 3 years before, been
12 found guilty of an offence involving violence. A suspended sentence order under
13 the *Crimes (Sentencing) Act 2005* is made as part of the sentence for the offence
14 of threatening to kill and Joe is released under the order on signing an
15 undertaking under a good behaviour order. However, Joe breaches the good
16 behaviour order and is before the court on an application to cancel the order.
17 There is no presumption in relation to bail because section 9B (b) applies to make
18 the offence of threatening to kill an offence to which division 2.2 (Presumption
19 for bail) does not apply.

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

23 (3) This section also applies to a person arrested, or otherwise brought
24 before the court, in relation to a breach, or anticipated breach, of an
25 obligation under an order to which the *Crimes (Sentence*
26 *Administration) Act 2005*, section 332 (Home detention orders—
27 Rehabilitation of Offenders (Interim) Act) applies.

28 (4) Subsection (3) is a law to which the Legislation Act, section 88
29 (Repeal does not end effect of transitional laws etc) applies.

30 (5) This subsection, subsection (3) and subsection (4) expire 3 years
31 after the day this section commences.

1 **8B Entitlement to bail—custody relating to sentence**
2 **administration board hearings**

3 (1) This section applies if—

4 (a) a person is arrested under the *Crimes (Sentence*
5 *Administration) Act 2005*, section 206 (Arrest of offender for
6 board hearing) and brought before a magistrate; or

7 (b) a person is remanded in custody under the *Crimes (Sentence*
8 *Administration) Act 2005*, section 210 (Custody of offender
9 during board hearing adjournment) and an application for bail
10 for the person is made to a court or magistrate.

11 (2) The person has the same entitlement to bail as the person had for the
12 offence to which the board hearing relates.

13 **[1.6] Section 9D (6), definition of *outstanding*, note**

14 *substitute*

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

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

24 (see Legislation Act, dict, pt 1).

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

26 *substitute*

27 (e) a requirement that the person—

- 28 (i) accept supervision by the chief executive; and

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

3 **Examples of directions**

- 4 1 a direction to attend a program
5 2 a direction to comply with a mental health assessment or treatment
6 order made by the mental health tribunal
7 3 a direction to attend drug or alcohol counselling

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

11 **[1.8] Section 31 (1) (d)**

12 *substitute*

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

15 **[1.9] Section 48 (2) to (5)**

16 *substitute*

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

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

- 22 (3) The notice must be given to the court not later than 7 days after the
23 day the person is received into custody.

- 24 (4) To remove any doubt, the court to which a notice is given under
25 subsection (2) may, on its own initiative, conduct a review under
26 section 46 of the condition on which bail was granted.

- 27 (5) A notice under this section is required to be given only once in
28 relation to any particular grant of bail.

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

3 **[1.10] Dictionary, note 2, new dot points**

4 *insert*

- 5 • chief executive
- 6 • correctional centre

7 **[1.11] Dictionary, note 2**

8 *omit*

- 9 • director of corrective services

10 **[1.12] Dictionary, note 2, new dot point**

11 *insert*

- 12 • found guilty

13 **[1.13] Dictionary, definition of *accused person*, paragraph (d)**

14 *substitute*

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

17 **[1.14] Dictionary, definition of *offence*, paragraph (b) (ii)**

18 *substitute*

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

1 **[1.15] Dictionary, definition of *parental responsibility***

2 *substitute*

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

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

9 **Part 1.3 Children and Young People Act**
10 **1999**

11 **[1.16] Section 76, definition of *police officer***

12 *substitute*

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

17 *Note* A reference to an Act includes a reference to the statutory instruments
18 made or in force under the Act, including any regulation (see
19 Legislation Act, s 104).

20 **[1.17] Section 85 (2) and (4) (a)**

21 *omit*

22 remand centre

23 *substitute*

24 correctional centre

1 **[1.18] Section 87 (1)**

2 *omit*

3 a custodial escort

4 *substitute*

5 corrections officer

6 **[1.19] Section 95 (4)**

7 *substitute*

8 (4) If the Childrens Court makes an order under subsection (2), the
9 court must not make—

10 (a) an order under any of the following provisions of the *Crimes*
11 *(Sentencing) Act 2005* for the offence:

12 (i) section 17 (Non-conviction orders—general);

13 (ii) section 19 (Reparation orders—losses and expenses
14 generally);

15 (iii) section 20 (Reparation orders—stolen property); or

16 (b) a good behaviour order with a community service condition
17 under the *Crimes (Sentencing) Act 2005*.

18 **[1.20] Section 99 (2)**

19 *substitute*

20 (2) For subsection (1) (b), the Childrens Court may make a good
21 behaviour order under the *Crimes (Sentencing) Act 2005*—

22 (a) section 13 (Good behaviour orders); or

23 (b) section 17 (2) (b) (Non-conviction orders—general).

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

12 **[1.21] Section 102 (3)**

- 13 *omit*
- 14 prison
- 15 *substitute*
- 16 a correctional centre

17 **[1.22] Section 102 (4) (b)**

- 18 *substitute*
- 19 (b) the outstanding fine has not been remitted by the Executive.
- 20 *Note 1* For the remission of a fine by the Executive, see the *Crimes*
21 *(Sentence Administration) Act 2005*, s 313 (Remission of
22 penalties).
- 23 *Note 2* A fine also may have been remitted under the *Magistrates Court*
24 *Act 1930*, s 159 (repealed) or the *Crimes Act 1900*, s 434
25 (repealed).

1 **[1.23] Section 120 (6)**

2 *omit*

3 a custodial escort

4 *substitute*

5 corrections officer

6 **[1.24] Section 122**

7 *substitute*

8 **122 Temporary custody before transfer between institutions**

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

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

- 13 (2) However, the person must not be placed in a correctional centre
14 without the written approval of—

15 (a) the chief executive; and

16 (b) the chief executive of the administrative unit responsible for
17 the *Crimes (Sentence Administration) Act 2005*.

- 18 (3) The person must not be kept in a shelter for longer than 14 days
19 without the written approval of the chief executive.

- 20 (4) The person must not be kept at a correctional centre for longer than
21 14 days without the written approval of—

22 (a) the chief executive; and

23 (b) the chief executive of the administrative unit responsible for
24 the *Crimes (Sentence Administration) Act 2005*.

- 25 (5) A transfer direction for a person is authority for an officer,
26 corrections officer or police officer—

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

6 **[1.25] Section 124 (2) (b) and (3)**

- 7 *omit*
- 8 remand centre
- 9 *substitute*
- 10 correctional centre

11 **[1.26] Sections 125 and 126**

12 *substitute*

13 **125 Placing in shelter or correctional centre**

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

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

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

1 (c) for a young person committed to a State institution—take the
2 young person to the State or Territory stated in the order for
3 detention in the State institution.

4 (4) The authority under subsection (3) (a) is subject to the order.

5 **126 Young people in correctional centres**

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

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

11 **[1.27] Section 131, new note**

12 *insert*

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

15 **[1.28] Section 139 (2) (b)**

16 *substitute*

17 (b) a corrections officer; or

18 **[1.29] Section 140**

19 *substitute*

20 **140 Temporary custody pending interstate transfer**

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

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

- 1 (2) However, the young offender must not be placed in a correctional
2 centre without the written approval of—
3 (a) the chief executive; and
4 (b) the chief executive of the administrative unit responsible for
5 the *Crimes (Sentence Administration) Act 2005*.
- 6 (3) The young offender must not be kept in a shelter for longer than
7 14 days without the written approval of the chief executive.
- 8 (4) The young offender must not be kept at a correctional centre for
9 longer than 14 days without the written approval of—
10 (a) the chief executive; and
11 (b) the chief executive of the administrative unit responsible for
12 the *Crimes (Sentence Administration) Act 2005*.
- 13 (5) An arrangement under subsection (1) is authority for an officer,
14 corrections officer or police officer to take the young offender to
15 and from a shelter or correctional centre for this section.
- 16 (6) The authority under subsection (5) is subject to the arrangement.

17 **[1.30] Section 399 (3)**

18 *substitute*

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

21 **[1.31] Section 401A, definition of *place of detention***

22 *omit*

23 remand centre

24 *substitute*

25 correctional centre

1 **[1.32] Section 417 (4), definition of *place of detention***

2 *omit*

3 remand centre

4 *substitute*

5 correctional centre

6 **[1.33] Dictionary, note 2, new dot point**

7 *insert*

- 8 • correctional centre

9 **[1.34] Dictionary, new definition of *corrections officer***

10 *insert*

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

13 **[1.35] Dictionary, definition of *custodial escort***

14 *omit*

15 **[1.36] Dictionary, definition of *remand centre***

16 *omit*

17 **Part 1.4 Clinical Waste Act 1990**

18 **[1.37] Section 36**

19 *substitute*

20 **36 Disposal of seized things**

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

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

13 Part 1.5 Confiscation of Criminal Assets 14 Act 2003

15 [1.38] Section 15 (1), note 1

16 *substitute*

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

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

26 (see Legislation Act, dict, pt 1).

27 [1.39] Section 19, definition of *restraining order*, paragraph (b)

28 *substitute*

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

- 1 **[1.40] New section 23 (4)**
- 2 *insert*
- 3 (4) Subsections (1) and (2) do not apply if the dealing with the property
- 4 is in accordance with—
- 5 (a) an additional order under section 39; or
- 6 (b) this Act.
- 7 **[1.41] Section 33 (1) (b)**
- 8 *substitute*
- 9 (b) another order under this Act of a relevant court; or
- 10 **[1.42] Section 39 (1), example 2**
- 11 *omit*
- 12 or execution levied against the property
- 13 **[1.43] Section 51 heading**
- 14 *substitute*
- 15 **51 Penalty orders—execution against restrained property**
- 16 **[1.44] Section 86 (3) (d)**
- 17 *substitute*
- 18 (d) any amount payable by the offender under a reparation order
- 19 under the *Crimes (Sentencing) Act 2005*, or any corresponding
- 20 order made under the law of the Commonwealth, a State or
- 21 another Territory;
- 22 *Note* A reparation order under the *Crimes Act 1900*, s 350 (repealed) is
- 23 taken to be a reparation order under the *Crimes (Sentencing)*
- 24 *Act 2005* (see that Act, s 142).

1 **Part 1.6 Coroners Act 1997**

2 **[1.45] Section 2, note 1**

3 *substitute*

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

7 For example, the signpost definition '*death in custody*—see
8 section 3C.' means that the term 'death in custody' is defined in that
9 section.

