EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Crimes (Sentence Administration) Bill 2004

Contents

2003 223B

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(Prepared by Parliamentary Counsel's Office)

Crimes (Sentence Administration) Bill 2004

A Bill for

An Act to consolidate and reform the law about correctional centres, offenders, sentences and rehabilitation, and for other purposes

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

2003 223B

Chapter 1 Preliminary

1 Name of Act

This Act is the *Crimes (Sentence Administration) Act 2004*.

2 Commencement

This Act commences on the commencement of the *Crimes (Sentencing) Act 2004*, part 13 (Transitional).

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

3 Dictionary

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

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

For example, the signpost definition '***parental responsibility***—see the *Children and Young People Act 1999*, section 17.' means that the term 'parental responsibility' is defined in that section and the definition applies to this Act.

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

4 Notes

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

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

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg ***conduct***, ***intention***, ***recklessness*** and ***strict liability***).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Chapter 2 Objects and important concepts

Part 2.1 Objects and general considerations

6 Objects

The objects of this Act include the following:

(a) to provide for the safe, humane and secure detention, supervision and management of remandees and offenders in correctional centres;

(b) to provide for the effective administration of correctional centres and of programs for offenders;

(c) to provide for the effective supervision of offenders serving home detention and other sentences in the community, including early intervention strategies to reduce breaches of sentences and obligations under this Act;

(d) to promote the rehabilitation of offenders and their reintegration into the community through the provision of programs, supervision and effective case management;

(e) to reduce the repetition of criminal and other antisocial behaviour by offenders.

7 Considerations when acting under Act

(1) This section applies to anyone who is exercising a function under this Act in relation to someone else.

(2) The person must, as far as practicable—

(a) respect the other person's dignity; and

(b) take into account—

(i) the other person's age, sex and race; and

(ii) any disability of the other person; and

(iii) the other person's cultural attitudes and spiritual beliefs (including the culturally specific needs of Aboriginal people and Torres Strait Islanders).

Note 1 Anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person (see *Human Rights Act 2004*, s 19 (1)).

Note 2 ***Aboriginal person*** and ***Torres Strait Islander*** are defined in the dict.

(3) Without limiting subsection (2), if the other person is illiterate or does not understand (or has a poor understanding of) English, or has a hearing disability, the person must take reasonable steps to ensure that the other person understands any communications with the person.

Part 2.2 Important concepts for Act

8 Meaning of *detainee*

In this Act:

detainee means—

(a) a full-time detainee; or

(b) a periodic detainee.

Note A home detainee is not a full-time detainee (see s 9 and dict, def ***full-time detention***).

9 Meaning of *full-time detainee*

In this Act:

full-time detainee means—

(a) a person remanded in custody by a court for an offence, other than a person who is serving the remand under a home detention order; or

(b) an offender who is subject to full-time detention under a sentence of imprisonment, other than a sentenced offender who has been released from detention under this Act or another law in force in the ACT; or

(c) anyone else (other than a periodic detainee) who is subject to detention in a correctional centre under the law of the ACT, the Commonwealth, a State or another Territory.

Examples for par (c)

1 a person arrested under a warrant issued by the sentence administration board under this Act, s 282 (Board inquiries—warrant committing offender to correctional centre)

2 a person held on a warrant issued under the *Royal Commissions Act 1991*, s 35 (Apprehension of witnesses failing to appear)

3 a person ordered to be held in custody by a judge for contempt of court

4 a person held in immigration detention under the *Migration Act 1958* (Cwlth)

5 a person sentenced under a State law to imprisonment who is serving his or her sentence in the ACT under an arrangement made under s 385 (Correctional centres—arrangements by Chief Minister with other jurisdictions).

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

10 Meaning of *home detainee* and *periodic detainee*

In this Act:

home detainee means—

(a) a remandee who is subject to a home detention order, whether or not the remandee has started to serve the remand by home detention; or

(b) a sentenced offender who is subject to a home detention order, whether or not the offender has started to serve the sentence, or the part of the sentence, to be served by home detention under the order.

periodic detainee means a sentenced offender who is subject to a periodic detention order, whether or not the offender has started to serve the sentence, or the part of the sentence, to be served by periodic detention under the order.

11 Meaning of *parolee*

In this Act:

parolee means a sentenced offender who is subject to a parole order, whether or not the offender has been released on parole under the order.

12 Meaning of *offender*, *remandee* and *sentenced offender*

In this Act:

offender means—

(a) for chapter 7 (Good behaviour)—see section 177; or

(b) for chapter 12 (Transfer of community-based sentences)—see section 335; or

(c) for part 15.1 (Community service work)—see section 386 (2); or

(d) in any other case—a person convicted or found guilty of an offence by a court.

remandee means—

(a) for part 5.3 (Home detention—supervision by courts and board)—see section 111; and

(b) in any other case—a person remanded in custody by a court.

sentenced offender means an offender who is subject to a sentence of imprisonment for an offence, whether or not the offender has started to serve the sentence, and includes an offender who has been released on parole.

13 Meaning of *term* of sentence

In this Act:

term, of a sentence, includes the term of the sentence as amended under a law of the ACT (including this Act), the Commonwealth, a State or another Territory.

14 Meaning of *victim*

(1) In this Act:

victim, of an offence, means—

(a) a person (the ***primary victim***) who suffers harm—

(i) because of the offence; or

(ii) while assisting a police officer in the exercise of the officer's power to arrest a person for the offence or to take action to prevent the offence; or

(b) if the primary victim dies because of the offence—anyone who was financially or psychologically dependent on the primary victim immediately before the primary victim's death; or

(c) a person who witnessed the commission of the offence in circumstances in which it is probable that the person would suffer harm.

(2) In this section:

because of, the offence, means as a result of, or in the course of, the commission of the offence.

harm includes—

(a) physical injury; and

(b) mental injury or emotional suffering (including grief); and

(c) pregnancy; and

(d) economic loss; and

(e) substantial impairment of rights accorded by law.

Chapter 3 Detention in correctional centres generally

Part 3.1 Case management and security classification

15 Case management and security classification—schemes

The regulations and corrections rules may prescribe schemes for the management and security classification of detainees, including, for example—

(a) matters that must or may be considered in giving a detainee a security classification; and

(b) the review of a detainee's security classification; and

(c) the development of a case management plan for a detainee, including—

(i) matters that must or may be considered in preparing the case management plan; and

(ii) the activities (including participation in education, counselling, personal development or treatment activities or programs) in which the detainee should be encouraged, or directed, to participate; and

(iii) the provision of health services to the detainee; and

(iv) for a detainee at risk of self-harm—the preparation of a strategy to minimise the risk; and

(v) for a detainee with a disability—the preparation of a strategy to minimise any disadvantage suffered by the detainee because of the disability, particularly in relation to the detainee's suitability to carry out work; and

(d) the review of a detainee's case management plan.

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

Part 3.2 Association restrictions for detainees

16 Association restrictions—definitions

In this Act:

custody association direction means—

(a) a health separation direction; or

(b) a protective custody direction; or

(c) a separate custody direction.

extend, a separate custody direction or protective custody direction, includes further extend the direction.

health separation direction—see section 20.

interstate custody association direction means a direction (however described) under a law of a State that has a similar effect to a custody association direction.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

protective custody direction—see section 19.

separate custody direction—see section 18.

17 Association restrictions—other provisions

To remove any doubt, this part does not affect the operation of any regulations and corrections rules in relation to the separation or placement of detainees in a correctional centre for whom a custody association direction has not been given.

18 Association restrictions—separate custody

(1) This section applies if the chief executive considers that the opportunity for a detainee to associate with other detainees has created, or is likely to create, a risk to—

(a) the personal safety of anyone in a correctional centre; or

(b) the security or good order and discipline of a correctional centre.

(2) The chief executive may, in writing, direct that separate custody arrangements apply to the detainee.

(3) A direction under this section is a ***separate custody direction***.

19 Association restrictions—protective custody

(1) This section applies if—

(a) the chief executive considers that the opportunity for a detainee to associate with other detainees has created, or is likely to create, a risk to the personal safety of the detainee; and

(b) the chief executive is satisfied there is no reasonable way to ensure the personal safety of the detainee otherwise than by giving a direction under subsection (2).

(2) The chief executive may, in writing, direct that protective custody arrangements apply to the detainee.

(3) A direction under subsection (2) may be given on the detainee's application or the chief executive's initiative.

(4) A direction under this section is a ***protective custody direction***.

20 Association restrictions—health separation

(1) This section applies if the chief executive considers that the opportunity for a detainee to associate with other detainees should be prevented or restricted—

(a) to allow the detainee's physical or mental health to be assessed; or

(b) to protect anyone (including the detainee) from harm because of the detainee's physical or mental health; or

(c) to prevent the spread of a contagious disease in a correctional centre.

(2) The chief executive may, in writing, direct that health separation arrangements apply to the detainee.

(3) A direction under this section is a ***health separation direction***.

21 Association restrictions—effect of directions

(1) A custody association direction for a detainee may—

(a) require the detainee to be detained in isolation from all other detainees; or

(b) limit, as provided under the direction, the opportunity for the detainee to associate with other detainees.

(2) The detainee is not, because of the detention—

(a) to have any reduction in the detainee's diet; or

(b) to be deprived of any rights, privileges or amenities, unless they are—

(i) expressly withdrawn in the direction; or

(ii) otherwise necessary to give effect to the direction.

22 Association restrictions—duration of separate and protective custody directions

(1) A separate custody direction or protective custody direction takes effect when it is made or, if the direction provides for a later time of effect, at that time.

(2) A separate custody direction or protective custody direction ends 28 days after the day the direction is given unless—

(a) the direction is extended under section 25 (3) (Association restrictions—review of separate and protective custody directions); or

(b) before the end of the 28-day period—

(i) the direction is revoked; or

(ii) the direction ends under section 30 (2) (Association restrictions—continuation of directions for detainees removed to NSW).

Note For the revocation of custody association directions, see s 24 (2), s 25 (4) and s 26 (5).

(3) A separate custody direction or protective custody direction extended under section 25 ends at the end of the extended period unless—

(a) the direction as extended is extended under section 25 (3); or

(b) before the end of the extended period—

(i) the direction is revoked; or

(ii) the direction ends under section 30 (2).

23 Association restrictions—duration of health separation directions

(1) A health separation direction takes effect when it is made or, if the direction provides for a later time of effect, at that time.

(2) A health separation direction continues in force until—

(a) the direction is revoked under section 26 (5) (Association restrictions—review of health separation directions); or

(b) the direction ends under section 30 (2) (Association restrictions—continuation of directions for detainees removed to NSW).

24 Association restrictions—revocation of protective custody direction at detainee's request

(1) This section applies to a protective custody direction given on the request of a detainee.

(2) The chief executive must give a written direction revoking the direction if the detainee asks that the direction be revoked.

(3) However, the revocation of a protective custody direction under subsection (2) does not prevent another protective custody direction being given (at the same time or later) in relation to the detainee.

(4) A direction revoking a protective custody direction under subsection (2) takes effect when it is made or, if the direction provides for a later time of effect, at that time.

25 Association restrictions—review of separate and protective custody directions

(1) The chief executive may, at any time, review a separate custody direction or protective custody direction given for a detainee.

(2) A review under subsection (1) may be made on the detainee's request or the chief executive's initiative.

(3) However, the chief executive must review whether the grounds for giving a separate custody direction or protective custody direction given for a detainee continue to apply to the detainee—

(a) before the direction ends; or

(b) if the detainee is transferred between correctional centres in the ACT.

Note ***Transfer*** does not include the transfer of a periodic detainee under s 152 (2) (c) (see s (7)).

(4) If, after reviewing a separate custody direction or protective custody direction given for a detainee, the chief executive is satisfied that grounds exist for the direction continuing to apply to the detainee, the chief executive must give a written direction—

(a) confirming the reviewed direction; or

(b) extending the reviewed direction for not longer than 90 days after the day it is extended; or

(c) extending the reviewed direction for not longer than 90 days after the day it is extended but amending its terms.

(5) If, after reviewing the separate custody direction or protective custody direction, the chief executive is not satisfied that grounds exist for the direction continuing to apply to the detainee, the chief executive must give a written direction revoking the direction.

(6) However, subsection (5) does not prevent another separate custody direction or protective custody direction being given (at the same time or later) in relation to the detainee.

(7) A direction revoking a separate custody direction or protective custody direction under subsection (5) takes effect when it is made or, if the direction provides for a later time of effect, at that time.

(8) In this section:

transfer, of a detainee, does not include the transfer of a periodic detainee under section 152 (2) (c) (Periodic detention—detainee unfit for detention).

26 Association restrictions—review of health separation directions

(1) The chief executive may, at any time, review a health separation direction given for a detainee.

(2) A review under subsection (1) may be made on the detainee's request or the chief executive's initiative

(3) However, the chief executive must review a health separation direction given for a detainee if a medical officer asks the chief executive to review the direction.

(4) The chief executive must have regard to the advice of a medical officer when reviewing a health separation direction under subsection (1) or (3).

(5) If, after reviewing a health separation direction given for a detainee, the chief executive is satisfied that grounds exist for the direction continuing to apply to the detainee, the chief executive must give a written direction—

(a) confirming the health separation direction; or

(b) confirming the direction but amending its terms.

(6) If, after reviewing the health separation direction, the chief executive is not satisfied that grounds exist for the direction continuing to apply to the detainee, the chief executive must give a written direction revoking the direction.

(7) However, subsection (6) does not prevent another health separation direction being given (at the same time or later) in relation to the detainee.

(8) A direction revoking a health separation direction under subsection (6) takes effect when it is made or, if the direction provides for a later time of effect, at that time.

27 Association restrictions—contents of custody association and related directions

(1) A custody association direction given for a detainee must state the following:

(a) the kind of direction it is;

(b) the grounds for giving the direction;

(c) when the direction takes effect.

(2) A direction under section 24, section 25 or section 26 revoking, confirming, amending or extending a custody association direction must state the following:

(a) if the direction confirms, amends or extends the custody association direction—the grounds for the direction continuing to apply to the detainee;

(b) if the direction amends the custody association direction—the amendments;

(c) if the direction extends the custody association direction—the period it is extended;

(d) if the direction revokes the custody association direction—when the revocation takes effect.

28 Association restrictions—explanation of custody association and related directions

(1) If a custody association direction is given for a detainee, the chief executive must ensure that reasonable steps are taken to explain to the detainee in general terms (and in language the detainee can readily understand)—

(a) the effect and operation of the direction (including when the direction takes effect and when it may end); and

(b) the procedures for having the direction reviewed; and

(c) if the direction is a protective custody direction given on the request of the detainee—the detainee's right under section 24 to have the direction revoked.

(2) If a custody association direction is revoked, confirmed, amended or extended under section 24, section 25 or section 26, the chief executive must ensure that reasonable steps are taken to explain to the detainee (and in language the detainee can readily understand)—

(a) that the direction has been revoked, confirmed, amended or extended; and

(b) if the direction is amended—in general terms, the effect and operation of the amendments; and

(c) if the direction is extended—the period it is extended; and

(d) if the direction is revoked—when the revocation takes effect.

(3) A failure to comply with this section does not invalidate—

(a) a custody association direction; or

(b) a direction revoking, confirming, amending or extending a custody association direction.

29 Association restrictions—review of interstate custody association directions

(1) This section applies if a detainee for whom an interstate custody association direction (the ***interstate direction***) is in force is transferred from a correctional centre (however described) in a State to a correctional centre in the ACT.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

(2) The interstate direction continues in force as if—

(a) it were a custody association direction under this Act; and

(b) any necessary changes, and any changes prescribed under the regulations, were made.

(3) Within 3 days after the day the detainee arrives at the correctional centre in the ACT, the chief executive must decide whether to make a custody association direction for the detainee under this Act.

(4) If the chief executive decides to make a custody association direction for the detainee, the interstate direction ends on the commencement of the custody association direction.

(5) If the chief executive decides not to make a custody association direction for the detainee, the chief executive must give a written direction revoking the transferred direction.

(6) A direction under subsection (5) takes effect when it is made or, if the direction provides for a later time of effect, at that time.

(7) If an interstate custody association direction is revoked under subsection (5), the chief executive must ensure that reasonable steps are taken to explain the following to the detainee (and in language the detainee can readily understand):

(a) that the direction has been revoked;

(b) when the revocation takes effect.

30 Association restrictions—continuation of directions for detainees removed to NSW

(1) This section applies if a detainee for whom a custody association direction (the ***transferred direction***) is in force is removed to a NSW correctional centre.

(2) The transferred direction—

(a) continues in force, with any necessary changes, despite the removal; and

(b) ends at the end of 3 days after the day the detainee arrives at the NSW correctional centre unless it is revoked under this part before the end of that period.

Note This Act may apply in relation to a full-time detainee in a NSW correctional centre (see s 75 and *Crimes (Administration of Sentences) Act 1999* (NSW), s 44).

(3) The transferred direction applies in relation to—

(a) the correctional centre to which a detainee is transferred (the ***receiving correctional centre***); and

(b) the transport of the detainee to the receiving correctional centre, including the detention of the detainee in a correctional centre (including a NSW correctional centre) where the

detainee is held while being transported to the receiving correctional centre; and

(c) anyone in a correctional centre mentioned in paragraph (a) or (b).

31 Association restrictions—reports to chief executive

The regulations must prescribe a scheme for the provision of regular reports to the chief executive in relation to custody association directions, including, for example, reports about—

(a) the number of each kind of custody association direction given or confirmed during a prescribed period; and

(b) the number of detainees to whom each kind of custody association direction has applied for longer than a prescribed period; and

(c) the grounds for making the custody association directions.