10 **[1.46] Section 3**

11 *omit*

12 **[1.47] New sections 3C and 3D**

13 *in part 1, insert*

14 **3C Meaning of *death in custody***

15 (1) For this Act, *death in custody* means the death of a person—

16 (a) at a correctional centre or lockup; or

17 (b) while performing work under a community service condition
18 of a good behaviour order under the *Crimes (Sentencing)*
19 *Act 2005*; or

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

24 (c) while performing work under a community service order under
25 the *Children and Young People Act 1999*; or

26 (d) while performing periodic detention under the *Crimes*
27 *(Sentencing) Act 2005*; or

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

- 1 **3D Who is a *custodial officer*?**
2 In this Act:
3 *custodial officer* means any of the following:
4 (a) a police officer;
5 (b) the person in charge of a correctional centre;
6 (c) a corrections officer;
7 (d) the chief psychiatrist;
8 (e) a mental health officer;
9 (f) the chief executive of the administrative unit responsible for
10 the *Children and Young People Act 1999*, chapter 2 (General
11 objects, principles and parental responsibility) or an officer
12 under that Act;
13 (g) the sheriff, a deputy sheriff, or a person appointed to assist the
14 sheriff, under the *Supreme Court Act 1933*;
15 (h) a carer under the *Intoxicated People (Care and Protection)*
16 *Act 1994*.

17 **[1.48] Dictionary, note 2**

18 *substitute*

- 19 • Act
20 • ACT
21 • appoint
22 • Attorney-General
23 • Chief Magistrate
24 • child
25 • correctional centre
26 • corrections officer
27 • director of public prosecutions
28 • domestic partner (see s 169 (1))

- 1 • establish
- 2 • Executive
- 3 • exercise
- 4 • give
- 5 • indictable offence
- 6 • individual
- 7 • in relation to
- 8 • instrument
- 9 • law
- 10 • lawyer
- 11 • magistrate
- 12 • Minister (see s 162)
- 13 • oath
- 14 • parent
- 15 • person
- 16 • police officer
- 17 • power
- 18 • proceeding
- 19 • property
- 20 • public servant
- 21 • registrar-general
- 22 • regulation
- 23 • Supreme Court
- 24 • the Territory
- 25 • under

26 **[1.49] Dictionary, new definition of *chief psychiatrist***

27 *insert*

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

- 1 **[1.50] Dictionary, definition of *custodial officer***
2 *substitute*
3 *custodial officer*—see section 3D.
- 4 **[1.51] Dictionary, definition of *death in custody***
5 *substitute*
6 *death in custody*—see section 3C.
- 7 **[1.52] Dictionary, new definition of *mental health officer***
8 *insert*
9 *mental health officer*—see the *Mental Health (Treatment and Care)*
10 *Act 1994*, dictionary.
- 11 **[1.53] Dictionary, definition of *registrar-general***
12 *omit*

13 Part 1.7 Crimes Act 1900

- 14 **[1.54] Section 157**
15 *substitute*
- 16 **157 Meaning of *lawful custody*—periodic detention**
17 For this part, an offender serving periodic detention in the offender's
18 periodic detention period of a sentence of imprisonment under the
19 *Crimes (Sentencing) Act 2005* is taken to be in lawful custody only
20 while performing periodic detention.
- 21 *Note* The *Crimes (Sentence Administration) Act 2005*, pt 5.3 provides for the
22 performance of periodic detention.

-
- 1 **[1.55] Section 159 (d)**
- 2 *substitute*
- 3 (d) takes anything into a correctional centre, lockup or another
- 4 place of lawful detention with intent to facilitate the escape
- 5 from there of someone else who is detained or in custody in
- 6 relation to an offence against a law of the Territory, the
- 7 Commonwealth, a State or another Territory;
- 8 **[1.56] Section 161 (c)**
- 9 *substitute*
- 10 (c) rescues by force a person who is in lawful custody at a
- 11 correctional centre, lockup or another place of lawful detention
- 12 in relation to an offence against a law of the Territory, the
- 13 Commonwealth, a State or another Territory from that centre,
- 14 lockup or place; or
- 15 **[1.57] Section 162 (a)**
- 16 *substitute*
- 17 (a) in accordance with a permission given under a law of the
- 18 Territory, the Commonwealth, a State or another Territory,
- 19 leaves a correctional centre, lockup or another place of lawful
- 20 detention where the person is detained, in custody or detained
- 21 during pleasure in relation to an offence against a law of the
- 22 Territory, the Commonwealth, a State or another Territory; and
- 23 **[1.58] Sections 162 (b) and 163 (1) (a)**
- 24 *omit*
- 25 prison
- 26 *substitute*
- 27 correctional centre
-

1 **[1.59] Section 165**

2 *omit*

3 **[1.60] Section 214 (3) (a)**

4 *substitute*

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

8 **[1.61] Section 248 (1)**

9 *substitute*

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

15 **[1.62] Section 263 (2)**

16 *omit*

17 to him or her seems meet

18 *substitute*

19 the judge considers appropriate

20 **[1.63] Section 288 (2)**

21 *substitute*

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

1 **[1.64] Section 308 (d)**

2 *omit*
3 prison
4 *substitute*
5 a correctional centre

6 **[1.65] Section 309 (1) (a)**

7 *omit*
8 custodial escort
9 *substitute*
10 corrections officer

11 **[1.66] Section 315 (3)**

12 *omit*
13 prison or remand centre
14 *substitute*
15 correctional centre

16 **[1.67] Section 334 (6)**

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

- 1 **[1.68] Part 15**
- 2 *omit*
- 3 **[1.69] Sections 368, 369 and 370**
- 4 *omit*
- 5 **[1.70] Section 397 (2)**
- 6 *omit*
- 7 the defendant may be imprisoned
- 8 *substitute*
- 9 the magistrate may order that the defendant be imprisoned
- 10 **[1.71] Sections 400 and 401**
- 11 *omit*
- 12 **[1.72] Parts 18 and 19**
- 13 *omit*
- 14 **[1.73] Section 430 (2) (b)**
- 15 *substitute*
- 16 (b) confirm the conviction and recommend that the Executive act
- 17 under either of the following sections of the *Crimes (Sentence*
- 18 *Administration) Act 2005* in relation to the convicted person:
- 19 (i) section 313 (Remission of penalties);
- 20 (ii) section 314 (Grant of pardons); or
- 21 **[1.74] Part 21**
- 22 *omit*
- 23 **[1.75] Section 436**
- 24 *omit*
-

1 **[1.76] Section 437**

2 *substitute*

3 **437 Power of courts to bring detainees before them**

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

8 **[1.77] Section 441 (6) (b) (ii)**

9 *substitute*

10 (ii) a good behaviour order; or

11 **[1.78] Dictionary, note 2, new dot point**

12 *insert*

- 13 • correctional centre

14 **[1.79] Dictionary, new definition of *corrections officer***

15 *insert*

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

18 **Part 1.8 Crimes (Child Sex Offenders) Act**
19 **2005**

20 **[1.80] Section 7 (1) (c)**

21 *substitute*

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

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

3 **[1.81] Section 7 (1) (d) (i)**

4 *substitute*

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

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

13 **[1.82] Section 7 (2) (a) (i)**

14 *substitute*

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

20 **[1.83] New section 7 (3)**

21 *insert*

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

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

2 *substitute*

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

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

11 **[1.85] New section 9 (4)**

12 *insert*

- 13 (4) Subsection (1) (a) (i), note and this subsection expire on
14 3 June 2021.

15 **[1.86] Section 108 (1) (c)**

16 *substitute*

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

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

23 **[1.87] Section 108 (4)**

24 *substitute*

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

- 1 **[1.88] Dictionary, definition of *community service order*,**
2 **paragraph (a)**
- 3 *substitute*
- 4 (a) means a community service order within the meaning of the
5 *Crimes (Sentencing) Act 2005*, section 13 (6) (Good behaviour
6 orders); or
- 7 *Note* An order under the *Crimes Act 1900*, s 408 (Directions to perform
8 work) (repealed) is taken to be a good behaviour order under the
9 *Crimes (Sentencing) Act 2005* (see *Crimes (Sentence*
10 *Administration) Act 2005*, s 339).
- 11 **[1.89] Dictionary, definition of *detainee***
- 12 *omit*
- 13 **[1.90] Dictionary, definition of *government custody*,**
14 **paragraph (b)**
- 15 *substitute*
- 16 (b) as a detainee under the *Corrections Management Act 2006*; or
- 17 **[1.91] Dictionary, definition of *parole***
- 18 *substitute*
- 19 *parole* means parole under the *Crimes (Sentence Administration)*
20 *Act 2005*, and includes an equivalent order (however described)
21 made under a foreign law.
- 22 *Note* A parole order under the *Rehabilitation of Offenders (Interim) Act 2001*
23 (repealed) is taken to be a parole order under the *Crimes (Sentence*
24 *Administration) Act 2005* (see that Act, s 343 and s 344).

1 **Part 1.9** **Crimes (Forensic Procedures)**
2 **Act 2000**

3 **[1.92] Section 71 (a)**

4 *substitute*

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

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

11 **[1.93] Section 72 (1) (f) (i)**

12 *substitute*

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

17 **[1.94] Section 78 (1)**

18 *omit*

19 in prison

20 *substitute*

21 in custody at a correctional centre

22 **[1.95] Section 78 (1)**

23 *omit*

24 the prison

25 *substitute*

26 the correctional centre

- 1 **[1.96] Section 78 (1), new note**
- 2 *insert*
- 3 *Note* **Correctional centre** includes a NSW correction centre, see the
- 4 dictionary.
- 5 **[1.97] Section 78 (2)**
- 6 *omit*
- 7 in a prison
- 8 *substitute*
- 9 in custody at a correctional centre
- 10 **[1.98] Dictionary, new definitions**
- 11 *insert*
- 12 **correctional centre** includes a NSW correctional centre.
- 13 *Note* **Correctional centre** and **NSW correctional centre** are defined in the
- 14 Legislation Act, dict, pt 1.
- 15 **medical officer**, for a correctional centre, means a medical officer
- 16 appointed for the centre.
- 17 **[1.99] Dictionary, definitions of *prison*, *prison medical officer***
- 18 **and *remand centre***
- 19 *omit*

1 **Part 1.10** **Crimes (Restorative Justice) Act**
2 **2004**

3 **[1.100] Section 13**

4 *substitute*

5 **13 Definition—*sentence-related order***

6 In this Act:

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

9 (a) for an adult offender, any of the following orders of the court:

10 (i) an order sentencing the offender;

11 (ii) an order under the *Crimes (Sentencing) Act 2005*,
12 section 12 (Suspended sentences) or section 17
13 (Non-conviction orders—general);

14 *Note* Orders under the *Crimes Act 1900*, s 402 (Conditional release of
15 offenders without proceeding to conviction) (repealed) and s 403
16 (Conditional release of offenders) (repealed) are taken to be
17 orders under the *Crimes (Sentencing) Act 2005*, s 12 or s 17 (see
18 *Crimes (Sentence Administration) Act 2005*, s 336 to s 338).

19 (b) for a young offender, any of the following orders under the
20 *Children and Young People Act 1999*:

21 (i) an order under that Act, section 96 (Disposition of young
22 offenders);

23 (ii) an order under that Act, section 98 (Disposition without
24 proceeding to conviction), including an order dismissing
25 a charge.

26 **Examples for par (a) (i)**

27 1 an order for a sentence of imprisonment

28 2 an order for periodic detention under the *Crimes (Sentencing) Act 2005*

1 3 a good behaviour order under the *Crimes (Sentencing) Act 2005*, including
2 an order subject to a community service condition

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

6 **[1.101] Section 20 (2), note 2**

7 *substitute*

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

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

18 **[1.102] Section 55 (2), example**

19 *substitute*

20 **Example**

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

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

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

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

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

11 **[1.103] Section 72 (2), example**

12 *substitute*

13 **Example**

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

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

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

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

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

1 **Part 1.11 Crimes (Sentencing) Act 2005**

2 **[1.104] Section 11 (5), note 1**

3 *substitute*

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

7 **[1.105] Section 13 (8)**

8 *substitute*

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

10 **[1.106] Section 18 (5), example 2**

11 *omit*

12 **[1.107] Section 42 (4) (f)**

13 *omit*

14 **[1.108] Section 42 (4) (g) to (l)**

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

16 **[1.109] Section 65 (2), note**

17 *omit*

18 *(see Crimes (Sentence Administration) Act 2005)*

19 *substitute*

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

21 **[1.110] Section 67, note**

22 *substitute*

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

1 **[1.111] New section 68 (3)**

2 *insert*

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

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

10 **[1.112] Section 71 (3) (b)**

11 *substitute*

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

14 **[1.113] Section 72 heading**

15 *substitute*

16 **72 Concurrent and consecutive sentences—offences while**
17 **in custody or unlawfully absent**

18 **[1.114] Section 72 (1)**

19 *substitute*

- 20 (1) This section applies if the primary sentence is imposed on the
21 offender for any of the following offences:

22 (a) an offence committed while the offender was in lawful
23 custody;

24 (b) an offence committed while the offender was unlawfully
25 absent from a correctional centre or other place during the term
26 of the offender's sentence of imprisonment;

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

2 **Example of unlawful absence for par (b)**

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

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

8 **[1.115] Section 78 (4)**

9 *omit*

10 table 86

11 *substitute*

12 table 79

13 **[1.116] Section 85, definition of *community service condition*,**
14 **note 2**

15 *substitute*

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

18 **[1.117] New section 110A**

19 *insert*

20 **110A Reparation orders—enforcing non-money order**

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

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

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

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

4 **[1.118] Section 112 (2)**

5 *substitute*

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

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

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

20 **[1.119] Section 134 (5)**

21 *substitute*

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

- 1 **[1.120] Section 136 (1)**
- 2 *substitute*
- 3 (1) This section applies to any information in relation to an offence
- 4 (including an alleged offence) in a record of a criminal justice
- 5 entity, including information about—
- 6 (a) a person charged with the offence; and
- 7 (b) a victim of the offence; and
- 8 (c) a person convicted or found guilty of the offence.
- 9 **[1.121] Section 136 (4), definition of *criminal justice entity*,**
- 10 **paragraph (g)**
- 11 *substitute*
- 12 (g) the victims of crime coordinator under the *Victims of Crime*
- 13 *Act 1994*;
- 14 (h) any other entity prescribed by regulation.
- 15 **[1.122] Section 140 heading**
- 16 *substitute*
- 17 **140 Application of Act to offenders charged before and after**
- 18 **commencement**
- 19 **[1.123] Section 140 (5), definition of *old sentencing law*, note 1**
- 20 *omit*
- 21 *Crimes (Sentencing Legislation) Consequential Amendments Act 2005*
- 22 *substitute*
- 23 *Sentencing Legislation Amendment Act 2006*
- 24 **[1.124] Section 140 (6)**
- 25 *omit*
-

1 **[1.125] Section 141 (1) (b)**

2 *substitute*

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

5 **[1.126] Section 141 (2) (a)**

6 *substitute*

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

10 **[1.127] Sections 141 (3) and 142 (4)**

11 *omit*

12 **[1.128] Section 143 (1)**

13 *substitute*

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

18 **[1.129] New sections 144 to 147**

19 *insert*

20 **144 Common law disabilities of convictions abolished**

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

- 1 **145 Construction of outdated references**
- 2 (1) In any Act, instrument made under an Act or document, a reference
- 3 to an earlier law is, in relation to anything to which this Act applies,
- 4 a reference to this Act.
- 5 (2) In any Act, instrument made under an Act or document, a reference
- 6 to a provision of an earlier law is, in relation to anything to which
- 7 this Act applies, a reference to the corresponding provision of this
- 8 Act.
- 9 (3) In any Act, instrument made under an Act or document, a reference
- 10 to anything that is no longer applicable because of the repeal or
- 11 amendment of an earlier law by the *Sentencing Legislation*
- 12 *Amendment Act 2006*, and for which there is a corresponding thing
- 13 under this Act, is taken to be a reference to the thing under this Act,
- 14 if the context allows and if otherwise appropriate.
- 15 (4) In this section:
- 16 *earlier law* means any of the following:
- 17 (a) *Crimes Act 1900*;
- 18 (b) *Magistrates Court Act 1930*;
- 19 (c) *Periodic Detention Act 1995* (repealed).
- 20 **146 Application of Legislation Act, s 88**
- 21 A provision of this chapter (other than section 143 or section 147) is
- 22 a law to which the Legislation Act, section 88 (Repeal does not end
- 23 effect of transitional laws etc) applies.
- 24 **147 Expiry of ch 10**
- 25 (1) This chapter expires 5 years after the day it commences.

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

12 **[1.130] Dictionary, new definition of *at***

13 *insert*

14 *at*, in relation to a correctional centre, includes in the correctional

15 centre.

16 **[1.131] Dictionary, definition of *community service work***

17 *substitute*

18 *community service work*—see the *Crimes (Sentence*

19 *Administration) Act 2005*, section 316.

20 **[1.132] Dictionary, definition of *corrections officer***

21 *substitute*

22 *corrections officer*—see the *Corrections Management Act 2006*,

23 section 20.

- 1 **[1.133] Dictionary, definition of *parole order***
- 2 *substitute*
- 3 *parole order*—see the *Crimes (Sentence Administration) Act 2005*,
- 4 section 117.
- 5 **[1.134] Dictionary, definition of *periodic detention***
- 6 *substitute*
- 7 *periodic detention*, for an offender—see the *Crimes (Sentence*
- 8 *Administration) Act 2005*, section 40.
- 9 **[1.135] Dictionary, definition of *periodic detention period***
- 10 *omit*
- 11 amended
- 12 *substitute*
- 13 extended
- 14 **[1.136] Further amendments, mentions of *in a correctional centre***
- 15 *omit*
- 16 in a correctional centre
- 17 *substitute*
- 18 at a correctional centre
- 19 *in*
- 20 • section 9 (2), note 1
- 21 • section 10 (3)
- 22 • section 29 (1) (a), note
- 23 • section 29 (1), example 2
- 24 • section 31 (c), example
- 25 • section 82 (1) (c)

1 **Part 1.12** **Crimes (Sentence**
2 **Administration) Act 2005**

3 **[1.137] Section 10 (2) (a)**

4 *substitute*

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

8 **[1.138] Section 10 (2), new note 2**

9 *insert*

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

15 **[1.139] Section 15 (2), new note**

16 *insert*

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

21 **[1.140] Section 26 (1)**

22 *omit*

23 detention in—

24 *substitute*

25 detention at—

- 1 **[1.141] Section 26 (2) (a)**
2 *omit*
3 in the ACT correctional centre
4 *substitute*
5 at the ACT correctional centre

- 6 **[1.142] Section 46**
7 *substitute*

8 **46 Periodic detention—searches**

- 9 (1) The chief executive may direct an offender, orally or in writing, to
10 submit to a search when reporting to perform periodic detention.
11 (2) The provisions of the *Corrections Management Act 2005* relating to
12 searches apply, with any necessary changes, in relation to a
13 direction under this section and any search conducted under the
14 direction.

- 15 **[1.143] Section 84 (1), definition of *community service condition***
16 *omit*
17 section 86
18 *substitute*
19 section 85

- 20 **[1.144] Section 96 (2)**
21 *substitute*
22 (2) The provisions of the *Corrections Management Act 2005* relating to
23 searches apply, with any necessary changes, in relation to a
24 direction under this section and any frisk search conducted under the
25 direction.

1	[1.145]	Section 117, definition of <i>victim</i>
2		<i>omit</i>
3	[1.146]	New section 118A
4		<i>in part 7.1, insert</i>
5	118A	Parole—meaning of <i>registered victim</i> and <i>victim</i>
6		In this chapter:
7		<i>registered victim</i> , of an offender, means a person who is a registered
8		victim of an offence by the offender only if this chapter applies to
9		the sentence of imprisonment for the offence.
10		<i>victim</i> , of an offender, means a person who is a victim of an offence
11		by the offender only if this chapter applies to the sentence of
12		imprisonment for the offence.
13	[1.147]	New section 138A
14		<i>insert</i>
15	138A	Parole—alcohol and drug tests
16		(1) The chief executive may direct an offender, orally or in writing, to
17		give a test sample.
18		(2) The provisions of the <i>Corrections Management Act 2006</i> relating to
19		alcohol and drug tests apply, with any necessary changes, in relation
20		to a direction under this section and any sample given under the
21		direction.
22	[1.148]	Section 153 (3) (a)
23		<i>omit</i>
24		release under the parole order
25		<i>substitute</i>
26		release on parole

- 1 **[1.149] Section 168 (4)**
2 *omit*
3 parole release date for the sentence
4 *substitute*
5 offender's parole release date

- 6 **[1.150] New section 302A**
7 *insert*

8 **302A Release on licence—alcohol and drug tests**

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

- 15 **[1.151] New section 314A**
16 *in part 13.2, insert*

17 **314A Prerogative of mercy**

- 18 The prerogative of mercy is not affected by—
19 • this Act
20 • the *Corrections Management Act 2006*
21 • the *Crimes (Sentencing) Act 2005*.