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

32 Association restrictions—directions not invalidated by failure to review

A failure to review a custody association direction or interstate custody association direction as required under this part does not invalidate—

(a) the direction; or

(b) a direction revoking, confirming, amending or extending the direction.

Part 3.3 Correctional centre discipline

33 Discipline—definitions

In this Act:

charge, for a disciplinary breach, means a charge under section 34.

disciplinary breach, for a detainee, means conduct engaged in by the detainee that—

(a) happens while the detainee is in a correctional centre or is taken to be in the custody of the chief executive; and

(b) is a breach of a provision of this Act that is prescribed under the regulations or corrections rules as a disciplinary breach.

Note 1 A detainee may engage in conduct by omitting to do an act (see dict, def ***conduct*** and def ***engage in***).

Note 2 For when a detainee is taken to be in the custody of the chief executive, see s 97 and s 98 (for full-time detainees) and s 175 (for periodic detainees).

Note 3 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations and the corrections rules (see Legislation Act, s 104).

major breach means a disciplinary breach that is prescribed under the regulations or corrections rules as a major breach.

minor breach means a disciplinary breach that is not a major breach.

prohibited item breach means a disciplinary breach that applies to the custody, possession or use of a prohibited item.

Note A ***prohibited item*** is a thing that is prescribed under the regulations or corrections rules to be a prohibited item (see dict, def ***prohibited item***).

withdrawable—a right, privilege or amenity is ***withdrawable*** if the regulations or corrections rules provide that the right, privilege or amenity is withdrawable.

34 Discipline—charging of detainees

(1) This section applies if a person alleges that a detainee has engaged in conduct that is a disciplinary breach.

Note A detainee may engage in conduct by omitting to do an act (see dict, def ***conduct*** and def ***engage in***).

(2) The chief executive may charge the detainee with a major breach or minor breach.

(3) If the detainee is charged with a disciplinary breach, the chief executive must give the detainee a written notice that states the following:

(a) the provision of this Act breached;

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

(b) whether the breach is a major breach or minor breach;

(c) a brief statement of the conduct to which the breach applies and when, or the period during which, it happened;

(d) whether the chief executive proposes to—

(i) deal with the charge; or

(ii) if the detainee is a full-time detainee—refer the charge to a visiting magistrate; or

(iii) if the detainee is a periodic detainee—refer the charge to the sentence administration board.

(4) If the chief executive proposes to deal with the charge, the notice must also—

(a) include a statement to the effect that the detainee may elect to have the charge dealt with under section 37 (Discipline—disposal of charges without inquiry); and

(b) include a statement of how, and the period within which, the election may be made; and

(c) state the penalty that the chief executive proposes to impose in relation to the charge if the detainee elects to have the charge dealt with under section 37; and

(d) include a copy of section 38 (Discipline—inquiry into charges by chief executive).

35 Discipline—full-time detainees

(1) If a full-time detainee is charged with a major breach, the chief executive must refer the charge to a visiting magistrate.

(2) If a full-time detainee is charged with a minor breach, the chief executive may deal with the charge or refer the charge to a visiting magistrate.

(3) If the chief executive decides to deal with a charge for a minor breach by a full-time detainee, the chief executive may subsequently refer the charge to a visiting magistrate at any time before the chief executive imposes a penalty for the breach or dismisses the charge.

36 Discipline—periodic detainees

(1) If a periodic detainee is charged with a major breach, the chief executive must refer the charge to the sentence administration board.

(2) If a periodic detainee is charged with a minor breach, the chief executive may deal with the charge or refer the charge to the sentence administration board.

(3) If the chief executive decides to deal with a charge for a minor breach by a periodic detainee, the chief executive may subsequently refer the charge to the sentence administration board at any time before the chief executive imposes a penalty for the breach or dismisses the charge.

37 Discipline—disposal of charges without inquiry

(1) A detainee who is charged with a minor breach may elect to have the charge dealt with by the chief executive without an inquiry being conducted into the charge.

(2) The election must be made within—

(a) 1 day after the day the detainee is given notice of the charge under section 34 (3) (Discipline—charging of detainees); or

(b) any further period the chief executive allows, whether before or after the end of the period mentioned in paragraph (a).

(3) For subsection (2) (b), the chief executive may allow the further period on the detainee's application or the chief executive's initiative.

(4) If the detainee makes an election under subsection (1), the chief executive may deal with the charge without holding an inquiry.

(5) The chief executive may deal with the charge by—

(a) dismissing the charge; or

(b) imposing a reprimand and caution; or

(c) depriving the detainee of some or all withdrawable rights, privileges or amenities for not longer than 7 days.

38 Discipline—inquiry into charges by chief executive

(1) The chief executive must conduct an inquiry into a charge for a minor breach by a detainee if the detainee does not elect to have the charge dealt with by the chief executive under section 37.

(2) The detainee is entitled—

(a) to be present at the inquiry; and

(b) to be heard, to examine and cross-examine witnesses, and to make submissions to the chief executive.

(3) However—

(a) subsection (2) does not apply if the chief executive makes an order under subsection (5) excluding the detainee from the inquiry; and

(b) subsection (2) (b) does not apply if the detainee fails to appear at the inquiry.

(4) The following provisions apply in relation to the inquiry:

(a) the inquiry must be conducted with as little formality and technicality, and as quickly, as fairness to the detainee, the requirements of this Act and the proper consideration of the charge allow;

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

(b) the chief executive is not bound by the rules of evidence and may be informed of anything in any way the chief executive considers appropriate, but must observe natural justice;

(c) the detainee is entitled to be represented or assisted by a lawyer or someone else;

(d) evidence must not to be given on oath or by affidavit;

(e) the chief executive may allow a corrections officer or anyone else to be present and to be heard.

(5) The chief executive may make an order excluding the detainee from the inquiry if the detainee—

(a) unreasonably interrupts, interferes with or obstructs the inquiry; or

(b) contravenes a reasonable direction of the chief executive about the conduct of the inquiry.

39 Discipline—actions available to chief executive for full-time detainees

(1) This section applies if the chief executive has conducted an inquiry under section 38 in relation to a charge for a minor breach by a full-time detainee.

(2) If the chief executive is satisfied beyond reasonable doubt that the charge is proven, the chief executive may impose 1 (but not more than 1) of the following penalties:

(a) a reprimand and caution;

(b) deprivation of some or all withdrawable rights, privileges or amenities for not longer than 28 days or, if the breach is a prohibited item breach, for not longer than 180 days;

(c) confinement to a cell, with or without deprivation of some or all withdrawable rights, privileges or amenities, for not longer than 3 days.

Note For the power to order payment of reparation for loss or expenses suffered as a direct result of a disciplinary breach, see s 46.

(3) However, if the chief executive is satisfied beyond reasonable doubt that the charge is proven but considers that a penalty should not be imposed, the chief executive may—

(a) dismiss the charge; or

(b) record a penalty mentioned in subsection (2) for the breach, but defer imposing the penalty on condition that the detainee is of good behaviour for a stated period of not longer than 60 days starting on the day the penalty is recorded.

(4) If subsection (3) (b) applies to the detainee, the chief executive must, as soon as practicable after the end of the good behaviour period—

(a) if the detainee has complied with the good behaviour condition—revoke the penalty recorded and dismiss the charge; or

(b) if the detainee has not complied with the condition—impose the penalty.

(5) If the chief executive is not satisfied beyond reasonable doubt that the charge is proven, the chief executive must dismiss the charge.

(6) However, if the chief executive dismisses the charge under subsection (5), the chief executive may find another minor breach (the ***other breach***) by the detainee proven, and take action under subsection (2) or (3) in relation to the other breach, if—

(a) the chief executive is satisfied beyond reasonable doubt that the detainee engaged in conduct constituting the other breach; and

Note ***Conduct*** means an act or an omission to do an act (see dict).

(b) the other breach arose out of the same conduct as the charge dismissed; and

(c) the detainee was given natural justice in relation to the finding for the other breach.

(7) The chief executive may revoke a penalty imposed under this section.

40 Discipline—actions available to chief executive for periodic detainees

(1) This section applies if the chief executive has conducted an inquiry under section 38 (Discipline—inquiry into charges by chief executive) in relation to a charge for a minor breach by a periodic detainee.

(2) If the chief executive is satisfied beyond reasonable doubt that the charge is proven, the chief executive may impose 1 (but not more than 1) of the following penalties:

(a) a reprimand and caution;

(b) a direction that the periodic detainee leave the periodic correction centre;

(c) the transfer of the detainee to a correctional centre for full-time detainees for the remainder of the detention period during which the breach happened.

Note For the power to order payment of reparation for loss or expenses suffered as a direct result of a disciplinary breach, see s 46.

(3) However, if the chief executive is satisfied beyond reasonable doubt that the charge is proven but considers that a penalty should not be imposed, the chief executive may dismiss the charge.

(4) If the periodic detainee is directed under subsection (2) (b) to leave the periodic detention centre—

(a) the detainee must immediately leave the centre; and

(b) the detainee is taken to have failed to report for the detention period.

Note For the consequences of a failure to report, see s 157.

(5) If the chief executive is not satisfied beyond reasonable doubt that the charge is proven, the chief executive must dismiss the charge.

(6) However, if the chief executive dismisses the charge under subsection (5), the chief executive may find another minor breach (the ***other breach***) by the detainee proven, and take action under subsection (2) or (3) in relation to the other breach, if—

(a) the chief executive is satisfied beyond reasonable doubt that the detainee engaged in conduct constituting the other breach; and

Note ***Conduct*** means an act or an omission to do an act (see dict).

(b) the other breach arose out of the same conduct as the charge dismissed; and

(c) the detainee was given natural justice in relation to the finding for the other breach.

(7) The chief executive may revoke a penalty imposed under this section.

41 Discipline—proceedings for charges against full-time detainees referred to visiting magistrates

(1) This section applies if a charge against a full-time detainee for a disciplinary breach is referred under this part by the chief executive to a visiting magistrate.

Note For the referral of charges by the chief executive, see s 35.

(2) The charge must be heard by a visiting magistrate.

(3) The proceeding must be conducted as if it were a proceeding in relation to an information laid under the *Magistrates Court Act 1930*, subject to—

(a) any changes prescribed under the regulations; and

(b) any other changes considered appropriate by the visiting magistrate hearing the charge.

(4) To remove any doubt—

(a) the proceeding is not a criminal proceeding; and

(b) the proceeding may be heard by a visiting magistrate sitting at the correctional centre where the detainee is detained; and

(c) the proceeding against the detainee is a proceeding to which the *Evidence (Miscellaneous Provisions) Act 1991*, part 3.4 (Use of audiovisual links or audio links between Territory courts and places in ACT) applies; and

(d) the detainee is entitled to be represented in the proceeding by a lawyer.

42 Discipline—actions available to visiting magistrates

(1) This section applies if a visiting magistrate has heard a charge against a full-time detainee for a disciplinary breach.

(2) If the visiting magistrate is satisfied beyond reasonable doubt that the charge is proven, the visiting magistrate may impose 1 (but not more than 1) of the following penalties:

(a) a reprimand and caution;

(b) deprivation of some or all withdrawable rights, privileges or amenities for not longer than 56 days or, if the breach is a prohibited item breach, for not longer than 180 days;

(c) confinement to a cell, with or without deprivation of some or all withdrawable rights, privileges or amenities, for not longer than 28 days;

(d) an extension, by not longer than 28 days at a time, of—

(i) the term of the detainee's sentence; and

(ii) if the breach happened during a nonparole period of the detainee's sentence—the nonparole period of the sentence.

Note For the power to order payment of reparation for loss or expenses suffered as a direct result of a disciplinary breach, see s 46.

(3) However, if the visiting magistrate is satisfied beyond reasonable doubt that the charge is proven but considers that a penalty should not be imposed, the visiting magistrate may—

(a) dismiss the charge; or

(b) record a penalty mentioned in subsection (2) for the breach, but defer imposing the penalty on condition that the detainee is of good behaviour for a stated period of not longer than 60 days starting on the day the penalty is recorded.

(4) If subsection (3) (b) applies to the detainee, a visiting magistrate must, as soon as practicable after the end of the good behaviour period—

(a) if the detainee has complied with the good behaviour condition—revoke the penalty recorded and dismiss the charge; or

(b) if the detainee has not complied with the condition—impose the penalty.

(5) If the visiting magistrate is not satisfied beyond reasonable doubt that the charge is proven, the visiting magistrate must dismiss the charge.

(6) However, if the visiting magistrate dismisses the charge under subsection (5), the visiting magistrate may find another disciplinary breach (the ***other breach***) by the detainee proven, and take action under subsection (2) or (3) in relation to the other breach, if—

(a) the visiting magistrate is satisfied beyond reasonable doubt that the detainee engaged in conduct constituting the other breach; and

Note ***Conduct*** means an act or an omission to do an act (see dict).

(b) the other breach arose out of the same conduct as the charge dismissed; and

(c) the detainee was given natural justice in relation to the finding for the other breach.

(7) If the visiting magistrate finds a disciplinary breach by the detainee proven, the visiting magistrate must give the chief executive the information mentioned in section 47 (2) (Discipline—record of charges etc).

(8) The visiting magistrate may revoke a penalty imposed under this section.

43 Discipline—disciplinary proceedings by board for periodic detainees

(1) This section applies if a charge against a periodic detainee for a disciplinary breach is referred under this part by the chief executive to the sentence administration board.

Note 1 For the referral of charges by the chief executive, see s 36.

Note 2 For the board's power to hold an inquiry into a disciplinary breach, see s 165.

(2) If the sentence administration board is satisfied beyond reasonable doubt that the charge is proven, the board may—

(a) cancel the periodic detainee's periodic detention order under section 168 (Periodic detention—discretionary cancellation by board); or

(b) take action in relation to the detainee under section 171 (Periodic detention—other actions available to board).

Note For the power to order payment of reparation for loss or expenses suffered as a direct result of a disciplinary breach, see s 46.

(3) However, if the sentence administration board is satisfied beyond reasonable doubt that the charge is proven but considers that a penalty should not be imposed, the board may dismiss the charge.

(4) If the sentence administration board is not satisfied beyond reasonable doubt that the charge is proven, the board must dismiss the charge.

(5) However, if the sentence administration board dismisses the charge under subsection (4), the board may find another disciplinary breach (the ***other breach***) by the detainee proven, and take action in accordance with subsection (2) or (3) in relation to the other breach, if—

(a) the board is satisfied beyond reasonable doubt that the periodic detainee engaged in conduct constituting the other breach; and

Note ***Conduct*** means an act or an omission to do an act (see dict).

(b) the other breach arose out of the same conduct as the charge dismissed; and

(c) the detainee was given natural justice in relation to the finding for the other breach.

(6) If the sentence administration board finds a disciplinary breach by the detainee proven, the board must give the chief executive the information mentioned in section 47 (2) (Discipline—record of charges etc).

(7) The sentence administration board may revoke a penalty imposed under this section.

44 Discipline—maximum penalties

(1) This section applies if—

(a) a detainee is charged with 2 or more disciplinary breaches; and

(b) the charges are decided together or arise out of the same conduct.

Note ***Conduct*** means an act or an omission to do an act (see dict).

(2) The total of the penalties imposed for the breaches must not, for any particular kind of penalty, be more than the maximum penalty that may be imposed for any 1 of those breaches.

Example

Ernie is a full-time detainee. The chief executive has found that he committed 2 minor breaches, 1 of which was a prohibited item breach. The penalties that the chief executive may impose are stated in s 39 (2) (a).

- If the chief executive decides that the appropriate penalty for the breaches is deprivation of privileges, the maximum total period of deprivation (for both breaches) is 180 days.
- If the chief executive decides to impose a different kind of penalty for each breach, the chief executive might impose the following penalties:
  (a) the deprivation of privileges for 180 days for the prohibited item breach;
  (b) the confinement of Ernie to his cell for 1 day (with deprivation of privileges) for the other breach.

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

45 Discipline—person liable to be punished only once

(1) This section applies if a detainee engages in conduct that is both a disciplinary breach and an offence against a Territory law (including this Act).

Note A detainee may engage in conduct by omitting to do an act (see dict, def ***conduct*** and def ***engage in***).

(2) The detainee may be—

(a) charged with the disciplinary breach and have the breach found proven; and

(b) prosecuted for and be convicted of the offence.

(3) However, the detainee is not liable to be punished more than once for the conduct.

Note See also the Legislation Act, s 191 (Offences against 2 or more laws).

(4) To remove any doubt, a detainee is not punished only because a custody association direction is made in relation to the detainee or the detainee is moved to another part of a correctional centre.

46 Discipline—reparation for property damage

(1) In this section:

loss—see the Criminal Code, section 300.

relevant authority means—

(a) the chief executive; or

(b) a visiting magistrate; or

(c) the sentence administration board.

(2) This section applies if—

(a) under this part, a relevant authority finds a charge for a disciplinary breach by a detainee proven or that the detainee engaged in conduct constituting another disciplinary breach; and

(b) a person (the ***injured person***) suffered loss, or incurred expense (including any out-of-pocket expense), as a direct result of the breach.

(3) The relevant authority may, whether or not a penalty is imposed for the breach, order the detainee to make reparation to the injured person, by way of a payment or otherwise, for the loss or expense.

(4) However, the maximum amount that the chief executive may order the detainee to pay is $100 or, if the regulations prescribe a higher amount, the higher amount.

(5) The amount payable under an order to make reparation is payable out of—

(a) any money held by the chief executive on behalf of the detainee; or

(b) any other money otherwise payable to the detainee under this Act.

(6) To remove any doubt, an order under this section that a detainee make reparation is not a penalty in relation to a disciplinary breach by the detainee.

47 Discipline—record of charges etc

(1) This section applies if the chief executive, a visiting magistrate or the sentence administration board finds a disciplinary breach by a detainee proven.