1 **[1.152] New section 321A**

2 *insert*

3 **321A Evidentiary certificates**

- 4 (1) A certificate that appears to be signed by or for the chief executive,
5 and states any matter relevant to anything done or not done under
6 this Act in relation to person, is evidence of the matter.
- 7 (2) Without limiting subsection (1), a certificate under subsection (1)
8 may state any of the following:
- 9 (a) that a stated person was, or was not subject to full-time
10 detention or periodic detention on a stated day;
 - 11 (b) that a stated person was or was not in the chief executive's
12 custody on a stated day;
 - 13 (c) that a stated offender subject to full-time detention did not
14 comply with a stated obligation of the detention;
 - 15 (d) that a stated offender subject to periodic detention did not
16 comply with a stated obligation of the detention;
 - 17 (e) that a stated offender's release from imprisonment on a stated
18 day was authorised by a parole order;
 - 19 (f) that a stated offender released from imprisonment on parole
20 did not comply with a stated condition of the parole;
 - 21 (g) that a stated offender's release from imprisonment on a stated
22 day was authorised by a licence;
 - 23 (h) that a stated offender released from imprisonment on licence
24 did not comply with a stated condition of the release;
 - 25 (i) that the chief executive gave a stated direction to a stated
26 person on a stated day;
 - 27 (j) that a stated person did not comply with a stated direction by
28 the chief executive on a stated day;

- 1 (k) that a stated decision was made by the board on a stated date;
- 2 (l) that a stated person did, or did not, occupy a position under this
3 Act on a stated day;
- 4 (m) that a stated instrument under this Act was, or was not, in force
5 on a stated day;
- 6 (n) that a stated instrument is a copy of an instrument made, given,
7 issued or received under this Act.
- 8 (3) A certificate that appears to be signed by or for the chief executive,
9 and states any matter prescribed by regulation for this section, is
10 evidence of the stated matter.
- 11 (4) A certificate mentioned in subsection (1) or (2) may state a matter
12 by reference to a date or period.
- 13 (5) A certificate of the results of the analysis of a substance under this
14 Act, signed by an analyst, is evidence of the facts stated in the
15 certificate.
- 16 (6) A court must accept a certificate or other document mentioned in
17 this section as proof of the matters stated in it if there is no evidence
18 to the contrary.
- 19 (7) However, the following certificates must not be admitted in
20 evidence by a court unless the court is satisfied that reasonable
21 efforts have been made to serve a copy of the certificate on the
22 person concerned:
- 23 (a) a certificate about a matter mentioned in subsection (2) (c), (d)
24 or (f) or (h) to (j);
- 25 (b) a certificate mentioned in subsection (5).
- 26 (8) The chief executive may appoint analysts for this Act.
- 27 *Note 1* For the making of appointments (including acting appointments), see
28 the Legislation Act, pt 19.3.

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

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

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

6 (10) In this section:

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

9 **[1.153] Chapter 16 heading**

10 *substitute*

11 **Chapter 16 Transitional—general**

12 **[1.154] Section 328, definition of *consequential amendments Act***

13 *omit*

14 *Crimes (Sentencing Legislation) Consequential Amendments*
15 *Act 2005*

16 *substitute*

17 *Sentencing Legislation Amendment Act 2006*

18 **[1.155] Section 330 (2) and (3)**

19 *substitute*

20 (2) If the offender's sentence was imposed before the commencement
21 day—

22 (a) this Act applies in relation to the sentence on and after the
23 commencement day; and

24 (b) the court order for the sentence is taken to be a committal order
25 under part 3.1 (Imprisonment) in relation to the sentence on
26 and after the commencement day.

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

14 **[1.156] Section 331 (2) and (3)**

15 *substitute*

- 16 (2) If the order for the offender's remand was made before the
17 commencement day—
- 18 (a) this Act applies in relation to the remand on and after the
19 commencement day; and
- 20 (b) the court order for the remand is taken to be a remand order
21 under part 3.2 (Remand) in relation to the remand on and after
22 the commencement day.
- 23 (3) If the order for the offender's remand is made on or after the
24 commencement day—
- 25 (a) this Act applies in relation to the remand from the time when
26 the order is made; and
- 27 (b) the court order for the remand is taken to be an order for
28 remand under part 3.2 in relation to the remand from the time
29 when the order is made.

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

6 **[1.157] New sections 331A and 331B**

7 *insert*

8 **331A Full-time imprisonment—other detainees**

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

22 **331B Application of Act to transitional warrants under Removal**
23 **of Prisoners Act (repealed)**

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

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

5 **[1.158] Part 16.6 heading**

6 *substitute*

7 **Part 16.6 Transitional—other provisions**

8 **[1.159] New sections 348A and 348B**

9 *insert*

10 **348A Sentence administration board—transitional members etc**

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

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

3 **348B Official visitors—transitional**

4 (1) This section applies to a person who held a position of official
5 visitor under the *Remand Centres Act 1976* (repealed) immediately
6 before the commencement day.

7 (2) The person is taken to be an official visitor in relation to a
8 correctional centre under this Act.

9 (3) A person who holds a position of official visitor in relation to a
10 correctional centre under this Act because of this section holds that
11 position, subject to this Act, for the remainder of the term for which
12 the person was appointed as an official visitor under the *Remand*
13 *Centres Act 1976* (repealed).

14 **[1.160] Section 349 heading**

15 *substitute*

16 **349 Transitional regulations—ch 16**

17 **[1.161] Section 349 (1)**

18 *substitute*

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

1 **[1.162] Section 350**

2 *substitute*

3 **350 Construction of outdated references**

4 (1) In any Act, instrument made under an Act or document, a reference
5 to an earlier law is, in relation to anything to which this Act applies,
6 a reference to this Act.

7 (2) In any Act, instrument made under an Act or document, a reference
8 to a provision of an earlier law is, in relation to anything to which
9 this Act applies, a reference to the corresponding provision of this
10 Act.

11 (3) In any Act, instrument made under an Act or document, a reference
12 to anything that is no longer applicable because of the repeal or
13 amendment of an earlier law by the *Sentencing Legislation*
14 *Amendment Act 2006*, and for which there is a corresponding thing
15 under this Act, is taken to be a reference to the thing under this Act,
16 if the context allows and if otherwise appropriate.

17 (4) In this section:

18 ***earlier law*** means any of the following:

- 19 (a) *Community Based Sentences (Transfer) Act 2003* (repealed);
20 (b) *Crimes Act 1900*;
21 (c) *Custodial Escorts Act 1998* (repealed);
22 (d) *Magistrates Court Act 1930*;
23 (e) *Parole Orders (Transfer) Act 1983* (repealed);
24 (f) *Periodic Detention Act 1995* (repealed);
25 (g) *Prisoners (International Transfer) Act 1999* (repealed);
26 (h) *Prisoners Interstate Leave Act 1997* (repealed);
27 (i) *Prisoners (Interstate Transfer) Act 1993* (repealed);

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

6 **351 Application of Legislation Act, s 88—ch 16**

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

10 **352 Expiry of ch 16**

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

15 **[1.163] New chapter 17**

16 *insert*

17 **Chapter 17 Transitional—interim custody**
18 **arrangements**

19 **600 Purpose—ch 17**

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

1 **601 Relationship with ch 16**

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

4 **602 No application to home detention**

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

8 **603 Definitions—ch 17**

9 (1) In this chapter:

10 *Corrections Management Act 2006* means an Act about
11 correctional services passed by the Legislative Assembly after
12 2 June 2006 that provides that this definition applies to it.

13 *Note* The new sentencing law commences on 2 June 2006.

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

17 *interim custody period* means the period commencing on
18 2 June 2006 and ending immediately before the *Corrections*
19 *Management Act 2006* commences.

20 *new sentencing law* means the following Acts:

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

23 *old custody law* means the territory law in force immediately before
24 2 June 2006 applying in relation to the custody of a person, and
25 includes, in particular, the following:

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

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

8 **604 Application of new sentencing law—interim custody**
9 **period**

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

22 **Examples of corresponding references**

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

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

Amendment [1.163]

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

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

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

6 **605 Old custody law continues**

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

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

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

22 (2) However, a provision of the old custody law has no effect to the
23 extent that it is inconsistent with the new sentencing law.

24 (3) For subsection (2), a provision is taken to be consistent with the new
25 sentencing law to the extent that it can operate concurrently with
26 that law.

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

- 1 **606 Application of old custody law—periodic detention**
- 2 (1) For section 605, the provisions of the *Periodic Detention Act 1995*
- 3 (repealed) continue to apply in relation to the custody of a person in
- 4 the interim custody period, and, in particular, for the application of
- 5 the relevant provisions in relation to the custody of the person in
- 6 that period.
- 7 (2) For subsection (1), the *relevant provisions* are as follows:
- 8 (a) section 8 (Identification of detainees);
- 9 (b) section 21 (Complaints by detainees);
- 10 (c) section 23 (Manager may require alcohol or drug testing);
- 11 (d) section 27 (Directions);
- 12 (e) part 3 (Corrective services administration).
- 13 (3) This section is a law to which the Legislation Act, section 88
- 14 (Repeal does not end effect of transitional laws etc) applies.
- 15 **607 Application of old custody law—remand**
- 16 (1) For section 605 (Old custody law continues), the provisions of the
- 17 *Remand Centres Act 1976* (repealed) continue to apply in relation to
- 18 the custody of a person in the interim custody period.
- 19 (2) However, the following provisions of the *Remand Centres Act 1976*
- 20 (repealed) do not apply in relation to the custody of a person in the
- 21 interim custody period:
- 22 (a) section 15 (Persons who may be detained);
- 23 (b) section 16 (Transportation of detainees).
- 24 (3) This section is a law to which the Legislation Act, section 88
- 25 (Repeal does not end effect of transitional laws etc) applies.

-
- 1 **608 Additional powers of courts etc**
- 2 (1) This section applies to a court, judge or magistrate, or the registrar
3 or a deputy registrar of a court, (a *judicial entity*) in relation to the
4 exercise of a function under the new sentencing law or the old
5 custody law in relation to the custody of a person in the interim
6 custody period.
- 7 (2) A judicial entity may make any order or give any direction it
8 considers necessary or desirable to facilitate the application of the
9 new sentencing law or the old custody law in relation to the custody
10 of the person in the interim custody period.
- 11 (3) This section is additional to, and does not limit, any other power of
12 the judicial entity.
- 13 (4) This section is a law to which the Legislation Act, section 88
14 (Repeal does not end effect of transitional laws etc) applies.
- 15 **609 Additional powers of sentence administration board**
- 16 (1) This section applies to the board in relation to the exercise of a
17 function under the new sentencing law or the old custody law in
18 relation to the custody of a person in the interim custody period.
- 19 (2) The board may give any direction it considers necessary or desirable
20 to facilitate the application of the new sentencing law or the old
21 custody law in relation to the custody of a person in the interim
22 custody period.
- 23 (3) This section is additional to, and does not limit, any other power of
24 the board.
- 25 (4) A direction under this section is subject to any order or direction
26 under section 608.
- 27 (5) This section is a law to which the Legislation Act, section 88
28 (Repeal does not end effect of transitional laws etc) applies.