(2) The chief executive must ensure that the following information is recorded:

(a) the detainee's name;

(b) the provision of this Act breached;

(c) whether the breach was a major breach or minor breach;

(d) a brief statement of the conduct to which the breach applies and when, or the period during which, it happened;

(e) the date the finding was made;

(f) the penalty (if any) imposed;

(g) details of any order under section 46;

(h) anything else required under the regulations or corrections rules.

(3) The record must be kept at the correctional centre where the detainee is detained.

(4) The record may be inspected at any reasonable time by—

(a) an official visitor; or

(b) a judge or magistrate; or

(c) a member of the Legislative Assembly nominated by the Assembly for section 70 (Detention generally—inspections by judicial officers and Assembly members).

48 Discipline—visiting magistrates

(1) Each magistrate is a visiting magistrate for this Act.

(2) The Chief Magistrate is responsible for ensuring the orderly and prompt hearing and deciding of charges for disciplinary breaches referred by the chief executive to a visiting magistrate.

(3) For subsection (2), the Chief Magistrate may, subject to appropriate and practicable consultation with the other magistrates, make arrangements about the magistrates who are to exercise the functions of visiting magistrate.

Part 3.4 Searching of detainees and property

49 Searches—definitions

(1) In this Act:

frisk search, of a detainee, means a search in which light pressure is momentarily applied to the detainee over the detainee's outer clothing without contact being made with—

(a) the detainee's genital or anal areas; or

(b) for a female detainee—the detainee's breasts.

ordinary search, of a detainee, means a search—

(a) to reveal the contents of the detainee's clothing (other than an inner garment) without touching the detainee; or

(b) in which the detainee may be required to—

(i) remove outer clothing being worn by the detainee; or

(ii) open the detainee's hands or mouth for visual inspection; or

(iii) shake the detainee's hair vigorously.

scanning search, of a detainee, means a search of a detainee by electronic or other means that does not require the detainee to remove the detainee's clothing (other than the detainee's outer clothing) or to be touched by someone else.

Examples of scanning searches

1 passing a portable electronic device over a detainee

2 requiring a detainee to pass through an electronic device

3 using a dog to detect the scent of a prohibited item

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

strip search, of a detainee, means a search that may include requiring the detainee to remove all of the detainee's clothing, but in which no direct contact is made with the detainee.

(2) In this section:

inner garment means underwear or anything else prescribed as an inner garment under the regulations or corrections rules.

50 Searches—transgender and intersex detainees

(1) This section applies if—

(a) a frisk search or strip search is proposed to be carried out under this Act on a detainee who is a transgender person or intersex person; and

(b) the provision under which it is carried out refers to a person of the opposite sex, or the same sex.

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

(2) The detainee's sex for subsection (1) is the detainee's sex for the purposes of accommodating the detainee in a correctional centre.

51 Searches—power to search correctional centres including detainees' possessions

(1) The chief executive may, at any time, direct a corrections officer to search any part of a correctional centre or anything in it.

Examples

1 the searching of cells, including anything in a cell that is in a detainee's custody or possession, for prohibited items

2 the searching of exercise facilities for prohibited items

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

(2) This section does not authorise—

(a) a frisk search, ordinary search, scanning search or strip search of a detainee; or

(b) a search of a kind mentioned in paragraph (a) of someone who is not a detainee.

52 Searches—things in detainee's possession

A power under this Act to conduct a frisk search, ordinary search or scanning search of a detainee includes power to search anything in the detainee's possession (other than the detainee's clothing).

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

53 Searches—frisk, ordinary and scanning searches generally

(1) The chief executive may, at any time, direct a corrections officer to conduct a frisk search, ordinary search or scanning search of a detainee.

(2) Also, a corrections officer may conduct a frisk search, ordinary search or scanning search of a detainee if the officer suspects, on reasonable grounds, that the detainee has something that creates, or is likely to create, a risk to—

(a) the personal safety of anyone in a correctional centre; or

(b) the security or good order and discipline of a correctional centre.

(3) The regulations and corrections rules may make provision in relation to the other circumstances in which frisk searches, ordinary searches or scanning searches of detainees are to be, or may be, conducted.

Example

The corrections rules may require the frisk searching of detainees whenever they leave a part of a correctional centre (such as a kitchen or workshop) where detainees may have access to concealable prohibited items.

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

54 Searches—frisk search requirements

(1) A frisk search of a detainee must be carried out by—

(a) a corrections officer of the same sex as the detainee; or

(b) a corrections officer who is not of the same sex as the detainee if a person (other than another detainee) of the same sex of the detainee is present while the frisk search is being carried out.

(2) The regulations and corrections rules may prescribe other requirements and procedures in relation to the carrying out of frisk searches.

55 Searches—strip searches generally

(1) The chief executive may direct that a detainee be strip searched if any of the following apply:

(a) the chief executive believes, on reasonable grounds, that the strip search is necessary for the security or good order and discipline of the correctional centre;

(b) the chief executive believes, on reasonable grounds, that the strip search is necessary for the personal safety of anyone in the correctional centre;

(c) the chief executive suspects, on reasonable grounds, that a detainee has a prohibited item concealed on the detainee's body.

Example for par (a) and par (b)

A knife is missing from a correctional centre's kitchen. The chief executive may direct a strip search of 1 or more detainees who worked in the kitchen on that day if the chief executive believes that it is necessary for the security of the centre or the personal safety of a detainee or someone else in the centre.

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

(2) The regulations and corrections rules may make provision in relation to the other circumstances in which strip searches of detainees are to be, or may be, conducted

Example

If the corrections rules require that a detainee must be strip searched when entering a correctional centre, the rules may also prescribe exceptions for circumstances when a detainee, while outside a corrections centre, had no likely opportunity to obtain a prohibited item, eg during an escorted medical visit.

(3) A strip search may be preceded by another less intrusive search.

56 Searches—strip search requirements

(1) A strip search of a detainee—

(a) must be carried out in circumstances providing reasonable privacy to the detainee; and

(b) must be carried out by at least 2 corrections officers; and

(c) except as allowed under this section, must not be carried out in the presence or view of anyone—

(i) who is of the opposite sex to the detainee; or

(ii) whose presence is not necessary and reasonable for the search or required or allowed under this section.

(2) A corrections officer carrying out the strip search must—

(a) ensure, as far as reasonably practicable, that the way in which the detainee is searched causes minimal embarrassment to the detainee; and

(b) carry out the search as quickly as practicable; and

(c) allow the detainee to dress as soon as practicable after the search is finished.

(3) A corrections officer of the opposite sex to the detainee may be present during the search if the presence of the officer is necessary and reasonable to ensure—

(a) the personal safety of the corrections officer carrying out the search; or

(b) that the search is carried out.

(4) The regulations and corrections rules may prescribe other requirements and procedures in relation to the carrying out of strip searches.

57 Searches—register of strip searches

(1) The chief executive must keep a register that records each strip search of a detainee.

(2) The register must state the following for each strip search of a detainee:

(a) the detainee's name;

(b) the reason for the strip search;

(c) when the search was conducted;

(d) the names of the people present at any time during the search;

(e) details of anything seized from the detainee during the search;

(f) anything else required under the regulations or corrections rules or that the chief executive considers relevant.

(3) The register may be inspected at any reasonable time by—

(a) an official visitor; or

(b) a judge or magistrate; or

(c) a member of the Legislative Assembly nominated by the Assembly for section 70 (Detention generally—inspections by judicial officers and Assembly members); or

(d) anyone else the chief executive considers appropriate.

58 Searches—use of force

A person who is authorised to search a detainee under this Act may use reasonable force—

(c) to carry out the search; or

(d) to prevent the loss, destruction or contamination of anything seized during the search.

Part 3.5 Alcohol and drug testing of detainees

59 Alcohol and drug testing—definitions

(1) In this Act:

test sample means a sample of blood, breath, hair, saliva, urine or anything else prescribed under the regulations.

(2) For this Act, a detainee is taken to have given a ***positive test sample*** for alcohol or drugs if—

(a) the detainee fails to provide a test sample in accordance with a requirement under this Act; or

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

(b) the detainee provides an invalid test sample; or

(c) for a full-time detainee—the detainee provides a test sample that shows that the detainee has used alcohol or a drug; or

(d) for a periodic detainee—the detainee provides a test sample that shows that the detainee—

(i) has a blood alcohol concentration of the prescribed concentration or more; or

(ii) has used a drug.

Note For when a positive test sample for drugs does not apply, see s (4).

(3) However, subsection (2) (a) does not apply if the detainee has a reasonable excuse for failing to provide the test sample within a reasonable time of the requirement being made.

Example of reasonable excuse

a medical condition that prevents the detainee from providing a test sample within the time it might reasonably take someone else who does not have the medical condition to provide the sample

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

(4) Also, subsection (2) (c) and (d) (ii) does not apply in relation to a drug if—

(a) the drug was prescribed for the detainee by a doctor, dentist or nurse practitioner and was taken in accordance with the instructions (if any) stated in the prescription; or

(b) the drug was lawfully supplied to the detainee by, and was taken in accordance with the instructions of, a doctor, dentist or nurse practitioner; or

(c) the drug was taken by the detainee or administered to the detainee in a form or preparation prescribed under the regulations; or

(d) the possession or use of the drug by the detainee was otherwise authorised under the regulations or corrections rules.

(5) In this section:

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

(a) the detainee tampers, or attempts to tamper, with the test sample; or

(b) the detainee, by any other conduct, changes or invalidates, or attempts to change or invalidate, the results of the test sample.

prescribed concentration, of alcohol, means 0.02g/100mL or, if the regulations prescribe another concentration, the other concentration.

60 Alcohol and drug testing—power to require samples

(1) The chief executive may require a detainee to provide a test sample of the kind the chief executive requires.

(2) The chief executive, a doctor or a nurse may give a detainee directions about the way a detainee must provide a test sample required by the chief executive.

(3) However—

(a) a detainee, the chief executive, a doctor or a nurse must comply with any requirements or procedures prescribed under the regulations or corrections rules in relation to the giving of test samples by detainees; and

(b) only a doctor or nurse may take a blood sample.

(4) If a doctor or nurse takes a test sample from a detainee, the doctor or nurse must give the sample, as soon as practicable, to a corrections officer.

(5) The chief executive must give the detainee the results of any tests conducted on the test sample as soon as practicable after the chief executive receives them.

61 Alcohol and drug testing—consequences of positive test sample

(1) If a detainee gives a positive test sample for alcohol or drugs—

(a) the test result may be considered when assessing the detainee's security classification; and

(b) the detainee may be required to undertake a medical or behavioural treatment program; and

(c) if the giving of a positive test sample is, or is evidence of, a disciplinary breach or an offence—the detainee may be dealt with for the disciplinary breach or the offence.

Note If the detainee is a periodic detainee, see also s 147.

(2) When acting under subsection (1) (a) or (b), the chief executive must take into account the circumstances of the case and the detainee's needs.

62 Alcohol and drug testing—random testing for statistical purposes

(1) The chief executive may require a number of randomly selected detainees at a correctional centre to give test samples.

(2) No record that identifies the donor of the test sample must be made.

(3) The results of any tests conducted on the test samples must be used only for statistical purposes.

(4) In this section:

randomly selected detainees means detainees selected by a computer programmed to make a random selection of names from detainee records.

test sample means a sample of breath or urine.

63 Alcohol and drug testing—use of force

(1) The chief executive, a doctor or nurse, and anyone acting honestly and with reasonable care on the direction of the chief executive or a doctor or nurse, may use reasonable force—

(a) to enable a test sample to be taken; or

(b) to prevent the loss, destruction or contamination of a test sample.

(2) If the doctor or nurse acts honestly and with reasonable care under subsection (1), the use of the force is, for all purposes, not a breach of professional etiquette, ethics or rule of professional conduct applying to the doctor or nurse.

Part 3.6 Detention in correctional centres—other provisions

64 Detention generally—detainees to be told about rights and obligations

(1) As soon as practicable after a detainee is first admitted into a correctional centre, the chief executive must ensure that reasonable steps are taken to explain to the detainee in general terms (and in language the detainee can readily understand)—

(a) the detainee's rights; and

(b) the detainee's obligations, in particular, the obligations about discipline and behaviour; and

(c) the case management process; and

(d) the procedures for seeking information and making complaints; and

(e) the role of official visitors; and

(f) if the detainee is a national of a foreign country—the detainee's right to have a diplomatic or consular representative of the country told that the detainee is being held in detention; and

(g) anything else required under the regulations or corrections rules; and

(h) anything else that is necessary and reasonable to enable the detainee to understand the detainee's rights and obligations and to adapt to living in the correctional centre.

Examples for par (h)

1 the general scope of the corrections rules

2 the health services and activities (including education, counselling, personal development or treatment activities or programs) that are available to detainees

3 the administrative policies and procedures relevant to a detainee's rights and obligations

4 if the detainee is a periodic detainee, the functions of the sentence administration board in relation to leave of absence by periodic detainees

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

(2) The chief executive must also ensure that copies of the following are available to detainees at each correctional centre:

(a) this Act;

(b) the regulations;

(c) the corrections rules applying to the centre (other than an exempt provision of the rules).

(3) If a detainee who is a national of a foreign county asks the chief executive to tell a diplomatic or consular representative of the country that the detainee is being held in detention, the chief executive must comply with the request as soon as practicable.

65 Detention generally—complaints to official visitors

(1) A detainee may complain to an official visitor about—

(a) any conduct of the chief executive or a corrections officer under this Act; or

Note ***Conduct*** means an act or an omission to do an act (see dict).

(b) the detainee's treatment under this Act; or

(c) how the correctional centre where the detainee is detained, or a place where the detainee has been directed to work, is conducted.

(2) If a detainee tells a corrections officer that the detainee wants to see an official visitor, the chief executive must ensure that an official visitor is told of the fact when an official visitor next visits the correctional centre.

(3) The detainee is not required, and must not be asked either directly or indirectly, by the chief executive or a corrections officer, to explain why the detainee wants to see an official visitor.

66 Detention generally—functions of official visitors for complaints

(1) An official visitor must inquire into each complaint made by a detainee unless satisfied that the complaint is frivolous or vexatious.

(2) An official visitor may—

(a) make a recommendation about the complaint to the chief executive; or

(b) if the official visitor considers that the Minister should be told about the complaint or inquiry—give the Minister a report about the complaint or inquiry.

(3) As soon as practicable after the end of each quarter, an official visitor must give the Minister a written report summarising the number and kinds of complaints the official visitor has received, and the number and kinds of complaints the official visitor has investigated, during the quarter.

Note For the meaning of ***quarter***, see the Legislation Act, dict, pt 1.

(4) The report may include comments by the official visitor about anything in relation to a complaint or inquiry to which the report applies.

67 Detention generally—health assessment, treatment and care

(1) A detainee must be given the opportunity to receive the health assessment, treatment and care that a medical officer considers necessary to protect the health of the detainee, other detainees and anyone else.

Note For the appointment and functions of a medical officer, see s 375 and s 376.

(2) A detainee must be given a reasonable opportunity to receive health services in relation to the detainee's mental health.

68 Detention generally—health services at hospitals or other places

(1) This section applies if the chief executive considers that it is necessary or desirable for a detainee to receive heath services at a hospital (including a hospital that is part of a correctional centre) or another place.

(2) The chief executive may order that the detainee be transferred to the hospital or other place.

(3) The chief executive must have regard to the advice of a doctor when considering whether to make a direction under subsection (2).

(4) The chief executive may direct a corrections officer to take charge of the detainee while the detainee is at the hospital or other place.

(5) If the detainee is transferred to a hospital, the detainee may be discharged from the hospital only if—

(a) a doctor in charge of the detainee's care discharges the detainee; or

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

Example of when chief executive might give a direction

the detainee is a danger to the safety of people in the hospital

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

(6) If the detainee is a full-time detainee, the detainee must, on being discharged from the hospital or other place, immediately be returned to the correctional centre from which the detainee was transferred.

(7) To remove any doubt, if a periodic detainee is transferred to a hospital or other place under this section during a detention period, the part of the detention period after the detainee is transferred is taken to have been served by the detainee as part of the detainee's sentence.

69 Detention generally—confiscation of detainee's property

(1) The chief executive may confiscate any property (including money) that is unlawfully in the possession of a detainee.

(2) The confiscated property vests in the Territory.

Note For the disposal of unclaimed property (including money), see the *Uncollected Goods Act 1996*, pt 4.

(3) The regulations and corrections rules may make provision in relation to when property is taken to be unlawfully in the possession of a detainee.

70 Detention generally—inspections by judicial officers and Assembly members

A judge or magistrate, or a member of the Legislative Assembly nominated by the Assembly, may, at any reasonable time, enter and inspect—

(a) a correctional centre; or

(b) a place outside a correctional centre where a full-time detainee or periodic detainee has been directed to work.

Examples of unreasonable times

1 when the inspection would hinder a search of a correctional centre

2 when the inspection would add to disorder in a correctional centre

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

71 Detention generally—prohibited items

The regulations and corrections rules may prescribe a thing to be a prohibited item, including the circumstances in which something may be a prohibited item.