- 1 **610 Additional powers of chief executive**
- 2 (1) This section applies to the chief executive in relation to the exercise
3 of a function under the new sentencing law or the old custody law in
4 relation to the custody of a person in the interim custody period.
- 5 (2) The chief executive may give any direction the chief executive
6 considers necessary or desirable to facilitate the application of the
7 new sentencing law or the old custody law in relation to the custody
8 of a person in the interim custody period.
- 9 (3) This section is additional to, and does not limit, any other power of
10 the chief executive.
- 11 (4) A direction under this section is subject to—
- 12 (a) any order or direction under section 608 (Additional powers of
13 courts etc); and
- 14 (b) any direction under section 609 (Additional powers of sentence
15 administration board).
- 16 (5) This section is a law to which the Legislation Act, section 88
17 (Repeal does not end effect of transitional laws etc) applies.
- 18 **611 Transitional regulations—ch 17**
- 19 (1) A regulation may prescribe transitional matters necessary or
20 convenient to be prescribed because of the enactment of this Act,
21 the *Crimes (Sentencing) Act 2005*, the *Corrections Management*
22 *Act 2005* or the *Crimes (Sentencing Legislation) Consequential*
23 *Amendments Act 2005*.
- 24 (2) A regulation may modify this chapter (including its operation in
25 relation to another territory law) to make provision in relation to
26 anything that, in the Executive’s opinion, is not, or is not adequately
27 or appropriately, dealt with in this chapter.
- 28 (3) A regulation under subsection (2) has effect despite anything else in
29 this Act or another territory law.

1 **612 Expiry—ch 17**

2 This chapter expires 1 year after the day it commences.

3 **[1.164] Dictionary, new definition of *at***

4 *insert*

5 *at*, in relation to a correctional centre, includes in the correctional
6 centre.

7 **[1.165] Dictionary, definition of *combination sentence***

8 *substitute*

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

13 **[1.166] Dictionary, definition of *community service condition***

14 *omit*

15 section 86

16 *substitute*

17 section 85

18 **[1.167] Dictionary, definition of *nonparole period*, note**

19 *omit*

20 in a NSW correctional centre

21 *substitute*

22 at a NSW correctional centre

1 **[1.168] Dictionary, definitions of *registered victim* and *victim***

2 *substitute*

3 *registered victim*, of an offender, means—

4 (a) for chapter 7 (Parole)—see section 118A; or

5 (b) for this Act—see section 213.

6 *victim*, of an offender, means—

7 (a) for chapter 7 (Parole)—see section 118A; or

8 (b) for this Act—see section 214.

9 **[1.169] Further amendments, references to *Corrections***
10 ***Management Act 2005***

11 *omit*

12 *Corrections Management Act 2005*

13 *substitute*

14 *Corrections Management Act 2006*

15 *in*

- 16 • section 6
- 17 • section 7 (2) (b)
- 18 • section 8 (2) (c)
- 19 • section 9 (3) (b)
- 20 • sections 13 and 14
- 21 • section 18 (1) (a)
- 22 • section 19
- 23 • section 24
- 24 • section 36 (3) (b)
- 25 • section 42 (2) (e)
- 26 • section 43 (1) (d)
- 27 • section 45 (2)

- 1 • section 46 (2)
- 2 • section 62 (1)
- 3 • section 85 (c)
- 4 • section 86 (1) (d)
- 5 • section 95 (2)
- 6 • section 96 (2)
- 7 • section 136 (b)
- 8 • section 137 (1) (d)
- 9 • section 216 (1), example 4, paragraph (e)
- 10 • section 300 (b)
- 11 • section 301 (1) (d)
- 12 • section 319 (1)
- 13 • section 322 (1), definition of *research*, paragraph (b) and (2) (c)
- 14 • section 329
- 15 • dictionary, definition of *test sample*

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

18 *omit*

19 in a correctional centre

20 *substitute*

21 at a correctional centre

22 *in*

- 23 • section 36 (2) (a)
- 24 • section 37 (4)
- 25 • section 162, definition of *sentence of imprisonment*
- 26 • section 200 (3) (b)
- 27 • section 330 (1) (b)

- 1 **[1.171] Further amendments, mentions of (*Application of Act—***
2 ***charges after commencement*)**
- 3 *omit*
- 4 (Application of Act—charges after commencement)
- 5 *substitute*
- 6 (Application of Act to offenders charged before and after commencement)
- 7 *in*
- 8 • section 326 (2), note
- 9 • section 330 (1), note
- 10 • section 332 (2), note
- 11 • section 334 (1), note
- 12 • section 336 (1), note
- 13 • section 337 (1), note
- 14 • section 338 (1), note
- 15 • section 339 (1), note
- 16 • section 340 (1), note
- 17 • section 348 (2), note 1

18 **Part 1.13 Director of Public Prosecutions**
19 **Act 1990**

- 20 **[1.172] Section 6 (1) (k)**
- 21 *substitute*
- 22 (k) the functions of the director under the *Crimes (Sentence*
23 *Administration) Act 2005*;

1 **Part 1.14** **Domestic Violence and**
2 **Protection Orders Act 2001**

3 **[1.173] Section 34 (2), note**

4 *substitute*

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

8 **[1.174] Section 101 (2) (c)**

9 *substitute*

10 (c) information from being given to a criminal justice entity under
11 the *Crimes (Sentencing) Act 2005*, section 136 (Information
12 exchanges between criminal justice entities); or

13 (ca) information from being given to the chief executive in relation
14 to the exercise of the chief executive's functions; or

15 **[1.175] Section 101 (2)**

16 *renumber paragraphs when Act next republished under Legislation*
17 *Act*

18 **Part 1.15** **Drugs of Dependence Act 1989**

19 **[1.176] Section 121, definition of *responsible officer***

20 *substitute*

21 *responsible officer* means—

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

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

4 **[1.177] Section 123 (6)**

5 *omit*

6 **[1.178] Section 123**

7 *renumber subsections when Act next republished under Legislation*
8 *Act*

9 **[1.179] Section 124 (7) (c)**

10 *substitute*

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

13 **[1.180] Section 125 (4)**

14 *omit*

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

17 *substitute*

18 may grant bail to the offender

19 **[1.181] Section 128**

20 *omit*

1 **Part 1.16** **Electoral Act 1992**

2 **[1.182] Section 71A**

3 *omit*

4 For this part,

5 *substitute*

6 (1) For this part,

7 **[1.183] New section 71A (2)**

8 *insert*

9 (2) In this section:

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

13 **[1.184] Section 103 (1)**

14 *omit*

15 subsections (2) and (4)

16 *substitute*

17 this section

18 **[1.185] New section 103 (3A)**

19 *insert*

20 (3A) A person is not eligible to be an MLA if the person is under a
21 sentence of imprisonment for 1 year or longer for a conviction of an
22 indictable offence.

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

1 **[1.186] Section 103 (4) (b), notes**

2 *substitute*

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

5 **[1.187] Section 103**

6 *renumber subsections when Act next republished under Legislation*
7 *Act*

8 **[1.188] Section 131 (1) (b)**

9 *omit*

10 in a remand centre

11 *substitute*

12 at a correctional centre

13 **[1.189] New section 131 (4)**

14 *insert*

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

18 **[1.190] Section 149, definition of *remand centre***

19 *omit*

20 **[1.191] Section 150 (3) and (4)**

21 *substitute*

22 (3) The commissioner may arrange for an officer to visit electors
23 detained at a correctional centre to take their votes.

24 (4) A visit mentioned in subsection (3) must be made at a time, and in
25 accordance with any conditions, arranged between the
26 commissioner and the person in charge of the correctional centre.

1 **[1.192] Section 151 (2)**

2 *substitute*

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

7 **[1.193] Section 151 (5)**

8 *substitute*

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

12 **[1.194] Dictionary, note 2, new dot points**

13 *insert*

- 14 • correctional centre
15 • indictable offence

16 **[1.195] Dictionary, definition of *remand centre***

17 *omit*

18 **Part 1.17 Evidence (Miscellaneous**
19 **Provisions) Act 1991**

20 **[1.196] Section 16, definition of *territory court*, paragraph (f)**

21 *substitute*

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

1 **[1.197] Dictionary, note 2, new dot point**

2 *insert*

- 3 • sentence administration board

4 **Part 1.18 Firearms Act 1996**

5 **[1.198] Section 6**

6 *omit*

7 This Act

8 *substitute*

- 9 (1) This Act

10 **[1.199] Section 6 (b)**

11 *substitute*

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

14 **[1.200] New section 6 (2)**

15 *insert*

- 16 (2) In this section:

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

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

21 **[1.201] Section 46 (3) (c)**

22 *substitute*

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

1 Part 1.19 Firearms Regulation 1997

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

3 *omit*

4 recognisance

5 *substitute*

6 court order (however described)

7 Part 1.20 Food Act 2001

8 [1.203] Section 9 (1) (o) (i)

9 *substitute*

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

12 Part 1.21 Hawkers Act 2003

13 [1.204] Section 18 (3) (c)

14 *substitute*

- 15 (c) whether the applicant or anyone else who is concerned with, or
16 takes part in, the applicant's management has been convicted
17 or found guilty of an offence against—

18 (i) the Criminal Code, section 313 (Receiving); or

19 (ii) the *Crimes Act 1900*, section 105 (Handling stolen
20 property) (repealed); or

21 (iii) an offence against the law of a State or another Territory
22 that corresponds to an offence mentioned in
23 subparagraph (i) or (ii);

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

11 **Part 1.22 Health Professionals Regulation**
12 **2004**

13 **[1.205] Schedule 17, section 150M (7)**

14 *omit*

15 **Part 1.23 Judicial Commissions Act 1994**

16 **[1.206] Section 44 (6)**

17 *omit*

18 **Part 1.24 Juries Act 1967**

19 **[1.207] Section 10 (a)**

20 *omit*

21 free

1 **[1.208] Schedule 2, part 2.1, items 22 to 30**

2 *substitute*

22 a corrections officer

23 an employee at a place declared to be an attendance centre,
institution or shelter under the *Children and Young People*
Act 1999, section 412

24 a person appointed as 1 of the following:

(a) a royal commission under the *Royal Commissions*
Act 1991, section 5;

(b) a board of inquiry under the *Inquiries Act 1991*, section 5;

(c) a member of a judicial commission under the *Judicial*
Commissions Act 1994, section 6

25 a public servant during the period the public servant is made
available to a royal commission, board of inquiry or judicial
commission

3 **[1.209] Dictionary, note 2, new dot points**

4 *insert*

- 5 • corrections officer
- 6 • judge
- 7 • registrar.