Examples of things that might be prescribed

1 alcohol or drugs

2 a mobile phone

3 a weapon or tool

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

72 Detention generally—regulations and corrections rules

The regulations and corrections rules may make provision in relation to the administration (including the control, inspection, management, operation and supervision) of correctional centres and the detention of detainees in correctional centres, including, for example, in relation to the following matters:

(a) the admission of detainees, including the procedure for accepting or refusing custody of property in a detainee's possession when the detainee is admitted;

(b) the release from detention of detainees, including the procedure for returning property accepted from a detainee on admission;

(c) the security or good order and discipline of correctional centres, including in relation to disciplinary breaches and offences against a law in force in the ACT or elsewhere by detainees;

(d) the health, welfare and living conditions of detainees in correctional centres and any place outside a correctional centre (including a periodic detention centre) a detainee is required to work, including—

(i) diet, clothing, medical treatment, recreation and exercise facilities and the availability of reading materials; and

(ii) the medical examination of detainees; and

(iii) work, including payment for any work performed; and

(iv) the provision of religious instruction or guidance;

(e) correctional centre routine, including hours of work, requirements for cleanliness, the use of cells and the possession or custody of prohibited items;

(f) the making of complaints by detainees to official visitors and the investigation of complaints by official visitors;

(g) the sending and receiving of mail by detainees and the making and receiving of telephone calls by detainees, including the opening of mail and the monitoring of telephone calls;

(h) the expenditure of money (or money's worth) by detainees;

(i) the acquisition or possession of property by detainees;

(j) the making of contracts for goods or services by detainees;

(k) the seizure, forfeiture and disposal of prohibited items;

(l) the forfeiture and disposal of a detainee's abandoned or unclaimed property (including money), or of unhygienic or otherwise dangerous property received from, or sent to, a detainee;

(m) visits to detainees, including—

(i) when visits may be allowed; and

(ii) the maximum number of people who may visit a detainee at the same time; and

(iii) the people who may visit a detainee and the conditions they must comply with; and

(iv) the procedures to be followed by visitors and detainees during visits;

(n) disciplinary breaches, including the charging of detainees, the conduct of inquiries into breaches and the referral of charges for disciplinary breaches to a visiting magistrate or the sentence administration board;

(o) the making of complaints to the chief executive and the facilities to be given to the detainee for that purpose;

(p) the making of applications for the issue or making of an order or permit by the chief executive and the facilities to be made available to detainees for those purposes;

(q) the observance by detainees of religious rites and obligations;

(r) the provision of facilities and services to detainees, including education and vocational training and health services;

(s) the distribution of prophylactic devices to detainees;

(t) the functions of corrections officers, including in relation to escaping or escaped detainees;

(u) the giving of directions to detainees by corrections officers;

(v) the use of force (including firearms) by corrections officers and police officers in relation to detainees, including when force may be used and the keeping of records of the occasions when force is used;

(w) the restraint of detainees by corrections officers and police officers, including the equipment that may or must be used to restrain a detainee and when, and the maximum periods for which, a detainee may be restrained;

(x) reports in relation to detainees and the administration of correctional centres;

(y) the service of documents on detainees.

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

Chapter 4 Full-time detention in correctional centres

Part 4.1 Full-time detainees—place of detention

73 Full-time detention—detention may be in ACT or NSW

(1) A full-time detainee may be detained in a correctional centre in the ACT or a NSW correctional centre.

(2) However, a full-time detainee must not be detained in a police station or court building cell for longer than 7 days at a time.

(3) Subsection (2) does not apply if the cell where the full-time detainee is detained is part of a temporary remand centre.

74 Full-time detention—warrant for removal to NSW

(1) An authorised person may, by warrant, direct that a full-time detainee be removed to a NSW correctional centre.

(2) The warrant must state the correctional centre to which the full-time detainee is to be removed.

(3) The warrant is sufficient authority for a police officer or escort to transport the full-time detainee in custody to the NSW correctional centre.

(4) In this section:

authorised person means—

(a) a magistrate; or

(b) the sheriff or a deputy sheriff under the *Supreme Court Act 1933*; or

(c) the registrar or a deputy registrar of the Supreme Court or the Magistrates Court; or

(d) the chairperson, a deputy chairperson or the secretary of the sentence administration board; or

(e) a sheriff, registrar, deputy registrar or district registrar, or similar officer, of the High Court or a court created by the Commonwealth Parliament.

75 Full-time detention—detention in NSW

(1) This section applies to a full-time detainee who has been removed under this part to a NSW correctional centre.

(2) The full-time detainee may be detained in the NSW correctional centre stated in the warrant of removal, or any other NSW correctional centre, until the detainee is released from detention under this Act or another law in force in the ACT.

(3) While the full-time detainee is detained in a NSW correctional centre, the detainee is taken to be serving, under the *Crimes (Sentencing) Act 2004*, a sentence of imprisonment in a correctional centre.

(4) Until the full-time detainee is released from detention under this Act or another law in force in the ACT, the detainee must be dealt with as if the detainee's sentence were a sentence imposed under New South Wales law (including, for example, a New South Wales law about the reduction or remission of sentences).

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

(5) However, the following provisions of this Act apply in relation to the detainee:

(a) section 30 (Association restrictions—continuation of directions for detainees removed to NSW);

(b) section 74 (Full-time detention—warrant for removal to NSW);

(c) section 76 (Full-time detention—warrant for return to ACT);

(d) section 77 (Full-time detention—release at end of sentence);

(e) chapter 8 (Parole);

(f) section 278 (Board inquiries—reports about offenders);

(g) a provision prescribed under the regulations for this section.

Note Full-time detainees serving a sentence in NSW are otherwise subject to the *Crimes (Administration of Sentences) Act 1999* (NSW) (see NSW Act, s 44).

(6) To remove any doubt, this section does not apply to a detainee who is transferred to New South Wales under part 11.1 (Interstate transfer of prisoners).

76 Full-time detention—warrant for return to ACT

(1) This section applies to a full-time detainee who has been removed under this part to a NSW correctional centre.

(2) An authorised person may, by warrant, direct that the full-time detainee be returned to the ACT.

(3) The warrant is sufficient authority for a police officer or escort to transport the full-time detainee in custody for return to the ACT.

(4) The full-time detainee must be held in custody by a police officer or escort, or in detention in a correctional centre, until released from detention under this Act or another law in force in the ACT or returned to New South Wales.

(5) If the full-time detainee is not released, the warrant is sufficient authority for a police officer or escort to return the detainee to a NSW correctional centre.

(6) A full-time detainee returned to a NSW correctional centre under subsection (5) must be dealt with as if the detainee had not been returned to the ACT.

(7) In this section:

authorised person—see section 74 (4) (Full-time detention—warrant for removal to NSW).

Part 4.2 Full-time detainees—release from detention

77 Full-time detention—release at end of sentence

(1) Unless sooner released from detention under another provision of this Act or another law in force in the ACT, a detainee who is serving a sentence by full-time detention (the ***current sentence***) must be released from detention on the detainee's release date for the sentence.

Note For release under a parole order, see pt 8.2.

(2) The full-time detainee may be released from detention at any time on the release date.

(3) However, if the release date is a non-working day—

(a) the full-time detainee may be released from detention at any time during the next previous day that is not a non-working day if the detainee asks to be released on that day; and

(b) the detainee's sentence is taken to have ended when the detainee is released under paragraph (a).

(4) This section does not apply to a full-time detainee if—

(a) on the release date for the current sentence, the detainee is subject to another sentence to be served by full-time detention; and

(b) the other sentence—

(i) started on or before, but will not end until after, the release date for the current sentence; or

(ii) starts on or immediately after the release date for the current sentence.

(5) In this section:

non-working day means—

(a) a Saturday or Sunday; or

(b) a public holiday at the place where the sentenced offender is being detained.

release date, for a sentence, means the day the term of the sentence ends.

Note The ***term*** of a sentence includes the term of the sentence as amended (see s 13).

78 Full-time detention—release in NSW

(1) A full-time detainee who is released from detention from a NSW correctional centre is entitled to be returned to the ACT at the cost of the Territory.

(2) The regulations and corrections rules may make provision in relation to the return of the detainee to the ACT (including, for example, the method of return).

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

(3) In this section:

release includes release on parole.

Part 4.3 Full-time detainees—local leave

79 Full-time detention—local leave orders

(1) The chief executive may give a written order (a ***local leave order***) requiring a full-time detainee to be taken from a correctional centre to any place in the ACT.

Note 1 If a form is approved under s 398 for this provision, the form must be used.

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

(2) The order may be given for any purpose the chief executive considers appropriate, including to assist a law enforcement agency in relation to the administration of justice.

Note ***Law enforcement agency*** is defined in the dict.

(3) The order is subject to the following conditions:

(a) the standard conditions for local leave orders prescribed under the regulations;

(b) any other condition included in the permit by the chief executive, not inconsistent with the standard conditions, that the chief executive considers is necessary and reasonable (including a non-association or place restriction condition).

Note For non-association and place restriction conditions, see ch 9.

80 Full-time detention—local leave permits

(1) The chief executive may give a full-time detainee a written permit (a ***local leave permit***) allowing the detainee to be absent from a correctional centre for the purpose and period stated in the permit.

Note 1 If a form is approved under s 398 for this provision, the form must be used.

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

(2) The permit is subject to the following conditions:

(a) the standard conditions for local leave permits prescribed under the regulations;

(b) any other condition included in the permit by the chief executive, not inconsistent with the standard conditions, that the chief executive considers is necessary and reasonable (including a non-association or place restriction condition).

Note For non-association and place restriction conditions, see ch 9.

(3) A non-association or place restriction condition included in the permit under subsection (2) (b) is suspended while the full-time detainee is in lawful custody.

81 Full-time detention—purposes of local leave permits

(1) A local leave permit may be given for the following purposes:

(a) compassionate reasons;

(b) educational or vocational activities;

(c) employment or employment related activities;

(d) medical, dental or optical treatment;

(e) rehabilitation or resettlement;

(f) the administration of justice;

(g) any other purpose the chief executive considers appropriate.

Examples of compassionate reasons

1 to attend an occasion of special significance to the detainee's immediate or extended family

2 to visit a member of the detainee's immediate family who is suffering serious illness or disability

3 to attend a funeral service or burial of a member of the detainee's immediate or extended family

4 for a female detainee who is the mother of a young child—to serve her sentence with the child in an appropriate environment or to establish the child with a replacement primary care giver

5 for a detainee who, before being imprisoned, was the primary care giver for a child—to maintain the relationship with the child

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

(2) In this section:

immediate family, of a detainee, includes—

(a) a person with whom the detainee has a domestic relationship within the meaning of the *Domestic Relationships Act 1994*; and

(b) for a detainee who is an Aboriginal person or a Torres Strait Islander—a person who, in accordance with the traditions and customs of the Aboriginal or Torres Strait Island community of which the detainee is a member, had the responsibility for, or an interest in, the welfare of the detainee.

Note ***Aboriginal person*** and ***Torres Strait Islander*** are defined in the dict.

Part 4.4 Full-time detainees—interstate leave permits

Division 4.4.1 Interstate leave permits—preliminary

82 Full-time detention—definitions for interstate leave permits

(1) In this Act:

interstate leave permit means a permit issued under section 84.

(2) In this part:

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

corresponding leave law means a law of a State or another Territory that is declared to be a corresponding leave law under section 83.

corresponding leave permit means a permit issued under a corresponding leave law that authorises an interstate detainee to travel to or through the ACT.

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

interstate detainee means a person who is in the ACT under a corresponding leave permit issued under a corresponding leave law.

interstate escort, for a corresponding leave permit issued to an interstate detainee, means—

(a) a corrections officer (however described), or a police officer, of the participating leave jurisdiction that issued the permit; or

(b) a person who is authorised to have the custody of the interstate detainee under—

(i) the corresponding leave permit of that jurisdiction; or

(ii) an appointment made in writing by the corresponding chief executive of that jurisdiction.

participating leave jurisdiction means a State or another Territory in which a corresponding leave law is in force.

83 Full-time detention—corresponding interstate leave laws

(1) The Minister may, in writing, declare that a law of a State or another Territory is a corresponding leave law for this part.

(2) The Minister may make a declaration under subsection (1) only if satisfied that the law substantially corresponds to the provisions of this part.

(3) A declaration under subsection (1) is a notifiable instrument.

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

Division 4.4.2 Interstate leave permits—ACT leave permits

84 Full-time detention—issue of interstate leave permits

(1) The chief executive may issue to a full-time detainee a written permit (an ***interstate leave permit***) for leave to travel to, remain in, and travel from, the participating leave jurisdiction stated in the permit for the purpose and period stated in the permit.

Note 1 If a form is approved under s 398 for this provision, the form must be used.

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

(2) The period stated in the interstate leave permit must not be longer than 14 days.

(3) The interstate leave permit may be issued—

(a) if the full-time detainee has a high security classification—only if the purpose of the leave is for health assessment, treatment or care or for a compassionate reason; or

(b) in any other case—for any purpose the chief executive considers appropriate, including a purpose mentioned in section 81 (Full-time detention—purposes of local leave permits).

(4) The interstate leave permit is subject to the following conditions:

(a) the standard conditions for interstate leave permits prescribed under the regulations;

(b) any other condition included in the permit by the chief executive, not inconsistent with the standard conditions, that

the chief executive considers is necessary and reasonable (including a non-association or place restriction condition).

Note For non-association and place restriction conditions, see ch 9.

(5) In this section:

high security classification means a classification prescribed under the regulations or corrections rules as a high security classification.

85 Full-time detention—effect of interstate leave permits

(1) If it is a condition of an interstate leave permit issued to a full-time detainee that the detainee be escorted from a correctional centre to a participating leave jurisdiction, the permit authorises—

(a) the detainee to be absent from the correctional centre in the custody of the escort for the purpose and period stated in the permit; and

(b) if the escort is a corrections officer or police officer—the corrections officer or police officer to have custody of the detainee for the purposes of—

(i) escorting the detainee to and within the participating leave jurisdiction stated in the permit (whether or not through any other jurisdiction) in accordance with the permit; and

(ii) returning the detainee to the correctional centre.

(2) If it is not a condition of an interstate leave permit issued to a full-time detainee that the detainee be escorted from a correctional centre to a participating leave jurisdiction, the permit authorises the detainee to be absent from the correctional centre for the purpose and period stated in the permit.

86 Full-time detention—powers of ACT escorts for interstate leave permits

(1) A corrections officer or police officer escorting a full-time detainee under an interstate leave permit issued to the detainee may, for the purpose of ensuring that the detainee complies with the permit, or to prevent the escape of the detainee—

(a) give the detainee any direction that is necessary and reasonable; or

(b) use force that is necessary and reasonable; or

(c) use a weapon or means of restraint in a way and in circumstances authorised under this Act or any other law in force in the ACT.

(2) If, at any time, the corrections officer or police officer considers that it is desirable to find out whether the full-time detainee is carrying a prohibited item, the corrections officer or police officer may—

(a) conduct a frisk search or ordinary search of the detainee; and

(b) seize any prohibited item found because of the search.

87 Full-time detention—notice to participating and transit jurisdictions about interstate leave permits

Immediately after issuing an interstate leave permit to a full-time detainee, the chief executive must give written notice of the permit's issue and the period of the permit to—

(a) the corresponding chief executive and the police commissioner (however described) of the participating leave jurisdiction to which the detainee is to travel under the permit; and

(b) the police commissioner (however described) of any other jurisdiction through which the detainee is to travel to reach, or return from, the participating leave jurisdiction.

Division 4.4.3 Interstate leave—corresponding leave permits

88 Full-time detention—effect of corresponding leave permits

If a corresponding leave permit issued for an interstate detainee authorises an interstate escort to escort the detainee to or through the ACT, the escort is authorised, while in the ACT, to have custody of the interstate detainee—

(a) for the purpose and period stated in the permit; and

(b) for the purpose of returning the interstate detainee to the participating leave jurisdiction where the permit was issued.

89 Full-time detention—arrest of escaped interstate detainees

(1) This section applies if it appears to an interstate escort or a police officer that an interstate detainee has escaped from lawful custody.

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

(2) The interstate escort or police officer may arrest the interstate detainee and, if the detainee is in the custody of an interstate escort, return the detainee to the custody of the interstate escort.

90 Full-time detention—powers of interstate escorts

(1) This section applies if an interstate escort uses force, a weapon, or a means of restraint, in the ACT for—

(a) keeping custody of an interstate detainee; or

(b) arresting an interstate detainee who has escaped.

(2) If the force, weapon or means of restraint is used in a way and in circumstances that would be lawful in the participating leave jurisdiction where the interstate permit was issued for a purpose mentioned in subsection (1), the interstate escort does not commit an offence against a Territory law because of that use.

91 Full-time detention—return of escaped interstate detainees

(1) This section applies if an interstate detainee attempts to escape or is arrested after an escape.

(2) The interstate detainee may be taken before a magistrate.

(3) Despite the terms of the interstate leave permit that authorises the interstate detainee to be in the ACT, the magistrate may by warrant (a ***return warrant***)—

(a) order the return of the detainee to the participating leave jurisdiction where the permit was issued; and

(b) order the interstate detainee to be delivered into the custody of an interstate escort for that purpose.

(4) If a return warrant is issued for the interstate detainee, the detainee may be kept in detention until the earlier of the following events:

(a) the detainee is delivered into the custody of an interstate escort in accordance with the warrant;

(b) the end of 14 days after the day the warrant was issued.

(5) The return warrant ends if the interstate detainee is not delivered into the custody of an interstate escort, in accordance with the terms of the warrant, within 14 days after the day the warrant is issued.

92 Full-time detention—liability of Territory under interstate leave permits

(1) The Territory is liable for any damage or loss sustained by anyone in a participating leave jurisdiction that is caused by the conduct of a full-time detainee or an escort while in the jurisdiction under an interstate leave permit.

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

Part 4.5 Full-time detention—other provisions

93 Full-time detention—obligations of detainees

The obligations of a full-time detainee are—

(a) to comply with the requirements of this Act that apply to the detainee; and

(b) to comply with any directions given to the detainee under this Act.

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

94 Full-time detention—directions by chief executive

The chief executive may give a full-time detainee directions for the purpose of—

(a) enforcing the detainee's obligations under this Act; or

(b) giving effect to the objects of this Act (see section 6).