1 **Part 1.25 Land (Planning and**
2 **Environment) Act 1991**

3 **[1.210] Section 272**

4 *substitute*

5 **272 Disposal of seized things**

6 (1) The planning and land authority must take reasonable steps to return
7 a thing seized under section 269 (1) (d) to the person from whom it
8 was seized, or to someone else who appears to the authority to be
9 entitled to it, if—

10 (a) a prosecution for an offence against this part in relation to the
11 thing is not started within 90 days after the day of the seizure;
12 or

13 (b) a person is charged with an offence against this part in relation
14 to the thing within the 90-day period but the person is not
15 convicted or found guilty of the offence.

16 (2) If a person is convicted or found guilty of an offence against this
17 part in relation to a thing seized under section 269 (1) (d), the court
18 may order—

19 (a) that the thing be given to the person who appears to the court
20 to be entitled to it; or

21 (b) that the thing be forfeited to the Territory.

1 **Part 1.26** **Legislation Act 2001**

2 **[1.211] Section 140, example 3**

3 *omit*

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

5 *substitute*

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

7 **[1.212] Dictionary, part 1, definition of *committed for trial***

8 *substitute*

9 ***commit***, a person for trial, means—

10 (a) to order that the person be remanded in custody until tried by
11 the Supreme Court; or

12 (b) to grant bail to the person to appear and be tried by the
13 Supreme Court.

14 **[1.213] Dictionary, part 1, new definitions**

15 *insert*

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

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

20 **[1.214] Dictionary, part 1, definition of *custodial escort***

21 *omit*

22 **[1.215] Dictionary, part 1, definition of *director of corrective***
23 ***services***

24 *omit*

- 1 **[1.216] Dictionary, part 1, definition of *found guilty***
2 *substitute*
3 *found guilty*, of an offence, includes—
4 (a) having an order made for the offence under the *Crimes*
5 (*Sentencing*) *Act 2005*, section 17 (Non-conviction orders—
6 general); and
7 (b) having the offence taken into account under the *Crimes*
8 (*Sentencing*) *Act 2005*, section 57 (Outstanding additional
9 offences taken into account in sentencing); and
10 (c) having an order made for the offence under the *Children and*
11 *Young People Act 1999*, section 98 (Disposition without
12 proceeding to conviction).

- 13 **[1.217] Dictionary, part 1, new definition of *NSW correctional***
14 ***centre***
15 *insert*
16 *NSW correctional centre* means a correctional centre (however
17 described) under the *Crimes (Administration of Sentences) Act 1999*
18 (NSW).

- 19 **[1.218] Dictionary, part 1, definitions of *remand centre* and**
20 ***remand centre administrator***
21 *omit*

- 22 **[1.219] Dictionary, part 1, definition of *sentence administration***
23 ***board***
24 *substitute*
25 *sentence administration board* means the Sentence Administration
26 Board under the *Crimes (Sentence Administration) Act 2005*.

1 **Part 1.27** **Magistrates Court Act 1930**

2 **[1.220] Section 13**

3 *substitute*

4 **13 Issue of writ of execution after case decided**

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

7 **[1.221] Section 17C**

8 *omit*

9 warrant of commitment or writ of execution is granted on it

10 *substitute*

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

13 **[1.222] Section 17E**

14 *omit*

15 If a warrant of commitment or writ of execution is granted

16 *substitute*

17 If a committal order or writ of execution is issued

18 **[1.223] Section 17E**

19 *omit*

20 warrant or writ

21 *substitute*

22 committal order or writ

1 **[1.224] Section 18A, definitions of *administrator*, *escort* and**
2 ***superintendent***

3 *omit*

4 **[1.225] Section 23B**

5 *omit*

6 **[1.226] Section 43 (2) (a)**

7 *omit*

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

13 *substitute*

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

18 **[1.227] Division 3.4.3**

19 *substitute*

20 **Division 3.4.3 Remand**

21 **70 Remand of defendant**

22 (1) This section applies if the court considers it is necessary or desirable
23 to adjourn the hearing of a proceeding for an indictable offence—

24 (a) because of the absence of witnesses; or

25 (b) for any other reasonable cause.

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

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

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

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

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

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

21 **72 Bringing remanded defendant before court**

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

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

- 1 **72A Bail application hearings—audiovisual links**
- 2 (1) This section applies if—
- 3 (a) a person in custody is entitled to appear, or is required to
- 4 appear or be brought, before the court for the hearing of an
- 5 application for bail; and
- 6 (b) the hearing could be conducted using an audiovisual link
- 7 between the court and the place of custody.
- 8 (2) Unless the court directs otherwise, the hearing must be conducted
- 9 using the audiovisual link.
- 10 (3) The court may amend or revoke a direction under subsection (2)—
- 11 (a) at any time; and
- 12 (b) on its own initiative or on application by a party to the bail
- 13 proceeding.
- 14 (4) In this section:
- 15 ***audiovisual link***—see the *Evidence (Miscellaneous Provisions)*
- 16 *Act 1991*, dictionary.
- 17 **72B Defendant’s appearance in non-bail proceedings—**
- 18 **audiovisual links**
- 19 (1) This section applies if the court gives a direction under the *Evidence*
- 20 *(Miscellaneous Provisions) Act 1991*, section 20 (Territory courts
- 21 may take evidence and submissions from outside ACT) or
- 22 section 32 (1) (Use of link in proceedings) in relation to any part of
- 23 a proceeding in relation to a defendant remanded under—
- 24 (a) section 70 (Remand of defendant); or
- 25 (b) section 72 (Bringing remanded defendant before court).
- 26 (2) The chief executive must make arrangements to ensure that the
- 27 evidence can be taken, or the submission made, in accordance with
- 28 the court’s direction.

1 **[1.228] Sections 74 and 75**

2 *substitute*

3 **74 Remand of defendant before decision**

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

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

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

11 **75 Remand of witness or defendant after decision**

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

15 (2) If the court commits a defendant, it must order that the defendant be
16 remanded in custody.

17 **[1.229] Section 79 (1) (d)**

18 *substitute*

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

21 **[1.230] Section 82**

22 *omit*

1 **[1.231] Section 84**

2 *substitute*

3 **84 Particular cases may be adjourned**

4 (1) Before or during the hearing or further hearing of an information,
5 the magistrate may adjourn the hearing or further hearing.

6 (2) The magistrate may, by order, release the defendant (whether or not
7 on bail) or remand the defendant in custody.

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

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

13 **[1.232] Section 94 (b)**

14 *substitute*

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

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

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

22 **[1.233] Section 105**

23 *substitute*

24 **105 Court may remand noncompliant witness**

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

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

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

9 **[1.234] Section 111 (3)**

10 *omit*
11 safe custody,
12 *substitute*
13 custody

14 **[1.235] Section 141 (1), new note**

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

19 **[1.236] Section 141 (4)**

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

1 **[1.237] Section 144 (1)**

2 *substitute*

3 (1) On application, the registrar must give an applicant a copy of—

4 (a) an information; or

5 (b) a minute or memorandum of a conviction or order; or

6 (c) a formal conviction or order; or

7 (d) a committal order.

8 **[1.238] Section 145**

9 *omit*

10 **[1.239] Section 146**

11 *omit*

12 In

13 *substitute*

14 (1) In

15 **[1.240] Section 146, definition of *fine*, paragraph (a)**

16 *substitute*

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

19 **[1.241] Section 146, definition of *fine*, paragraph (e)**

20 *substitute*

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

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

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

3 **[1.242] Section 152 (5)**

4 *substitute*

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

7 **[1.243] Section 153 (3) (b) and (c)**

8 *substitute*

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

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

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

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

18 **[1.244] Sections 154D to 158**

19 *substitute*

20 **154D Fine defaulters—imprisonment**

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

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

1 **158 Outstanding fine satisfied by imprisonment**

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

5 (a) at the rate of \$100 for each day or part of a day for which the
6 person is detained under the warrant; or

7 (b) if the person is committed for 6 months—at the end of the
8 6-month period.

9 **[1.245] Section 159**

10 *omit*

11 **[1.246] Sections 185 to 188**

12 *omit*

13 **[1.247] Section 191**

14 *omit*

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

16 *substitute*

17 registrar and person in charge of a correctional centre

18 **[1.248] Section 194**

19 *substitute*

20 **194 Writ of execution not void for form only**

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

- 1 **[1.249] Section 208 (1) (e) and (f)**
2 *substitute*
3 (e) an appeal from an order of the court under any of the following
4 provisions of the *Crimes (Sentencing) Act 2005*:
5 (i) part 3.2 (Sentences of imprisonment);
6 (ii) part 3.3 (Non-custodial sentences);
7 (iii) part 3.4 (Non-association and place restriction orders);
8 (iv) part 3.5 (Deferred sentence orders);
9 (v) part 3.6 (Combination sentences);
10 *Note* Orders under the *Crimes Act 1900*, pt 18 (Conditional release of
11 offenders) are taken to be orders under the *Crimes (Sentencing)*
12 *Act 2005* (see *Crimes (Sentence Administration) Act 2005*, ch 16).
13 (f) an appeal from an order of the court under the *Crimes*
14 *(Sentence Administration) Act 2005*, part 6.6 (Good behaviour
15 orders—amendment and discharge).

- 16 **[1.250] Section 216 (2)**
17 *omit*
18 may, by warrant, commit the person to a remand centre
19 *substitute*
20 may order the person be remanded in custody

- 21 **[1.251] Section 216 (2), new note**
22 *insert*
23 *Note* The court must issue a warrant for the remand of the defendant in the
24 chief executive's custody (see *Crimes (Sentence Administration)*
25 *Act 2005*, s 17).

1 **[1.252] Section 219B (2)**

2 *substitute*

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

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

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

8 (i) part 3.2 (Sentences of imprisonment);

9 (ii) part 3.3 (Non-custodial sentences);

10 (iii) part 3.4 (Non-association and place restriction orders);

11 (iv) part 3.5 (Deferred sentence orders);

12 (v) part 3.6 (Combination sentences); or

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

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

18 **[1.253] Section 222 (1)**

19 *omit*

20 warrant of commitment

21 *substitute*

22 committal order

1 **[1.254] Section 222 (1)**
2 *omit*
3 the warrant
4 *substitute*
5 the committal order

6 **[1.255] Section 222 (2)**
7 *omit*
8 commitment
9 *substitute*
10 committal

11 **[1.256] Section 223 (2)**
12 *substitute*
13 (2) The Supreme Court must allow the committal order, and may allow
14 the conviction or judgment, to be immediately amended as
15 necessary in accordance with the facts.

16 **[1.257] Section 226 (1)**
17 *omit*
18 committed to gaol
19 *substitute*
20 imprisoned or detained

21 **[1.258] Sections 250 to 253**
22 *omit*
23 or the *Bail Act 1992*

-
- 1 **[1.259] Section 254 (4)**
- 2 *omit*
- 3 or under the *Bail Act 1992*, section 36 (1)
- 4 **[1.260] Section 312 (2) (b)**
- 5 *substitute*
- 6 (b) order that the person be remanded in custody until the earlier
- 7 of the following:
- 8 (i) the date to which the proceeding is adjourned;
- 9 (ii) the person agrees to comply with the relevant Code
- 10 provisions.
- 11 *Note* The court must issue a warrant for the remand of the person in the
- 12 chief executive's custody (see *Crimes (Sentence Administration)*
- 13 *Act 2005*, s 17).
- 14 **[1.261] Section 312 (3) (a)**
- 15 *omit*
- 16 committed the person
- 17 *substitute*
- 18 ordered the person's remand
- 19 **[1.262] Section 312 (4)**
- 20 *omit*
- 21 committed
- 22 *substitute*
- 23 remanded
- 24 **[1.263] Section 313**
- 25 *omit*
-

1 **[1.264] Dictionary, note 2, new dot point**

2 *insert*

- 3 • corrections officer

4 **[1.265] Dictionary, note 2**

5 *omit*

- 6 • custodial escort
7 • remand centre
8 • remand centre administrator

9 **[1.266] Dictionary, definition of *administrator***

10 *omit*

11 **[1.267] Dictionary, new definition of *committal order***

12 *insert*

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

15 **[1.268] Dictionary, definitions of *escort* and *superintendent***

16 *omit*

17 **Part 1.28 Mental Health (Treatment and**
18 **Care) Act 1994**

19 **[1.269] Section 38A**

20 *omit*

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

22 *substitute*

23 A police officer or corrections officer

1 **[1.270] Dictionary, note 2, new dot points**

2 *insert*

- 3 • correctional centre
4 • corrections officer

5 **[1.271] Dictionary, definition of *community care facility***

6 *omit*

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

9 *substitute*

10 a correctional centre

11 **Part 1.29 Prohibited Weapons Act 1996**

12 **[1.272] Section 4**

13 *omit*

14 A person

15 *substitute*

16 (1) A person

17 **[1.273] Section 4**

18 *omit*

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

20 *substitute*

21 in the exercise of the person's functions

22 **[1.274] Section 4 (e) and (f)**

23 *omit*

24 a member of

1 **[1.275] New section 4 (2)**

2 *insert*

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

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

8 **Part 1.30 Road Transport (Alcohol and**
9 **Drugs) Act 1977**

10 **[1.276] Section 29**

11 *substitute*

12 **29 Conditional release of convicted person**

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

19 (commencement: 2 June 2007)

20 **[1.277] New section 41A (1) (i) and (j)**

21 *substitute*

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

1 **[1.278] Section 45**

2 *omit*

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

4 *substitute*

5 A

6 **Part 1.31 Royal Commissions Act 1991**

7 **[1.279] Section 35 (3) (b)**

8 *omit*

9 force

10 *substitute*

11 service or force

12 **[1.280] Section 35 (6)**

13 *omit*

14 **Part 1.32 Security Industry Regulation**
15 **2003**

16 **[1.281] Section 6 (3), definition of *custodial officer***

17 *substitute*

18 *custodial officer* means—

19 (a) a corrections officer under the *Corrections Management*
20 *Act 2006*, section 20; or

21 (b) an escort under the *Children and Young People Act 1999*,
22 part 6.3 (Interstate transfer); or

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

16 Part 1.33 Spent Convictions Act 2000

17 [1.282] Section 6 (b)

18 *substitute*

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

21 [1.283] Section 6, examples 1 to 4

22 *substitute*

- 23 1 the court makes an order under the *Crimes (Sentencing) Act 2005*, s 17
24 (Non-conviction orders—general)
- 25 2 the court makes an order under the *Children and Young People Act 1999*, s 98
26 (Disposition without proceeding to conviction)

- 1 **[1.284] Section 7 (2)**
- 2 *substitute*
- 3 (2) In this Act, a reference to a conviction that is *spent* includes a
- 4 reference to the charge to which the spent conviction related.
- 5 **[1.285] Section 11 (2) (a)**
- 6 *substitute*
- 7 (a) a conviction for which a sentence of imprisonment of longer
- 8 than 6 months has been imposed;
- 9 **[1.286] Section 11 (3)**
- 10 *substitute*
- 11 (3) In this section:
- 12 *sentence of imprisonment—*
- 13 (a) includes a period of a sentence of imprisonment to be served
- 14 by periodic detention under the *Crimes (Sentence*
- 15 *Administration) Act 2005*; but
- 16 (b) does not include the detention of a person under a control
- 17 order.
- 18 **[1.287] Section 12 (1)**
- 19 *omit*
- 20 subsections (2) to (8)
- 21 *substitute*
- 22 this section

- 1 **[1.288] Section 12 (2), (3) and (4)**
2 *substitute*
- 3 (2) If a charge for an offence is dismissed under either of the following
4 provisions, the finding of guilt for the offence (however described)
5 is spent on the dismissal of the charge:
- 6 (a) the *Crimes (Sentencing) Act 2005*, section 17 (Non-conviction
7 orders—general);
- 8 (b) the *Children and Young People Act 1999*, section 98
9 (Disposition without proceeding to conviction).
- 10 *Note* An order under the *Crimes Act 1900*, s 402 (Conditional release of
11 offenders without proceeding to conviction) (repealed) is taken to be a
12 non-conviction order that is a good behaviour order under the *Crimes*
13 *(Sentencing) Act 2005* (see *Crimes (Sentence Administration) Act 2005*,
14 s 336).
- 15 (3) If an order under the *Crimes (Sentencing) Act 2005*, section 17
16 (Non-conviction orders—general) is a good behaviour order subject
17 to a condition, the order is spent only when the condition is
18 completely satisfied.

- 19 **[1.289] Section 12**
20 *renumber subsections when Act next republished under Legislation*
21 *Act*

22 **Part 1.34 Supreme Court Act 1933**

- 23 **[1.290] Section 37Q, heading**
24 *substitute*
- 25 **37Q Bail time on appeal does not count towards sentence**

1 **[1.291] Section 70A (2) (a) to (c)**

2 *substitute*

3 (a) order the person to pay a fine not exceeding \$5 000; or

4 (b) order that the person be imprisoned for not longer than
5 6 months; or

6 (c) make orders under both paragraph (a) and (b).

7 **Part 1.35 Supreme Court Rules 1937**

8 **[1.292] Order 68, rule 10**

9 *substitute*

10 **10 Detention of arrested person**

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

14 **[1.293] Order 80, rule 1, definition of *sentence*, examples 1 and 2**

15 *substitute*

16 1 a reparation order under the *Crimes (Sentencing) Act 2005*, s 19 or s 20

17 2 a good behaviour order under the *Crimes (Sentencing) Act 2005*, s 13

18 **[1.294] Order 80, rule 32**

19 *omit*

20 recognisance

21 *substitute*

22 undertaking

- 1 **[1.295] Order 86, rules 9 and 48, definition of *sentence*,**
2 **examples 1 and 2**
- 3 *substitute*
- 4 1 a reparation order under the *Crimes (Sentencing) Act 2005*, s 19 or s 20
5 2 a good behaviour order under the *Crimes (Sentencing) Act 2005*, s 13
- 6 **[1.296] Order 86, rule 63 (4), definition of *fine*, example 5**
- 7 *substitute*
- 8 5 an amount payable for reparation under the *Crimes (Sentencing) Act 2005*,
9 s 19

10 **Part 1.36 Taxation Administration Act 1999**

- 11 **[1.297] New section 5A**
- 12 *in part 1, insert*
- 13 **5A Offences against Act—application of Criminal Code etc**
- 14 Other legislation applies in relation to offences against this Act.
- 15 *Note 1 Criminal Code*
- 16 The Criminal Code, ch 2 applies to an offence against s 71 (6) (Orders
17 to comply with requirements). The chapter sets out the general
18 principles of criminal responsibility (including burdens of proof and
19 general defences) and defines terms used for offences to which the Code
20 applies (eg *conduct*, *intention*, *recklessness*, and *strict liability*).
- 21 *Note 2 Penalty units*
- 22 The Legislation Act, s 133 deals with the meaning of offence penalties
23 that are expressed in penalty units.

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

2 *after*

3 convicted

4 *insert*

5 or found guilty

6 **[1.299] Section 70 (4)**

7 *substitute*

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

11 **[1.300] Section 71**

12 *substitute*

13 **71 Orders to comply with requirements**

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

- 1 (b) to comply with any other requirements that have or could have
2 been made in relation to the person under a tax law that the
3 court considers necessary to ensure that the relevant
4 requirement is complied with.
- 5 (3) The order may be made whether or not the time to comply with the
6 relevant requirement or any other requirement has ended.
- 7 (4) If the order is not given orally to the person, the court's proper
8 officer must serve a copy of the order on the person.
- 9 (5) The making of an order under this section does not limit the court's
10 power to impose a sentence on the person for the offence or make
11 any other order in relation to the offence.
- 12 (6) The person must comply with an order under this section to the
13 extent that the person is capable of doing so.
- 14 Maximum penalty (subsection (6)): 100 penalty units,
15 imprisonment for 1 year or both.

16 **Part 1.37** **Victims of Crime (Financial**
17 **Assistance) Act 1983**

18 **[1.301] Section 35 (2) (c)**

19 *substitute*

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

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

1 **[1.302] Section 40 (2) (c)**

2 *substitute*

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

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

9 **[1.303] Section 52, definition of *related crime*, paragraph (b)**

10 *substitute*

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

14 **[1.304] New section 54 (2)**

15 *insert*

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

19 **[1.305] Section 54 (2) to (4)**

20 *renumber as section 54 (3) to (5)*

21 **[1.306] New section 61A**

22 *insert*

23 **61A Recovery under restitution orders—Confiscation of**
24 **Criminal Assets Act**

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

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

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

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

11 (3) In this section:
12 *restrained*—see the *Crimes (Sentencing) Act 2005*, section 112 (3).