95 Full-time detention—work by detainees

(1) The chief executive may direct a full-time detainee who is a sentenced offender to carry out work at a correctional centre, or community service work outside a correctional centre, that the chief executive considers is suitable for the detainee.

Note For other provisions about community service work, see pt 15.1. In particular, ***community service work*** means work of a kind prescribed under the regulations (see s 386).

(2) The chief executive may permit a full-time detainee who is not a sentenced offender to carry out work mentioned in subsection (1).

(3) For subsection (1), the regulations and corrections rules may prescribe the kinds of work (including community service work) that a full-time detainee may be directed or permitted to carry out and the circumstances in which a direction or permission may be given.

96 Full-time detention—disclosure of information to registered victims

(1) This section applies to a victim of an offence committed by a full-time detainee if the victim's details are entered in the victims register.

(2) To the extent that the chief executive considers appropriate in the circumstances, the chief executive may disclose information about the full-time detainee to the victim, including, for example—

(a) the correctional centre where the detainee is detained; and

(b) the detainee's classification; and

(c) the detainee's transfer between correctional centres; and

(d) the detainee's parole eligibility date; and

(e) the death or escape of, or any other exceptional event relating to, the detainee.

Note See also s 390 (Secrecy).

(3) If the victim is under 15 years old, the chief executive must, instead of giving the information to the victim, give the information to a person with parental responsibility for the victim.

Note ***Parental responsibility*** is defined in the *Children and Young People Act 1999*, s 17 (see dict).

(4) In this section:

correctional centre includes a NSW correctional centre.

97 Full-time detention—custody of detainees

While a detainee is in full-time detention, the detainee is taken to be in the chief executive's custody.

98 Full-time detention—when absent detainees taken to be in custody

(1) This section applies to a full-time detainee if the detainee is absent from a correctional centre in any of the following circumstances:

(a) while performing community service work;

(b) while being—

(i) transferred between correctional centres in the ACT; or

(ii) removed from a correctional centre in the ACT to a NSW correctional centre; or

(iii) returned from a NSW correctional centre to a correctional centre in the ACT; or

(iv) transferred between a correctional centre and a hospital or other place mentioned in section 68 (Detention generally—health services at hospitals or other places);

(c) while at a hospital or other place mentioned in section 68;

(d) while absent from a correctional centre in accordance with a local leave order, local leave permit or interstate leave permit;

(e) while being escorted to a participating State under part 11.1 (Interstate transfer of prisoners);

(f) while absent from a correctional centre under process issued by an entity (including a court) established under a law of the ACT, the Commonwealth, a State or another Territory that is authorised to take evidence on oath or affirmation.

(2) If the full-time detainee is unescorted, the detainee is taken to be in the custody of the chief executive.

(3) If the full-time detainee is escorted by a corrections officer or police officer, the detainee is taken to be in the custody of—

(a) the corrections officer or police officer; and

(b) the chief executive.

99 Full-time detention—extension of sentence for unlawful absence

(1) This section applies if a full-time detainee is unlawfully absent from a correctional centre during the term of a sentence because the detainee—

(a) has escaped from lawful custody; or

(b) has failed to return to a correctional centre by the end of the period of a local leave permit or interstate leave permit; or

(c) has failed to return to a correctional centre after the cancellation of a home detention order, periodic detention order or parole order.

(2) For the purpose only of working out how much of a sentence the full-time detainee has served, the detainee is taken not to have been in lawful custody for any of the absence.

(3) Subsection (2) applies whether or not, while absent, the full-time detainee is taken to be in the custody of the chief executive or someone else under another provision of this Act for part or all of the period of the absence.

Chapter 5 Home detention

Part 5.1 Home detention—important concepts

100 Home detention—definitions

In this Act:

additional condition, of a home detention order, means—

(a) a condition—

(i) included in the order by the court under the *Crimes (Sentencing) Act 2004*, section 11 (5); or

(ii) imposed on the order under this chapter; and

(b) if the condition is amended under this chapter—the condition as amended.

Note For the imposition or amendment of additional conditions—

- for remandees, see s 104 and s 121 (2) (b)
- for sentenced offenders, see s 107 and s 128 (2) (b).

core condition, of a home detention order for a home detainee, means a core condition under section 102.

home detention means detention under this chapter in accordance with a home detention order.

home detention obligations, of a home detainee, means the detainee's obligations under section 101.

Note ***Home detainee*** is defined in s 10.

home detention order means an order made by a court under the *Crimes (Sentencing) Act 2004*, section 11.

Part 5.2 Home detention—operation of orders

Division 5.2.1 Home detention—obligations and core conditions

101 Home detention—obligations

(1) This section applies to a home detainee while the detainee is serving—

(a) remand by home detention under a home detention order; or

(b) a sentence, or part of a sentence, by home detention under a home detention order.

(2) The obligations of the home detainee are—

(a) to comply with the order (including the core conditions and any additional conditions of the order); and

(b) to comply with the provisions of this Act that apply to the detainee.

Note 1 Action may be taken in relation to a home detention order whether or not the order has ended (see s 132 and s 286).

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations and the corrections rules (see Legislation Act, s 104).

102 Home detention—core conditions of orders

A home detention order for a home detainee is subject to the following core conditions:

(a) the detainee must not commit an offence against a law in force in the ACT or elsewhere that is punishable by imprisonment;

(b) if the detainee is charged with an offence against a law in force in the ACT or elsewhere—the detainee must tell the chief executive about the charge as soon as possible (but within 2 days) after the day the detainee becomes aware of the charge;

(c) the detainee must not change the detainee's home address or phone number, or mobile phone number, without the prior written approval of the chief executive;

(d) the detainee must comply with any directions given to the detainee under this Act by the chief executive;

(e) the detainee must comply with any requirements that apply to the detainee under the order or this Act in relation to the electronic monitoring of the detainee's compliance with the order;

(f) for a sentenced offender—the detainee must comply with any agreement given by the detainee under section 271 (3) (Board inquiries—offender to appear before board);

(g) the conditions (if any) prescribed under the regulations for this section that apply to the detainee.

Example of condition that might be prescribed

the detainee must not, except in an emergency, leave the place of home detention (including for shopping or non-emergency medical treatment) without the chief executive's approval

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

Division 5.2.2 Home detention—operation of orders for remandees

103 Home detention—effect of custody during order for remandee

(1) This section applies if a court makes a home detention order directing that a remandee in relation to an offence be subject to home detention under a home detention order.

(2) For the *Crimes (Sentencing) Act 2004*, section 71 (Backdated sentences), the following are taken to be periods during which the remandee was held in custody in relation to the offence:

(a) any period of remand served by home detention for the offence;

(b) any period while the home detention order was in force that the remandee was in custody in relation to—

(i) the remandee's home detention obligations; or

(ii) the payment of a fine or other amount (including restitution) under a court order.

(3) To remove any doubt, if the home detention order is cancelled under part 5.3 (Home detention—supervision by courts and board), any time after the cancellation takes effect must be disregarded for subsection (2).

104 Home detention—additional conditions for remandees

(1) A home detention order for a remandee is subject to any additional conditions that apply to the order.

(2) Subject to section 109 (Home detention—restrictions on additional conditions), a court may—

(a) impose additional conditions on the home detention order; or

(b) amend the additional conditions (if any) of the order, including any conditions included in the order under the *Crimes (Sentencing) Act 2004*, section 11 (5).

Note ***Amend*** includes omit or substitute (see Legislation Act, dict, pt 1).

(3) An additional condition may be imposed or amended by a court on—

(a) the court's initiative; or

(b) the application of the chief executive or remandee.

(4) The court must give written notice of the imposition or amendment of an additional condition to—

(a) the remandee; and

(b) the chief executive; and

(c) the director of public prosecutions; and

(d) for a court that is not the court that made the order—the registrar of the court that made the order.

(5) The imposition or amendment of an additional condition takes effect when the written notice of the imposition or amendment is given to

the remandee or, if the notice provides for a later time of effect, at that time.

105 Home detention—when order for remandee ends

A home detention order for a remandee ends—

(a) when the remandee's remand by home detention ends; or

(b) if the order is earlier cancelled under part 5.3 (Home detention—supervision by courts and board)—when the cancellation of the order takes effect.

Division 5.2.3 Home detention—operation of orders for sentenced offenders

106 Home detention—effect of custody during order for sentenced offender

(1) This section applies if a court makes a home detention order directing that a sentence, or a part of a sentence, of imprisonment of a sentenced offender be served by home detention.

(2) The following are taken to be periods of home detention served by the sentenced offender under the home detention order:

(a) any period of home detention under the order;

(b) any period while the order was in force that the offender was in custody in relation to—

(i) the offender's home detention obligations; or

(ii) the payment of a fine or other amount (including restitution) under a court order.

(3) To remove any doubt, if the home detention order is cancelled under part 5.3 (Home detention—supervision by courts and board), any time after the cancellation takes effect must be disregarded for subsection (2).

107 Home detention—additional conditions for sentenced offenders

(1) A home detention order for a sentenced offender is subject to any additional conditions that apply to the order.

(2) Subject to section 109 (Home detention—restrictions on additional conditions), a court or the sentence administration board may—

(a) impose additional conditions on the home detention order; or

(b) amend the additional conditions of the order, including any conditions included in the order under the *Crimes (Sentencing) Act 2004*, section 11 (5).

Note ***Amend*** includes omit or substitute (see Legislation Act, dict, pt 1).

(3) An additional condition may be imposed or amended by a court or the sentence administration board on—

(a) the initiative of the court or board; or

(b) the application of—

(i) the sentenced offender; or

(ii) the chief executive; or

(iii) for an application to a court—the board.

(4) The court or sentence administration board must give written notice of the imposition or amendment of an additional condition to—

(a) the sentenced offender; and

(b) the chief executive; and

(c) the director of public prosecutions; and

(d) for a court that is not the court that made the order—the registrar of the court that made the order; and

(e) for the board—the court that made the order.

(5) The imposition or amendment of an additional condition takes effect when the written notice of the imposition or amendment is given to the sentenced offender or, if the notice provides for a later time of effect, at that time.

108 Home detention—when order for sentenced offender ends

A home detention order for a sentenced offender ends—

(a) at the end of the term of the sentence, or the part of the sentence, to which the order applies; or

Note The ***term*** of a sentence includes the term of the sentence as amended (see s 13).

(b) if the offender is earlier released on parole—when the detainee is released on parole; or

(c) if the order is earlier cancelled under part 5.3 (Home detention—supervision by courts and board)—when the cancellation of the order takes effect.

Division 5.2.4 Home detention—operation of orders generally

109 Home detention—restrictions on additional conditions

(1) A court or the sentence administration board may not amend a core condition of a home detention order.

Note ***Amend*** includes omit or substitute (see Legislation Act, dict, pt 1).

(2) A court or the sentence administration board may not impose or amend an additional condition of a home detention order if the condition would be inconsistent with a core condition of the order.

(3) The Magistrates Court may not impose or amend an additional condition of a home detention order if the condition would be inconsistent with a condition applied to the order by the Supreme Court.

(4) However, subsection (3) does not apply to the amendment of an additional condition if—

(a) the amendment changes a compliance requirement of the condition; and

(b) the amendment is incidental to a proceeding before the Magistrates Court.

(5) The sentence administration board may not impose or amend an additional condition of a home detention order—

(a) for a remandee; or

(b) if the condition would be inconsistent with a condition applied to the order by a court—for a sentenced offender.

(6) However, subsection (5) (b) does not apply to the amendment of a compliance requirement of an additional condition.

(7) In this section:

compliance requirement, of an additional condition of a home detention order, means—

(a) a period for compliance under the condition; or

(b) any of the following in relation to an activity the home detainee is required to attend or do under the condition:

(i) a time, day or place for the activity;

(ii) a provider of the activity; or

(c) anything else provided for under the condition that is prescribed under the regulations.

Examples of activities

education, counselling, personal development or treatment activities or programs

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

110 Home detention—directions by chief executive

The chief executive may give a home detainee directions for the purpose of—

(a) enforcing the detainee's home detention obligations; or

(b) giving effect to the objects of this Act (see section 6).

Part 5.3 Home detention—supervision by courts and board

Division 5.3.1 Home detention—supervision generally

111 Home detention—meaning of *remandee* for pt 5.3

In this part:

remandee includes a person who has been remanded in custody under a home detention order, even if the home detention order is no longer in force.

112 Meaning of *relevant court* for remandee in pt 5.3

In this part:

relevant court, in relation to a home detention order for a remandee, means the court that made the order, and includes that court as differently constituted.

113 Home detention—duty of corrections officers

(1) This section applies if a corrections officer believes, on reasonable grounds, that a remandee or offender has breached the remandee's or offender's home detention obligations.

Note See s 101 for the home detention obligations.

(2) The corrections officer must tell—

(a) for a remandee—the relevant court; or

(b) for an offender—the sentence administration board.

(3) To remove any doubt, this section applies whether or not the breach relates to a core condition of the home detention order.

114 Home detention—arrest of remandee or offender without warrant

(1) If a police officer believes, on reasonable grounds, that a remandee or offender has breached the remandee's or offender's home detention obligations, the police officer may arrest the remandee or offender without a warrant.

(2) If a police officer arrests a remandee or offender under this section, the police officer must, as soon as practicable, bring the remandee or offender before—

(a) for a remandee—the relevant court; or

(b) for an offender—the sentence administration board; or

(c) if the relevant court or board is not sitting—a magistrate.

Note The offender may be remanded in custody or granted bail (see eg the *Bail Act 1992*, s 8A (Entitlement to bail—breaches of good behaviour bonds etc)).

115 Home detention—arrest of remandee or offender with warrant

(1) If a judge or magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that a remandee or offender has breached, or will breach, the remandee's or offender's home detention obligations, the judge or magistrate may issue a warrant for the remandee's or offender's arrest.

Note An arrest warrant may also be issued for a remandee if the remandee fails to appear before the board or, for a proceeding before the board, a judge or magistrate considers that the offender should be immediately arrested for any another reason (see s 271).

(2) The warrant must—

(a) be in writing signed by the judge or magistrate; and

(b) be directed to all police officers or a named police officer; and

(c) state briefly the matter on which the information is based; and

(d) order the arrest of the remandee or offender and the bringing of the remandee or offender before—

(i) for a remandee—the relevant court; or

(ii) for an offender—the sentence administration board.

(3) If a police officer arrests a remandee or offender under this section, the police officer must, as soon as practicable, bring the remandee or offender before—

(a) for a remandee—the relevant court; or

(b) for an offender—the sentence administration board; or

(c) if the relevant court or board is not sitting—a magistrate.

Note The offender may be remanded in custody or granted bail (see eg the *Bail Act 1992*, s 8A (Entitlement to bail—breaches of good behaviour bonds etc)).

Division 5.3.2 Home detention—conviction for ACT offence

116 Home detention—automatic cancellation for ACT offence

(1) This section applies if a remandee or offender who is subject to a home detention order is convicted by a court of an offence against a Territory law.

Note If a home detainee is convicted of an offence against a law of a place outside the Territory, see s 118 (for remandees) and s 125 (for sentenced offenders).

(2) Each home detention order to which the remandee or offender is subject is automatically cancelled on the day the remandee or offender is convicted of the offence.

Note Any parole order that applies to the offender is automatically cancelled if the offender's home detention order is cancelled (see s 131).

Division 5.3.3 Home detention—supervision of remandees

117 Home detention—when order for remandee may be reviewed

(1) The relevant court for a home detention order for a remandee may review the order if—

(a) the court has reason to suspect that the remandee has breached, or will breach, the remandee's home detention obligations; or

Note See s 101 for the home detention obligations.

(b) the court has reason to suspect that, because of a change in the remandee's circumstances, it is no longer appropriate that the remand be served by home detention.

Note The home detention order may be reviewed whether or not the order has ended (see s 132).

(2) The relevant court for a home detention order for a remandee may also review the order on the application of—

(a) the remandee; or

(b) the chief executive; or

(c) the director of public prosecutions.

118 Home detention—mandatory cancellation for remandee

(1) This section applies if—

(a) a remandee who is subject to a home detention order is convicted of an offence against a law of a place outside the Territory; and

(b) the remandee is sentenced to a term of imprisonment to be served by full-time detention in a correctional centre (however described).

(2) The chief executive must apply to the relevant court for the remandee's home detention order for an order cancelling the home detention order.

(3) The relevant court must make an order cancelling the remandee's home detention order if the court is satisfied that subsection (1) (a) and (b) apply to the remandee.

119 Home detention—discretionary cancellation for remandee

(1) The relevant court for a home detention order for a remandee may make an order cancelling the home detention order if—

(a) the court has reviewed the order; and

(b) the remandee appeared at a hearing held by the court for the review; and

Note The order may be cancelled if the remandee fails to appear before the court (see s (4)).

(c) the court is satisfied that a circumstance mentioned in subsection (2) applies in relation to the remandee.

(2) For subsection (1) (c), the circumstances are as follows:

(a) that the remandee has breached the remandee's home detention obligations;

(b) that, because of a change in the remandee's circumstances, it is no longer appropriate that the remandee be subject to home detention;

(c) that it is no longer appropriate that the remandee's remand be served by home detention because the continuation of the home detention order may cause harm (including mental harm) to anyone;

(d) that a person who consented under the *Crimes (Sentencing) Act 2004*, section 93 (1) (c) (Suitability for home detention—general) to the making of the order withdraws the consent by written notice given to the court;

(e) for an application by the remandee for the cancellation of the home detention order—that the order should be cancelled.

(3) Subsection (2) (d) applies despite any consent given under the *Crimes (Sentencing) Act 2004*, section 93 (1) (c) by anyone else to the making of the home detention order.

(4) The relevant court may also make an order cancelling the home detention order if the remandee fails to appear before the court when required do so.

Note Also, an arrest warrant may be issued for a remandee who fails to appear before the court (see s 115).

120 Home detention—when cancellation order by court takes effect

An order under section 118 or section 119 cancelling a home detention order for a remandee takes effect on the date stated in the order.

121 Home detention—other action available to court for remandees

(1) This section applies if—

(a) the relevant court for a home detention order for a remandee has reviewed the order under section 117 (Home detention—when order for remandee may be reviewed) in relation to the order; and

(b) the court does not cancel the order under section 118 or section 119.

(2) The relevant court may do 1 or more of the following:

(a) give the remandee a formal warning;

(b) subject to section 109 (Home detention—restrictions on additional conditions), impose additional conditions on, or amend the additional conditions of, the home detention order;

(c) give directions to the chief executive about the supervision of the remandee;

(d) take no action.

(3) To give effect to any additional condition or amended condition mentioned in subsection (2) (b), the relevant court may, by warrant, remand the remandee in custody until a stated date or the happening of a stated event.

122 Home detention—effect of cancellation on remandee

(1) This section applies if a home detention order for a remandee is cancelled under this part.

(2) If the remandee's home detention order is cancelled under section 116 (Home detention—automatic cancellation for ACT offence), the court that convicts the remandee must remand the remandee in full-time detention.

(3) If the remandee's home detention order is cancelled under section 118 (Home detention—mandatory cancellation for remandee) or section 119 (Home detention—discretionary cancellation for remandee), the relevant court must remand the remandee in full-time detention.

Division 5.3.4 Home detention—supervision of offenders

123 Home detention—when inquiry into order for offender may be held

The sentence administration board may conduct an inquiry in relation to a home detention order for an offender if—

(a) the chief executive applies to the board under section 125 (2) (Home detention—mandatory cancellation for offender) for the cancellation of the home detention order; or

(b) the board has reason to suspect that the offender has breached, or will breach, the offender's home detention obligations; or

Note See s 101 for the home detention obligations.

(c) the board has reason to suspect that, because of a change in the offender's circumstances, it is no longer appropriate that the offender's sentence, or the part of the offender's sentence, be served by home detention; or

(d) the offender applies to the board for the cancellation of the home detention order.

Note The inquiry may be conducted whether or not the home detention order has ended (see s 286).

124 Home detention—board to give notice of grounds for inquiry

(1) This section applies if the sentence administration board proposes to conduct an inquiry under section 125 in relation to an offender's periodic detention order.

(2) The sentence administration board must give the offender reasonable notice of—

(a) the grounds on which the board is proposing to conduct the inquiry; and

(b) the time and place fixed for the inquiry.

(3) Notice of the time and place fixed for the inquiry must also be given to the chief executive and the director of public prosecutions.

(4) The chief executive and the director of public prosecutions may appear at the inquiry.

125 Home detention—mandatory cancellation for offender

(1) This section applies if—

(a) an offender who is subject to a home detention order is convicted of an offence against a law of a place outside the Territory; and

(b) the offender is sentenced to a term of imprisonment to be served by full-time detention in a correctional centre (however described).

(2) The chief executive must apply to the sentence administration board for an order cancelling the offender's home detention order.

(3) The sentence administration board must make an order cancelling the offender's home detention order if—

(a) the board has held an inquiry in relation to the order; and

(b) the offender appeared at a hearing held by the board for the inquiry; and

Note A cancellation order may be made under s 126 if the offender fails to appear before the board.

(c) the board is satisfied that subsection (1) (a) and (b) apply to the offender.

(4) This section does not limit the sentence administration board's power to cancel the home detention order under section 126 (4).

126 Home detention—discretionary cancellation for offender

(1) The sentence administration board may make an order cancelling an offender's home detention order if—

(a) the board has held an inquiry in relation to the order; and

(b) the offender appeared at a hearing held by the board for the inquiry; and

Note The order may be cancelled if the offender fails to appear before the board (see s (3)).

(c) the board is satisfied that a circumstance mentioned in subsection (2) applies in relation to the offender.

(2) For subsection (1) (c), the circumstances are as follows:

(a) that the offender has breached the offender's home detention obligations;

(b) that, because of a change in the offender's circumstances, it is no longer appropriate that the offender be subject to home detention;

(c) that it is no longer appropriate that the offender's sentence be served by home detention because the continuation of the home detention order may cause harm (including mental harm) to anyone;

(d) that a person who consented under the *Crimes (Sentencing) Act 2004*, section 93 (1) (c) (Suitability for home detention—general) to the making of the order withdraws the consent by written notice given to the court;

(e) for an application by the offender for the cancellation of the home detention order—that the order should be cancelled.

(3) Subsection (2) (d) applies despite any consent given under the *Crimes (Sentencing) Act 2004*, section 93 (1) (c) by anyone else to the making of the home detention order.

(4) The sentence administration board may also make an order cancelling the home detention order if—

(a) the offender fails to appear before the board when required do so; or

(b) the offender fails to appear before the board in breach of an agreement under section 271 (3) (Board inquiries—offender to appear before board).

Note Also, an arrest warrant may be issued for an offender who fails to appear before the board (see s 271 (4)).

127 Home detention—when cancellation order by board takes effect

(1) An order under section 125 or section 126 cancelling a home detention order for an offender takes effect on the date stated in the order.

(2) The date stated in the order must be—

(a) the date the order is made; or

(b) if the sentence administration board is satisfied that the offender breached the offender's home detention obligations—

the date when it appears to the board that the offender breached the obligations; or

(c) if the board is satisfied that the offender breached the obligations on 2 or more separate days—the date when it appears to the board that the offender first breached the obligations.

128 Home detention—other action available to board for offenders

(1) This section applies if—

(a) the sentence administration board has conducted an inquiry under section 123 (Home detention—when inquiry into order for offender may be held) in relation to an offender's home detention order; and

(b) the board does not cancel the order under section 125 or section 126.

(2) The sentence administration board may do 1 or more of the following:

(a) give the offender a formal warning;

(b) subject to section 109 (Home detention—restrictions on additional conditions), impose additional conditions on, or amend the additional conditions of, the home detention order;

(c) give directions to the chief executive about the supervision of the offender;

(d) take no action.

(3) To give effect to any additional condition or amended condition mentioned in subsection (2) (b), the sentence administration board may, by warrant, remand the offender in custody until a stated date or the happening of a stated event.

(4) The sentence administration board must not remand the offender in custody under this section—

(a) more than once for the same breach; or

(b) for longer than 30 days for a breach.

(5) The day the sentence administration board remands the offender, and the stated date or the day the stated event happens, are both counted for subsection (4) (b).

129 Home detention—effect of cancellation of order for offender

(1) This section applies if a home detention order for an offender is cancelled under—

(a) section 116 (Home detention—automatic cancellation for ACT offence); or

(b) section 125 (Home detention—mandatory cancellation for offender); or

(c) section 126 (Home detention—discretionary cancellation for offender).

(2) The offender is automatically sentenced to a term of imprisonment to be served by full-time detention for a term ending on the day the term of the cancelled home detention order would otherwise have ended.

Note For when a home detention order for an offender ends, see s 108.

Division 5.3.5 Cancellation of other orders

130 Home detention—consequential cancellation of other orders

If a home detention order (the ***principal order***) is cancelled under this part, any other home detention order to which the offender is subject is automatically cancelled on the date of effect of the cancellation of the principal order.

131 Home detention—parole order cancelled if home detention order cancelled

(1) This section applies if a home detention order for an offender is cancelled under this part.

(2) Any parole order that applies to the offender is automatically cancelled.

Part 5.4 Home detention—other provisions

132 Home detention—exercise of functions by court after orders have ended

A court may exercise a function in relation to a home detention order (including a function for breach of the order) even though the order has ended.

Note For a similar power for the board, see s 286.

133 Home detention—reports about activities or work

(1) This section applies if the Territory makes an agreement with an entity for a home detainee to participate in—

(a) an activity provided by the entity; or

(b) community service work undertaken by the entity.

Note The regulations and corrections rules may make provision about the directions that the chief executive may give a home detainee (see s 135 (d)).

(2) The chief executive must ensure that the agreement contains a requirement that the entity must, if asked by the chief executive, give the chief executive a written report about the home detainee's participation in the activity or community service work.

(3) In this section:

activity includes education, counselling, personal development or treatment activities or programs.

134 Home detention—searching and testing of detainees

(1) The regulations and corrections rules may make provision in relation to—

(a) the testing of home detainees for alcohol or drugs and when the presence of alcohol or drugs in a home detainee is a breach of the detainee's home detention obligations; and

(b) the searching of home detainees, including the kinds of searches that may be carried out in relation to home detainees.

(2) A home detainee must comply with any requirement made by the chief executive for the detainee to provide a test sample.

Note If a person fails to comply with a requirement, the person is taken to have given a positive test sample (see s 59 (2) (a)).

(3) For subsection (2), part 3.5 (Alcohol and drug testing of detainees) (other than section 62 (Alcohol and drug testing—random testing for statistical purposes)) applies in relation to the home detainee as if the home detainee were a detainee, and with any other necessary changes and any changes prescribed under the regulations.

(4) If a home detainee gives a positive test sample, the detainee is taken to have failed to comply with the detainee's home detention obligations.

135 Home detention—regulations and corrections rules generally

The regulations and corrections rules may make provision in relation to home detention, including, for example, in relation to the following matters:

(a) the administration (including the management, control and supervision) of home detainees and home detention orders;

(b) the development of case management plans for home detainees, including matters that must or may be considered in preparing case management plans;

(c) the review of home detainees' case management plans;

(d) the directions that the chief executive may give to home detainees, including directions about—

(i) the employment of a home detainee; and

(ii) the carrying out of community service work by a home detainee; and

(iii) a home detainee attending education, counselling, personal development or treatment activities or programs as directed by the chief executive;

(e) the electronic monitoring of a home detainee's compliance with the home detention order;

(f) the service of notices on home detainees.

Chapter 6 Periodic detention

Part 6.1 Periodic detention—important concepts

136 Periodic detention—definitions

In this Act:

additional condition, of a periodic detention order, means—

(a) a condition—

(i) included in the order by the court under the *Crimes (Sentencing) Act 2004*, section 12 (6); or

(ii) imposed on the order under this chapter; and

(b) if the condition is amended under this chapter—the condition as amended.

Note For the imposition or amendment of additional conditions, see s 141 (2), s 171 (2) (b) and s 173 (2) (b).

approved place, in relation to a periodic detainee—see section 148 (1).

core condition, of a periodic detention order for a periodic detainee, means a core condition under section 140.

detention period, for a periodic detainee—see section 137.

periodic detention, for a periodic detainee, means detention under this chapter for the detention periods during the term of the detainee's periodic detention order.

Note 1 A ***periodic detainee*** is defined in s 10.

Note 2 The 1st detention period during the term of the order begins on the day stated in the order (see s 137 (2), def ***designated day***, par (a) and *Crimes (Sentencing) Act 2004*, s 12 (3)).

Note 3 For when a periodic detainee is taken to have served a detention period, see s 138.

periodic detention obligations, of a periodic detainee means the detainee's obligations under section 139.

periodic detention order means an order made by a court under the *Crimes (Sentencing) Act 2004*, section 12.

137 Periodic detention—meaning of *detention period*

(1) In this Act:

detention period, for a periodic detainee, means each period (other than a period that includes part or all of Christmas Day, Good Friday or Easter Sunday) during the term of the detainee's sentence, or the part of the detainee's sentence, to be served by periodic detention that—

(a) starts at the reporting time on the designated day; and

(b) ends at the finishing time on the 2nd day after the designated day.

(2) In this section:

designated day, for the periodic detainee, means—

(a) the day stated in the detainee's periodic detention order; and

(b) each subsequent day of the week that is the same as—

(i) the day stated in the order; and

(ii) if an order under section 151 (1) (a) (Periodic detention—changes of days and times of attendance) is in force in relation to the detainee—the day of the week stated in the order.

finishing time means—

(a) 4.30 pm or, if another time is prescribed under the regulations, the prescribed time; or

(b) if an order under section 151 (1) (b) is in force in relation to the detainee—the time stated in the order.

reporting time means—

(a) 7 pm or, if another time is prescribed under the regulations, the prescribed time; or

(b) if an order under section 151 (1) (b) is in force in relation to the detainee—the time stated in the order.

Part 6.2 Periodic detention—operation of orders

138 Periodic detention—effect of custody during detention period

(1) A periodic detainee is taken to have served a detention period under the periodic detention order if, for all of the detention period—

(a) the detainee was in detention in accordance with the detainee's periodic detention obligations; or

(b) the detainee was in custody in relation to—

(i) the detainee's periodic detention obligations; or

(ii) the payment of a fine or other amount (including restitution) under a court order.

(2) If the periodic detainee is in detention (including custody) for all of a detention period otherwise than in accordance with subsection (1), the detainee is taken to have failed to report for the detention period.

Note For the consequences of a failure to report, see s 157.

(3) To remove any doubt, if the periodic detention order is cancelled under part 6.4 (Periodic detention—supervision of offenders), any time after the cancellation takes effect must be disregarded for subsection (1).

139 Periodic detention—obligations

(1) The obligations of a periodic detainee while serving a sentence, or part of a sentence, by periodic detention under a periodic detention order are—

(a) to comply with the order (including the core conditions and any additional conditions of the order); and

(b) to comply with the provisions of this Act that apply to the detainee.

Note 1 Action may be taken in relation to a periodic detention order whether or not the order has ended (see s 286).

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations and the corrections rules (see Legislation Act, s 104).

(2) To remove any doubt, the periodic detention obligations may apply to a periodic detainee during a part of the term of the sentence to be served by periodic detention that is not a detention period.

140 Periodic detention—core conditions of orders

(1) A periodic detention order for a periodic detainee is subject to the following core conditions:

(a) the detainee must not commit an offence against a law in force in the ACT or elsewhere that is punishable by imprisonment;

(b) if the detainee is charged with an offence against a law in force in the ACT or elsewhere—the detainee must tell the chief executive about the charge as soon as possible (but within 2 days) after the day the detainee becomes aware of the charge;

(c) if any of the detainee's contact details change—the detainee must tell the chief executive about the change as soon as possible after the detainee knows the changed contact details (but within 2 days after the change is made);

(d) the detainee must comply with any directions given to the detainee under this Act by the chief executive;

(e) the detainee must comply with any voluntary agreement given by the detainee under section 271 (3) (Board inquiries—offender to appear before board);

(f) the conditions (if any) prescribed under the regulations for this section that apply to the detainee.

(2) In this section:

contact details means the periodic detainee's—

(a) home address and phone number; and

(b) work address and phone number; and

(c) mobile phone number.

141 Periodic detention—additional conditions of orders

(1) A periodic detention order is subject to any additional conditions that apply to the order.

Examples of additional conditions

1 a non-association or place restriction condition

2 a condition that the periodic detainee participate in a personal development activity or treatment program outside a detention period

Note 1 For non-association and place restriction conditions, see ch 9.

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

(2) Subject to section 142, a court or the sentence administration board may—

(a) impose additional conditions on the periodic detention order; or

(b) amend the additional conditions (if any) of the order, including any conditions included in the order under the *Crimes (Sentencing) Act 2004*, section 12 (6).

Note ***Amend*** includes omit or substitute (see Legislation Act, dict, pt 1).

(3) An additional condition may be imposed or amended by a court or the sentence administration board on—

(a) the initiative of the court or board; or

(b) the application of—

(i) the periodic detainee; or

(ii) the chief executive; or

(iii) for an application to a court—the board.

(4) The court or sentence administration board must give written notice of the imposition or amendment of an additional condition to—

(a) the periodic detainee; and

(b) the chief executive; and

(c) the director of public prosecutions; and

(d) for a court that is not the court that made the order—the registrar of the court that made the order; and

(e) for the board—the court that made the order.

(5) The imposition or amendment of an additional condition takes effect when the written notice of the imposition or amendment is given to the periodic detainee or, if the notice provides for a later time of effect, at that time.

142 Periodic detention—restrictions on additional conditions

(1) A court or the sentence administration board may not amend a core condition of a periodic detention order.

Note ***Amend*** includes omit or substitute (see Legislation Act, dict, pt 1).

(2) A court or the sentence administration board may not impose or amend an additional condition of a periodic detention order if the condition would be inconsistent with a core condition of the order.

(3) The Magistrates Court may not impose or amend an additional condition of a periodic detention order if the condition would be inconsistent with a condition applied to the order by the Supreme Court.

(4) However, subsection (3) does not apply to the amendment of an additional condition if—

(a) the amendment changes a compliance requirement of the condition; and

(b) the amendment is incidental to a proceeding before the Magistrates Court.

(5) The sentence administration board may not impose or amend an additional condition of a periodic detention order if the condition would be inconsistent with a condition applied to the order by a court.

(6) However, subsection (5) does not apply to the amendment of a compliance requirement of an additional condition.

(7) In this section:

compliance requirement, of an additional condition of a periodic detention order, means—

(a) a period for compliance under the condition; or

(b) any of the following in relation to an activity the periodic detainee to whom the order applies is required to attend or do under the condition:

(i) a time, day or place for the activity;

(ii) a provider of the activity; or

(c) anything else provided for under the condition that is prescribed under the regulations.

Examples of activities

education, counselling, personal development or treatment activities or programs

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

143 Periodic detention—directions by chief executive

The chief executive may give a periodic detainee directions for the purpose of—

(a) enforcing the detainee's periodic detention obligations; or

(b) giving effect to the objects of this Act (see section 6).

144 Periodic detention—when orders end

A periodic detention order ends—

(a) at the end of the term of the sentence, or the part of the sentence, to which the order applies; or

Note The ***term*** of a sentence includes the term of the sentence as amended (see s 13).