13 **[1.307] Section 66 (2) (a) (i)**

14 *substitute*

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

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

19 **[1.308] Section 67**

20 *substitute*

21 **67 Extended meaning of *conviction*—pt 5**

22 (1) For this part, a person is taken to have been convicted of an offence
23 if—

24 (a) the person is found guilty of the offence; or

25 (b) the offence was taken into account by a court when sentencing
26 the person for another offence.

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

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

4 **[1.309] Section 69 (2) (b)**

5 *substitute*

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

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

10 **[1.310] Regulation 4 (1) (a) and (2)**

11 *omit*

12 director of corrective services

13 *substitute*

14 chief executive

15 **Part 1.39** **Workers Compensation Act 1951**

16 **[1.311] Section 205 (1)**

17 *omit*

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

19 *substitute*

20 In

1 **Schedule 2 Crimes Act 1900—other**
2 **amendments**

3
4 (see s 3)

5 **[2.1] Section 116 (1)**

6 *omit*

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

9 *substitute*

10 commits an offence.

11 Maximum penalty: imprisonment for 20 years.

12 **[2.2] Section 116 (2)**

13 *omit*

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

16 *substitute*

17 commits an offence.

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

-
- 1 **[2.3] Section 116 (3)**
- 2 *omit*
- 3 is guilty of an offence punishable, on conviction, by imprisonment
- 4 for 6 months, a fine not exceeding 50 penalty units or both.
- 5 *substitute*
- 6 commits an offence.
- 7 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 8 both.
- 9 **[2.4] Section 117 (1)**
- 10 *omit*
- 11 is guilty of an offence punishable, on conviction, by imprisonment
- 12 for 25 years.
- 13 *substitute*
- 14 commits an offence.
- 15 Maximum penalty: imprisonment for 25 years.
- 16 **[2.5] Section 117 (2)**
- 17 *omit*
- 18 is guilty of an offence punishable, on conviction, by imprisonment
- 19 for 20 years.
- 20 *substitute*
- 21 commits an offence.
- 22 Maximum penalty: imprisonment for 20 years.

1 **[2.6] Section 119 (1)**

2 *omit*

3 \$1 000

4 *substitute*

5 10 penalty units

6 **[2.7] Section 119 (2)**

7 *omit*

8 \$1 000

9 *substitute*

10 10 penalty units

11 **[2.8] Section 122**

12 *omit*

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

15 *substitute*

16 commits an offence.

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

19 **[2.9] Section 137**

20 *omit*

21 Maximum penalty: imprisonment for 10 years.

22 *substitute*

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

-
- 1 **[2.10] Section 138 (1)**
- 2 *omit*
- 3 Maximum penalty: imprisonment for 10 years.
- 4 *substitute*
- 5 Maximum penalty: 200 penalty units, imprisonment for 10 years or
- 6 both.
- 7 **[2.11] Section 139 (1)**
- 8 *omit*
- 9 Maximum penalty: imprisonment for 10 years.
- 10 *substitute*
- 11 Maximum penalty: 200 penalty units, imprisonment for 10 years or
- 12 both.
- 13 **[2.12] Section 140A**
- 14 *omit*
- 15 Maximum penalty: imprisonment for 10 years.
- 16 *substitute*
- 17 Maximum penalty: 200 penalty units, imprisonment for 10 years or
- 18 both.
- 19 **[2.13] Section 140B (1)**
- 20 *omit*
- 21 Maximum penalty: imprisonment for 10 years.
- 22 *substitute*
- 23 Maximum penalty: 200 penalty units, imprisonment for 10 years or
- 24 both.
-

- 1 **[2.14] Section 140C (1)**
- 2 *omit*
- 3 Maximum penalty: imprisonment for 10 years.
- 4 *substitute*
- 5 Maximum penalty: 200 penalty units, imprisonment for 10 years or
- 6 both.
- 7 **[2.15] Section 141**
- 8 *omit*
- 9 is guilty of an offence punishable, on conviction, by imprisonment
- 10 for 7 years.
- 11 *substitute*
- 12 commits an offence.
- 13 Maximum penalty: 200 penalty units, imprisonment for 7 years or
- 14 both.
- 15 **[2.16] Section 142**
- 16 *omit*
- 17 is guilty of an offence punishable, on conviction, by imprisonment
- 18 for 7 years.
- 19 *substitute*
- 20 commits an offence.
- 21 Maximum penalty: 200 penalty units, imprisonment for 7 years or
- 22 both.

-
- 1 **[2.17] Section 143**
- 2 *omit*
- 3 is guilty of an offence punishable, on conviction, by imprisonment
- 4 for 7 years.
- 5 *substitute*
- 6 commits an offence.
- 7 Maximum penalty: 200 penalty units, imprisonment for 7 years or
- 8 both.
- 9 **[2.18] Section 144**
- 10 *omit*
- 11 is guilty of an offence punishable, on conviction, by imprisonment
- 12 for 10 years.
- 13 *substitute*
- 14 commits an offence.
- 15 Maximum penalty: 200 penalty units, imprisonment for 10 years or
- 16 both.
- 17 **[2.19] Section 145**
- 18 *omit*
- 19 is guilty of an offence punishable, on conviction, by imprisonment
- 20 for 3 years.
- 21 *substitute*
- 22 commits an offence.
- 23 Maximum penalty: 100 penalty units, imprisonment for 3 years or
- 24 both.
-

- 1 **[2.20] Section 147**
- 2 *omit*
- 3 is guilty of an offence punishable, on conviction, by imprisonment
4 for 10 years.
- 5 *substitute*
- 6 commits an offence.
- 7 Maximum penalty: 200 penalty units, imprisonment for 10 years or
8 both.
- 9 **[2.21] Section 148**
- 10 *omit*
- 11 is guilty of an offence punishable, on conviction, by imprisonment
12 for 7 years.
- 13 *substitute*
- 14 commits an offence.
- 15 Maximum penalty: 200 penalty units, imprisonment for 7 years or
16 both.
- 17 **[2.22] Section 151**
- 18 *omit*
- 19 is guilty of an offence punishable, on conviction, by a fine not
20 exceeding \$2 000, by imprisonment for 1 year or both.
- 21 *substitute*
- 22 commits an offence.
- 23 Maximum penalty: 20 penalty units, imprisonment for 1 year or
24 both.

1 **[2.23] Section 152**

2 *omit*

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

5 *substitute*

6 commits an offence.

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

9 **[2.24] Section 153 (1)**

10 *omit*

11 Maximum penalty: imprisonment for 2 years.

12 *substitute*

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

15 **[2.25] Section 153 (2)**

16 *omit*

17 Maximum penalty: imprisonment for 2 years.

18 *substitute*

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

- 1 **[2.26] Section 154 (1)**
- 2 *omit*
- 3 Maximum penalty: fine of \$100, imprisonment for 1 month or both.
- 4 *substitute*
- 5 Maximum penalty: 1 penalty unit, imprisonment for 1 month or
- 6 both.
- 7 **[2.27] Section 154 (2)**
- 8 *omit*
- 9 Maximum penalty: fine of \$250, imprisonment for 3 months or
- 10 both.
- 11 *substitute*
- 12 Maximum penalty: 2.5 penalty units, imprisonment for 3 months or
- 13 both.
- 14 **[2.28] Section 159**
- 15 *omit*
- 16 is guilty of an offence punishable, on conviction, by imprisonment
- 17 for 5 years, a fine of \$10 000 or both.
- 18 *substitute*
- 19 commits an offence.
- 20 Maximum penalty: 100 penalty units, imprisonment for 5 years or
- 21 both.

-
- 1 **[2.29] Section 160**
- 2 *omit*
- 3 is guilty of an offence punishable, on conviction, by imprisonment
4 for 5 years, a fine of \$10 000 or both.
- 5 *substitute*
- 6 commits an offence.
- 7 Maximum penalty: 100 penalty units, imprisonment for 5 years or
8 both.
- 9 **[2.30] Section 161**
- 10 *omit*
- 11 is guilty of an offence punishable, on conviction, by imprisonment
12 for 14 years.
- 13 *substitute*
- 14 commits an offence.
- 15 Maximum penalty: imprisonment for 14 years.
- 16 **[2.31] Section 162**
- 17 *omit*
- 18 is guilty of an offence punishable, on conviction, by imprisonment
19 for 5 years, a fine of \$10 000 or both.
- 20 *substitute*
- 21 commits an offence.
- 22 Maximum penalty: 100 penalty units, imprisonment for 5 years or
23 both.

1 **[2.32] Section 163 (1) and (2)**
2 *omit*
3 is guilty of an offence punishable, on conviction, by imprisonment
4 for 5 years, a fine of \$10 000 or both.
5 *substitute*
6 commits an offence.
7 Maximum penalty: 100 penalty units, imprisonment for 5 years or
8 both.

9 **[2.33] Section 164**
10 *omit*
11 is guilty of an offence punishable, on conviction, by imprisonment
12 for 5 years, a fine of \$10 000 or both.
13 *substitute*
14 commits an offence.
15 Maximum penalty: 100 penalty units, imprisonment for 5 years or
16 both.

17 **[2.34] Section 166 (1)**
18 *omit*
19 is guilty of an offence punishable, on conviction, by imprisonment
20 for a period not exceeding 2 years, a fine not exceeding \$20 000 or
21 both.
22 *substitute*
23 commits an offence.
24 Maximum penalty: 200 penalty units, imprisonment for 2 years or
25 both.

Schedule 3 New Crimes (Sentencing) Regulation

(see s 4)



Australian Capital Territory

Crimes (Sentencing) Regulation 2006

Subordinate Law SL2006-

made under the

Crimes (Sentencing) Act 2005

1 Name of regulation

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

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

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

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

Schedule 4 New Crimes (Sentence Administration) Regulation

(see s 5)



Australian Capital Territory

Crimes (Sentence Administration) Regulation 2006

Subordinate Law SL2006-

made under the

Crimes (Sentence Administration) Act 2005

1 Name of regulation

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

2 Dictionary

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

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

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

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

3 Notes

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

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

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

The following conditions are prescribed:

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

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

Example for par (b)

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

Examples for par (i)

directions about any of the following:

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

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

Dictionary

(see s 2)

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

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

- ACT
- chief executive
- doctor.

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

- board
- offender
- test sample.

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

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

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

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

prescribed substance means—

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

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

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

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

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2006.

2 Notification

Notified under the Legislation Act on 2006.

3 Republications of amended laws

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