(b) if the order is cancelled earlier under part 6.4 (Periodic detention—supervision of offenders)—when the cancellation of the order takes effect.

Part 6.3 Periodic detention—performance

145 Periodic detention—duty to report

During the term of a periodic detention order, the periodic detainee must report no later than the start of each detention period to—

(a) the periodic detention centre stated in the order; or

(b) if a direction under section 148 (1) (a) (ii) or (c) (Periodic detention—participation in activities or work) is in force for the detainee—the approved place stated in the direction.

Note 1 The 1st detention period during the term of the order begins on the day stated in the order (see s 137 (2), def ***designated day*** and *Crimes (Sentencing) Act 2004*, s 12 (3)).

Note 2 A detention period does not include any period that includes part or all of Christmas Day, Good Friday or Easter Sunday (see s 137 (1), def ***detention period***).

146 Periodic detention—how periodic detainee is to report

(1) A periodic detainee reporting for a detention period must comply with the reporting requirements prescribed under the regulations and corrections rules.

Examples of requirements that might be prescribed

1 the kinds of clothing, personal possessions and other things that a periodic detainee may or must not possess when reporting for a detention period

2 cleanliness

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

(2) If a periodic detainee fails to comply with a prescribed reporting requirement in relation to a detention period, and is directed by the chief executive to leave the periodic detention centre—

(a) the detainee must immediately leave the centre; and

(b) the detainee is taken to have failed to report for the detention period.

Note 1 For the consequences of a failure to report, see s 157.

Note 2 A failure to comply is also a breach of the detainee's periodic detention obligations (see s 139).

147 Periodic detention—provision of test sample

(1) A periodic detainee reporting for a detention period must comply with any requirement under section 60 (1) (Alcohol and drug testing—power to require samples) to provide a test sample.

Note If a person fails to comply with a requirement, the person is taken to have given a positive test sample (see s 59 (2) (a)).

(2) If the periodic detainee gives a positive test sample—

(a) the detainee must immediately leave the periodic detention centre; and

(b) the detainee is taken to have failed to report for the detention period.

Note 1 For the consequences of a failure to report, see s 157.

Note 2 A positive test sample is also a breach of the detainee's periodic detention obligations (see s 139).

(3) This section is additional to section 61 (Alcohol and drug testing—consequences of positive test sample).

148 Periodic detention—participation in activities or work

(1) The chief executive may direct a periodic detainee to do any of the following during a detention period:

(a) to participate in an activity that the chief executive considers is desirable for the detainee's welfare or training at—

(i) a periodic detention centre; or

(ii) a place (an ***approved place***) outside a periodic detention centre;

(b) to carry out work at a periodic detention centre that the chief executive considers is suitable for the detainee's capacity;

(c) to carry out community service work at a place (also an ***approved place***) outside a periodic detention centre that the chief executive considers is suitable for the detainee's capacity.

Note For other provisions about community service work, see pt 15.1. In particular, ***community service work*** means work of a kind prescribed under the regulations (see s 386).

(2) However, a periodic detainee is not required to carry out work (including community service work) that the detainee is not capable of doing.

(3) A direction under subsection (1) (a) (ii) or (c) takes effect when written notice of it is given to the periodic detainee or, if the notice provides for a later time of effect, at that time.

(4) For subsection (1), the regulations and corrections rules may prescribe the kinds of work (including community service work) that a periodic detainee may be directed to carry out and the circumstances in which a direction may be given.

(5) In this section:

activity includes education, counselling, personal development or treatment activities or programs.

149 Periodic detention—directions about activities or work at approved places

(1) A direction under section 148 (1) (a) (ii) or (c) must state the following:

(a) the activity or community service work to which the direction applies;

(b) the approved place to which the detainee is to report;

(c) the person (if any) to whom the detainee is to report;

(d) the person mentioned in subsection (3) (a).

(2) The direction takes effect when written notice of it is given to the periodic detainee or, if the notice provides for a later time of effect, at that time.

(3) If the activity or community service work to which the direction applies is not available at the approved place, or it is impracticable for the periodic detainee to participate in the activity or to carry out the work, the detainee must—

(a) report to another place as directed to by the person identified in the direction for the purpose; and

(b) comply with the instructions of the person.

(4) The periodic detainee must comply with any reasonable directions given to the detainee by a person in charge of the approved place, or other place mentioned in subsection (3) (a), in relation to the activity or community service work.

(5) Any part of a detention period during which the periodic detainee is absent from a periodic detention centre in accordance with the direction under section 148 (1) (a) (ii) or (c), or a direction under subsection (3) (a), is taken to have been served by the detainee.

150 Periodic detention—reports about activities or work

(1) This section applies if the Territory makes an agreement with an entity for a periodic detainee to participate in—

(a) an activity provided by the entity; or

(b) community service work undertaken by the entity.

(2) The chief executive must ensure that the agreement contains a requirement that the entity must, if asked by the chief executive, give the chief executive a written report about the periodic detainee's participation in the activity or community service work.

(3) In this section:

activity includes education, counselling, personal development or treatment activities or programs.

151 Periodic detention—changes of days and times of attendance

(1) The chief executive may, by written order, change the following in relation to a periodic detainee:

(a) the day of the week the detainee's detention periods are to start; or

(b) the times when the detainee's detention periods are to start and end.

(2) The order may be made on the periodic detainee's application or the chief executive's initiative.

(3) However—

(a) an order under subsection (1) (a) must not change the number of detention periods to be served by the periodic detainee for any particular periodic detention order; and

(b) an order under subsection (1) (b) must not change the length of the detention period.

(4) An order under subsection (1) must state—

(a) the change made by the order; and

(b) the detention periods to which it applies.

(5) The order takes effect when written notice of it is given to the periodic detainee or, if the notice provides for a later time of effect, at that time.

152 Periodic detention—detainee unfit for detention

(1) This section applies if the chief executive considers, on reasonable grounds, that a periodic detainee's behaviour during a detention period is a threat to the security or good order and discipline of any of the following:

(a) a periodic detention centre;

(b) an approved place;

(c) the other place mentioned in section 149 (3) (a) (Periodic detention—directions about activities or work at approved places).

(2) The chief executive may, by written order direct—

(a) that the detainee be confined to the detainee's sleeping quarters for part or all of the remainder of the detention period; or

(b) the detainee to leave the periodic detention centre, approved place or other place mentioned in section 149 (3) (a); or

(c) that the detainee be transferred to another correctional centre for the remainder of the detention period.

(3) If the periodic detainee is given a direction under subsection (2) (b)—

(a) the detainee must immediately leave the periodic detention centre, approved place or other place; and

(b) the detainee is taken to have failed to report for the detention period.

Note For the consequences of a failure to report, see s 157.

153 Periodic detention—leave of absence for failure to report

(1) This section applies if a periodic detainee fails to report for a detention period.

(2) On application under section 154, the chief executive may give the periodic detainee leave of absence for part or all of 1 or more detention periods—

(a) for health reasons; or

(b) for compassionate reasons; or

(c) because the detainee is in custody, other than in relation to the detainee's periodic detention obligations or the payment of a fine or other amount (including restitution) under a court order,

and is taken to have failed to report under section 138 (2) (Periodic detention—effect of custody during detention period); or

Note A detainee is taken to have served a detention period if, for all of the detention period, the detainee is in custody in relation to the detainee's periodic detention obligations or the payment of a fine or other amount (including restitution) under a court order (see s 138 (1) (b)).

(d) for any other reason the chief executive considers appropriate, including a purpose mentioned in section 81 (Full-time detention—purposes of local leave permits).

Note For mandatory cancellation of a periodic detention order for failure to report for periodic detention, see s 167.

(3) Leave of absence may be given by the chief executive before or after the start of the detention period to which it applies.

(4) Leave of absence is subject to the following conditions:

(a) the standard conditions for leave of absence prescribed under the regulations;

(b) any other condition included in the leave of absence by the chief executive, not inconsistent with the standard conditions, that the chief executive considers is necessary and reasonable (including a non-association or place restriction condition).

Note For non-association and place restriction conditions, see ch 9.

154 Periodic detention—application for leave for failure to report

(1) A periodic detainee must apply to the chief executive for leave of absence under section 153 for part or all of a detention period before the start of the detention period.

(2) If the reasons for the application include illness or injury, the application must include a doctor's certificate that—

(a) indicates the nature or extent of the illness or injury; and

(b) includes a statement to the effect that the nature or extent of the illness or injury justifies the periodic detainee's absence for the detention period.

(3) If the reasons for the application include a reason other than illness or injury, the application must include a written statement justifying the periodic detainee's absence for the detention period.

(4) Despite subsections (1), (2) and (3), a periodic detainee is taken to have made an application in accordance with this section if—

(a) before the start of the detention period, notice of the detainee's intended absence is given by telephone to a number given to the detainee by the chief executive for the purpose of this section; and

(b) the detainee gives the chief executive an application in accordance with subsection (2) and (3) within—

(i) 7 days after the day the detention period started; or

(ii) any further period the chief executive allows, whether before or after the end of the period mentioned in subparagraph (i).

(5) For subsection (4) (b) (ii), the chief executive may allow the further period on the periodic detainee's application or the chief executive's initiative.

155 Periodic detention—leave of absence for reporting late

(1) This section applies if a periodic detainee reports late for a detention period.

(2) On application under section 156, the chief executive may give the periodic detainee leave of absence for part or all of the detention period if the chief executive is satisfied that the detainee has a reasonable excuse for reporting late.

(3) If leave of absence for a period of time is given under this section, the chief executive may, by written order, direct the periodic detainee to serve an equivalent period of time—

(a) immediately before or after a detention period directed by the chief executive; or

(b) as part of an additional detention period to be served by the detainee.

(c) If the chief executive gives the periodic detainee a direction under subsection (3) (b), the term of the detainee's periodic detention order, and of any sentence of which it forms part, are automatically extended by 1 week to take account of the direction.

156 Periodic detention—application for leave for reporting late

(1) The periodic detainee must apply to the chief executive for leave of absence under section 155 for reporting late for a detention period within—

(a) 7 days after the day the detention period started; or

(b) any further period the chief executive allows, whether before or after the end of the period mentioned in paragraph (a).

(2) For subsection (1) (b), the chief executive may allow the further period on the periodic detainee's application or the chief executive's initiative.

(3) If the reasons for the application include illness or injury, the application must include a doctor's certificate that—

(a) indicates the nature or extent of the illness or injury; and

(b) includes a statement to the effect that the nature or extent of the illness or injury justifies the periodic detainee reporting late for the detention period.

(4) If the reasons for the application include a reason other than illness or injury, the application must include a written statement justifying the periodic detainee reporting late for the detention period.

(5) If the periodic detainee does not give the chief executive an application for leave of absence for reporting late for the detention period by the end of the period required under subsection (1), the chief executive is taken to have decided not to give the detainee leave of absence.

157 Periodic detention—extension of sentence for failure to report or reporting late

(1) The term of a periodic detainee's periodic detention order, and of any sentence of which it forms part, are automatically extended by 1 week for each detention period for which—

(a) the detainee fails to report (whether or not the chief executive or sentence administration board has given the detainee leave of absence for the detention period); or

(b) the detainee reports late and the detainee is not given leave of absence for reporting late by the chief executive or sentence administration board for the relevant part or all of the detention period.

Note 1 For when a periodic detainee is taken to have failed to report, see s 40 (4), s 138 (2), s 146 (2), s 147 (2) and s 152 (3).

Note 2 A detention period does not include any period that includes part or all of Christmas Day, Good Friday or Easter Sunday (see s 137 (1), def ***detention period***).

(2) The term of a periodic detainee's periodic detention order, and of any sentence of which it forms part, are also automatically extended by an additional 1 week (up to a maximum of 4 weeks) for each week for which the term of the sentence is extended by subsection (1).

Example for s (1) and s (2)

During the term of a periodic detention order Jane reported late for 2 detention periods for which she was not given leave of absence and failed to report for 3 detention periods.

The term of Jane's periodic detention order, and of any sentence of which it forms part, are automatically extended by 9 weeks as follows:

- 3 weeks under s (1) (a)
- 2 weeks under s (1) (b)
- 4 weeks under s (2).

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

(3) However, the chief executive may, by written order, exempt the periodic detainee from the operation of subsection (1) or (2) in relation to 1 or more detention periods.

(4) This section does not apply in relation to leave of absence directed under section 160 (Periodic detention—direction to take leave of absence on health and safety grounds).

Note The term of the periodic detention order may also be extended under s 155 (4).

158 Periodic detention—review by board of leave decisions

(1) A periodic detainee may apply to the sentence administration board for review of a decision of the chief executive to refuse to give the detainee leave of absence for part or all of a detention period under—

(a) section 153 (Periodic detention—leave of absence for failure to report); or

(b) section 155 (Periodic detention—leave of absence for reporting late).

(2) The application must be made within—

(a) 21 days after the day the periodic detainee is given notice of the chief executive's decision; or

(b) any further period the sentence administration board allows, whether before or after the end of the period mentioned in paragraph (a).

(3) For subsection (2) (b), the sentence administration board may allow the further period on the periodic detainee's application.

(4) The sentence administration board must—

(a) if satisfied that the application is frivolous or vexatious—refuse to conduct an inquiry into the application; or

(b) in any other case—conduct an inquiry into the application.

Note 1 The inquiry may be conducted whether or not the detainee's periodic detention order has ended (see s 286).

Note 2 For inquiries by the board, see pt 10.3.

(5) If the sentence administration board conducts an inquiry into the application, the board may—

(a) confirm the chief executive's decision; or

(b) amend the chief executive's decision; or

(c) set aside the chief executive's decision and make a decision in substitution for the chief executive's decision.

(6) As soon as practicable after the sentence administration board makes a decision under subsection (5), the board must give the periodic detainee and the chief executive—

(a) written notice of the decision; and

(b) a copy of any order made by the board in relation to the decision; and

(c) a written statement of the board's reasons for the decision.

Example of statement of reasons

a copy of the transcript of the reasons given during a hearing

Note 1 For what must be included in a statement of reasons, see Legislation Act, s 179.

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

159 Periodic detention—stay of decision refusing leave

(1) The making of an application to the sentence administration board under section 158 in relation to a detention period does not stay the operation of section 157 (Periodic detention—extension of sentence for failure to report or reporting late) in relation to the detention period.

(2) However, the sentence administration board may make an order staying the operation of section 157 on the periodic detainee's application or the board's initiative.

(3) An application must be made within—

(a) 21 days after the day the periodic detainee is given notice of the chief executive's decision; or

(b) any further period the sentence administration board allows, whether before or after the end of the period mentioned in paragraph (a).

(4) For subsection (3) (b), the sentence administration board may allow the further period on the periodic detainee's application.

(5) As soon as practicable after the sentence administration board makes a decision under this section, the board must give the periodic detainee and the chief executive—

(a) written notice of the decision; and

(b) a copy of any order made by the board in relation to the decision; and

(c) a written statement of the board's reasons for the decision.

160 Periodic detention—direction to take leave of absence on health and safety grounds

(1) The chief executive may direct a periodic detainee to take leave of absence for part or all of a detention period if the chief executive considers that any of the following would be a threat to the health or personal safety of the detainee or anyone else:

(a) the presence of the detainee in a periodic detention centre;

(b) the participation of the detainee in an activity under section 148 (1) (a) (Periodic detention—participation in activities or work);

(c) the carrying out by the detainee of any work under section 148 (1) (b) or (c).

(2) Without limiting subsection (1), a direction may be given under this section if the periodic detainee or another periodic detainee is suffering from a contagious disease.

(3) If leave of absence is given for a period of time under this section, the chief executive must, by written order, direct the periodic detainee to serve an equivalent period of time—

(a) immediately before or after a detention period stated by the chief executive; or

(b) as part of an additional detention period to be served by the detainee.

(4) If the chief executive gives the periodic detainee 1 or more directions under subsection (3) (b), the term of the detainee's periodic detention order, and of any sentence of which it forms part, are automatically extended by 1 week to take account of the direction.

Note A detention period does not include any period that includes part or all of Christmas Day, Good Friday or Easter Sunday (see s 137 (1), def ***detention period***).

161 Periodic detention—reduction of detention periods on health or compassionate grounds

(1) The section applies if a periodic detention order has been made by a court for a periodic detainee.

(2) The periodic detainee or the chief executive may apply under subsection (3) for an order (a ***detention period reduction order***) that 1 or more detention periods yet to be served by the detainee be taken to have been served.

(3) The application must be made to—

(a) if the application relates to no more than the relevant number of detention periods—the sentence administration board; or

(b) in any other case—the court that made the periodic detention order.

(4) The court or sentence administration board may make a detention period reduction order for health reasons or on compassionate grounds (including a purpose mentioned in section 81 (Full-time detention—purposes of local leave permits)) if satisfied that the detainee cannot serve the detention periods within a reasonable time.

(5) In deciding what is a reasonable time, the court or sentence administration board must have regard to—

(a) the number of detention periods yet to be served by the periodic detainee; and

(b) the likely duration of the detainee's inability to serve any of the detention periods.

(6) However, the sentence administration board must not make a detention period reduction order for more than the relevant number of detention periods.

(7) If a detention period reduction order is made under this section, the term of the periodic detainee's periodic detention order, and of any sentence of which it forms part, are automatically reduced by 1 week for each of the detention periods to which the detention period reduction order applies.

Note A detention period does not include any period that includes part or all of Christmas Day, Good Friday or Easter Sunday (see s 137 (1), def ***detention period***).

(8) In this section:

relevant number of detention periods means—

(a) if the term of the periodic detention order is 1 year or less—2 detention periods; or

(b) in any other case—4 detention periods.

Part 6.4 Periodic detention—supervision of offenders

162 Periodic detention—duty of corrections officers

(1) This section applies if a corrections officer believes, on reasonable grounds, that an offender has breached the offender's periodic detention obligations.

Note See s 139 for the periodic detention obligations.

(2) If the breach relates to a core condition of the offender's periodic detention order, the corrections officer must tell the sentence administration board about the breach.

(3) If the breach relates to anything else, the corrections officer may tell the sentence administration board about the breach.

163 Periodic detention—arrest of offender without warrant

(1) If a police officer believes, on reasonable grounds, that an offender has breached the offender's periodic detention obligations, the police officer may arrest the offender without a warrant.

(2) If a police officer arrests an offender under this section, the police officer must, as soon as practicable, bring the offender before—

(a) the sentence administration board; or

(b) if the board is not sitting—a magistrate.

Note The offender may be remanded in custody or granted bail (see eg *Bail Act 1992*, s 8A (Entitlement to bail—breaches of good behaviour bonds etc)).

164 Periodic detention—arrest of offender with warrant

(1) If a judge or magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that an offender has breached, or will breach, the offender's periodic detention obligations, the judge or magistrate may issue a warrant for the offender's arrest.

Note An arrest warrant may also be issued if the offender fails to appear before the board, or a judge or magistrate considers that the offender should be immediately arrested for any another reason (see s 271).

(2) The warrant must—

(a) be in writing signed by the judge or magistrate; and

(b) be directed to all police officers or a named police officer; and

(c) state briefly the matter on which the information is based; and

(d) order the arrest of the offender and the bringing of the offender before the sentence administration board.

(3) If a police officer arrests an offender under this section, the police officer must, as soon as practicable, bring the offender before—

(a) the sentence administration board; or

(b) if the board is not sitting—a magistrate.

Note The offender may be remanded in custody or granted bail (see eg *Bail Act 1992*, s 8A (Entitlement to bail—breaches of good behaviour bonds etc)).

165 Periodic detention—when board may hold inquiry

(1) The sentence administration board may conduct an inquiry in relation to an offender's periodic detention order if—

(a) under part 3.3 (Correctional centre discipline), the chief executive refers a charge against the offender for a disciplinary breach to the board; or

(b) the chief executive applies to the board under section 167 (Periodic detention—mandatory cancellation by board) for the cancellation of the periodic detention order; or

(c) the board has reason to suspect that the offender has breached, or will breach, the offender's periodic detention obligations; or

(d) a court refers a breach of the offender's periodic detention obligations to the board under section 173 (2) (d) (Periodic detention—other action available to court for ACT offence); or

(e) the board has reason to suspect that, because of a change in the offender's circumstances, it is no longer appropriate that the offender's sentence, or the part of the offender's sentence, to be served by periodic detention, be served by periodic detention; or

(f) the offender applies to the board for the cancellation of the periodic detention order.

(2) However, the sentence administration board may not conduct an inquiry in relation to an offender's conviction of an offence against a Territory law if a court has declined under section 172 (3) (b) (Periodic detention—cancellation for ACT offence) to cancel the order.

166 Periodic detention—board to give notice of grounds for inquiry

(1) This section applies if the sentence administration board proposes to conduct an inquiry under section 165 (1) in relation to an offender's periodic detention order.

(2) The sentence administration board must give the offender reasonable notice of—

(a) the grounds on which the board is proposing to conduct the inquiry; and

(b) the time and place fixed for the inquiry.

(3) Notice of the time and place fixed for the inquiry must also be given to the chief executive and the director of public prosecutions.

(4) The chief executive and the director of public prosecutions may appear at the inquiry.

167 Periodic detention—mandatory cancellation by board

(1) This section applies if—

(a) an offender who is subject to a periodic detention order—

(i) has failed to report for 2 (or more) detention periods (whether or not the detention periods were consecutive or under the same periodic detention order); and

(ii) was not given leave of absence for them (or at least 2 of them) by the chief executive; or

(b) an offender who is subject to a periodic detention order is—

(i) convicted of an offence against a law of a place outside the Territory; and

(ii) sentenced to a term of imprisonment to be served by full-time detention in a correctional centre (however described) for longer than 1 month.

Note 1 ***Month*** means calendar month (see Legislation Act, dict, pt 1, def ***month*** and def ***calendar month***).

Note 2 For an offence against a Territory law, see s 172.

(2) The chief executive must apply to the sentence administration board for an order cancelling the offender's periodic detention order.

(3) The sentence administration board must make an order cancelling the offender's periodic detention order if—

(a) the board has held an inquiry into the order; and

(b) the offender appeared at a hearing held by the board for the inquiry; and

Note A cancellation order may be made under s 168 if the offender fails to appear before the board.

(c) the board is satisfied that either subsection (1) (a) or (b) applies in relation to the offender.

(4) However, even if the sentence administration board is satisfied that subsection (1) (a) applies in relation to the offender, the board may decline to make an order cancelling the periodic detention order if satisfied that—

(a) the offender applied for leave of absence in accordance with section 154 (Periodic detention—application for leave for failure to report) for 1 or more of the detention periods; and

(b) leave of absence under section 153 should have been given to the offender for 1 or more of the detention periods (the ***relevant detention periods***); and

(c) had the leave of absence been given for the relevant detention periods, the offender would have failed to report for fewer than 2 detention periods.

(5) If the sentence administration board declines under subsection (4) to make an order cancelling the periodic detention order, the board must direct the chief executive to give the offender leave of absence for the relevant detention periods.

(6) This section does not limit the sentence administration board's power to cancel the periodic detention order under section 168 (3).

168 Periodic detention—discretionary cancellation by board

(1) The sentence administration board may make an order cancelling an offender's periodic detention order if—

(a) the board has held an inquiry in relation to the order; and

(b) the offender appeared at a hearing held by the board for the inquiry; and

Note The order may be cancelled if the offender fails to appear before the board (see s (3)).

(c) the board is satisfied that a circumstance mentioned in subsection (2) applies in relation to the offender.

(2) For subsection (1) (c), the circumstances are as follows:

(a) for an inquiry into a disciplinary breach by the offender—that section 43 (2) or (5) (Discipline—disciplinary proceedings by board for periodic detainees) applies to the offender;

(b) that the offender has breached the offender's periodic detention obligations;

(c) that, because of a change in the offender's circumstances, it is no longer appropriate that the offender be subject to periodic detention;

(d) for an application by the offender for the cancellation of the periodic detention order—that the order should be cancelled.

(3) The sentence administration board may also make an order cancelling the periodic detention order if—

(a) the offender fails to appear before the board when required do so; or

(b) the offender fails to appear before the board in breach of an agreement under section 271 (3) (Board inquiries—offender to appear before board).

Note Also, an arrest warrant may be issued for an offender who fails to appear before the board (see s 271 (4)).

169 Periodic detention—when cancellation order by board takes effect

(1) An order under section 167 or section 168 cancelling a periodic detention order for an offender takes effect on the date stated in the order.

(2) The date stated in the order must be—

(a) the date the order is made; or

(b) if the sentence administration board is satisfied that the offender breached the offender's periodic detention obligations—the date when it appears to the board that the offender breached the obligations; or

(c) if the board is satisfied that the offender breached the obligations on 2 or more separate days—the date when it appears to the board that the offender first breached the obligations.

170 Periodic detention—effect of cancellation of order by board

(1) This section applies if a periodic detention order for an offender is cancelled by the sentence administration board under section 167 or section 168.

(2) The offender is automatically sentenced to a term of imprisonment to be served by full-time detention for a term ending on the day the term of the cancelled periodic detention order would otherwise have ended.

Note For when the periodic detention order ends, see s 144.

171 Periodic detention—other action available to board

(1) This section applies if—

(a) the sentence administration board has conducted an inquiry under section 165 (1) (Periodic detention—when board may hold inquiry) in relation to the offender's periodic detention order; and

(b) the board does not cancel the order under section 167 or section 168.

(2) The sentence administration board may do 1 or more of the following:

(a) give the offender a formal warning;

(b) subject to section 142 (Periodic detention—restrictions on additional conditions), impose additional conditions on, or amend the additional conditions of, the periodic detention order;

(c) give directions to the chief executive about the supervision of the offender;

(d) if section 43 (2) or (5) (Discipline—disciplinary proceedings by board for periodic detainees) applies to the offender—order that the offender serve 1 or 2 detention periods in a correctional centre other than a periodic detention centre; or

(e) take no action.

(3) To give effect to any additional condition or amended condition mentioned in subsection (2) (b), the sentence administration board may, by warrant, remand the offender in custody until a stated date or the happening of a stated event.

(4) The sentence administration board must not remand the offender in custody under this section—

(a) more than once for the same breach; or

(b) for longer than 30 days for a breach.

(5) The day the sentence administration board remands the offender, and the stated date or the day the stated event happens, are both counted for subsection (4) (b).

172 Periodic detention—cancellation for ACT offence

(1) This section applies if—

(a) an offender who is subject to a periodic detention order is convicted by a court of an offence against a Territory law; and

(b) the offender is sentenced by the court to a term of imprisonment to be served by full-time detention (the ***later sentence***) for the offence.

Note For conviction for an offence against a law of a place outside the ACT, see s 167 (1) (b).

(2) If the later sentence is for a term longer than 1 month, each periodic detention order to which the offender is subject is automatically cancelled on the day the later sentence starts.

Note ***Month*** means calendar month (see Legislation Act, dict, pt 1, def ***month*** and def ***calendar month***).

(3) If the later sentence is for a term of 1 month or less, the court must—

(a) cancel each periodic detention order to which the offender is subject; or

(b) decline to cancel each periodic detention order to which the offender is subject.

(4) If a periodic detention order is cancelled under subsection (2) or (3) (a), the court must sentence the offender to full-time detention for a term ending on—

(a) the day the cancelled periodic detention order would have ended; or

(b) if there are 2 are more cancelled periodic detention orders and the terms of the orders end on different days—the latest of those days.

Note For when a periodic detention order ends, see s 144.

173 Periodic detention—other action available to court for ACT offence

(1) This section applies if, under section 172 (3) (b), a court declines to cancel a periodic detention order.

(2) The court may do 1 or more of the following:

(a) give the offender a formal warning;

(b) subject to section 142 (Periodic detention—restrictions on additional conditions), impose additional conditions on, or amend the additional conditions of, the periodic detention order;

(c) give directions to the chief executive about the supervision of the offender;

(d) refer the breach of the offender's periodic detention obligations to the sentence administration board;

(e) take no action.

174 Periodic detention—consequential cancellation of other orders

If a periodic detention order (the ***principal order***) is cancelled under this part, any other periodic detention order to which the offender is subject is automatically cancelled on the date of effect of the cancellation of the principal order.

Part 6.5 Periodic detention—other provisions

175 Periodic detention—custody of detainees

A periodic detainee is taken to be in the custody of the chief executive while the detainee is serving a detention period, whether inside or outside a periodic detention centre.

Examples

1 while the periodic detainee is travelling between a periodic detention centre and an approved place

2 while the periodic detainee is travelling between approved places

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

176 Periodic detention—regulations and corrections rules

The regulations and corrections rules may make provision in relation to periodic detention, including, for example, in relation to the following matters:

(a) the administration (including the management, control and supervision) of periodic detainees and periodic detention orders;

(b) the directions that the chief executive may give to periodic detainees, including directions about—

(i) the performance of community service work by a periodic detainee; and

(ii) a periodic detainee attending education, counselling, personal development or treatment activities or programs as directed by the chief executive;

(c) the making of applications by periodic detainees to the chief executive or the sentence administration board in relation to—

(i) leave of absence or the reduction of detention periods on health or compassionate grounds; and

(ii) the facilities to be made available to detainees for those purposes.

Note 1 See also s 72 (Detention generally—regulations and corrections rules).

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

Chapter 7 Good behaviour

Part 7.1 Good behaviour—important concepts

177 Good behaviour—definitions

(1) In this chapter:

offender, in relation to a good behaviour bond, means the person who has entered into the bond.

(2) In this Act:

additional condition, of a good behaviour bond or good behaviour order, means—

(a) a condition—

(i) included in the bond or order by the court under the *Crimes (Sentencing) Act 2004*, section 13 (4); or

(ii) imposed on the order under this chapter; and

(b) if the condition is amended under this chapter—the condition as amended.

Note For the imposition or amendment of additional conditions, see 181, s 182 and s 183.

community service condition, included in a good behaviour bond, see the *Crimes (Sentencing) Act 2004*, section 14 (2).

core condition, of a good behaviour bond for an offender, means a core condition under section 180 (1).

good behaviour bond means a good behaviour bond entered into by an offender under a good behaviour order.

good behaviour obligations, of an offender, means the offender's obligations under section 179.

good behaviour order means an order made by a court under the *Crimes (Sentencing) Act 2004*, section 13 (2).

interested person, in relation to a good behaviour bond entered into by an offender, means—

(a) the offender; or

(b) a surety under the bond; or

(c) the chief executive; or

(d) the director of public prosecutions.

relevant court means—

(a) in relation to a good behaviour bond—the court that made the good behaviour order that required a person to enter into the bond; or

(b) in relation to an offender who has entered into a good behaviour bond—the court that made the good behaviour order under which the offender entered into the bond.

Part 7.2 Good behaviour—failure to enter bond

178 Good behaviour—consequences of failure to enter bond

(1) This section applies if a person fails to enter into a good behaviour bond in accordance with a good behaviour order.

(2) The court that made the good behaviour order may sentence the person, or convict and sentence the person, as if the order had not been made.

Part 7.3 Good behaviour—operation of bonds

179 Good behaviour—obligations

The obligations of an offender while serving a sentence, or part of a sentence, under a good behaviour bond are—

(a) to comply with the bond (including the core conditions and any additional conditions of the bond); and

(b) to comply with the requirements of this Act that apply to the offender.

Note 1 Action my be taken in relation to a good behaviour bond whether or not the bond has ended (see s 208).

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations and the corrections rules (see Legislation Act, s 104).

180 Good behaviour—core conditions of bonds

(1) A good behaviour bond for an offender is subject to the following core conditions:

(a) the offender must be of good behaviour;

Example of good behaviour

not committing an offence against a law in force in the ACT or elsewhere

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

(b) if the offender is charged with an offence against a law in force in the ACT or elsewhere—the offender must tell the chief executive about the charge as soon as possible (but within 2 days) after the offender becomes aware of the charge;

(c) if any of the offender's contact details change—the offender must tell the chief executive about the change as soon as possible after the offender knows the changed contact details (but within 2 days after the change is made);

(d) if the bond includes a community service condition—the offender must comply with any directions given to the offender by the chief executive for performing community service work under the condition;

(e) if the bond includes a supervision condition—the offender must not, while subject to the condition, leave the ACT for more than the defined period without the approval of the chief executive;

(f) the offender must comply with any agreement given by the offender under section 201 (Good behaviour—voluntary agreement to attend court);

(g) the conditions (if any) prescribed under the regulations for this section that apply to the offender.

(2) In this section:

contact details, for an offender, means the offender's—

(a) home address and telephone number; and

(b) work address and telephone number; and

(c) mobile phone number.

defined period means 24 hours or, if another period is prescribed under the regulations, the prescribed period.

supervision condition means an additional condition—

(a) that requires the chief executive to supervise the offender; or

(b) a condition prescribed under the regulations.

181 Good behaviour—additional conditions

(1) A good behaviour bond is subject to any additional conditions that apply to the bond, including any conditions included in the good behaviour order that apply to the good behaviour bond entered into under the order.

(2) Subject to section 183 (Good behaviour—restrictions on amendment of bonds), a court may—

(a) impose additional conditions on a good behaviour bond; or

(b) amend the additional conditions (if any) of the bond, including any conditions included in the bond under the *Crimes (Sentencing) Act 2004*, section 13 (4).

Examples of conditions

See the *Crimes (Sentencing) Act 2004*, s 115 (Good behaviour—bond conditions) examples.

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

(3) An additional condition may be imposed or amended by a relevant court on the court's initiative or under section 182.

182 Good behaviour—amendment of bond

(1) An interested person for a good behaviour bond may apply to the relevant court for an amendment of the bond to—

(a) extend or reduce the term of the bond; or

(b) an additional condition of the bond.

Examples of when term of bond might be extended

1 the extension of the term of the bond to allow the offender to comply with a condition of the bond to perform community service work for a particular number of hours

2 the extension of the term of the bond to allow the offender to complete a rehabilitation program under the chief executive's supervision

Examples of the amendment of additional condition

1 an amendment that reduces the amount or instalments of a fine or donation to be paid under a fine or donation condition of the bond

2 if a bond condition requires the chief executive to supervise the offender for a particular period—an amendment ending the supervision before the end of the period

Note 1 ***Amend*** includes omit or substitute (see Legislation Act, dict, pt 1).

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

(2) An interested person for a good behaviour bond may appear at the hearing of an application under subsection (1).

(3) Subject to section 183, the relevant court may—

(a) by order, amend the good behaviour bond in a way mentioned in subsection (1); or

(b) refuse to amend the bond.

(4) The relevant court must give each interested person for the good behaviour bond (whether or not the person appeared at the hearing)—

(a) written notice of the court's decision; and

(b) a copy of any order made, or direction given, by the court.

(5) If the relevant court amends the good behaviour bond, the amendment takes effect when the order for the amendment is given to the offender or, if the order provides for a later time of effect, at that time.

183 Good behaviour—restrictions on amendment of bonds

(1) A court may not amend a good behaviour bond—

(a) if the bond was entered into under the *Crimes (Sentencing) Act 2004*, section 16 (2) (b) (Non-conviction orders)—to extend the bond beyond a period of 3 years after the bond was entered into; or

(b) to increase the number of hours of community service work to be performed under the bond.

(2) A court may not amend a core condition of a good behaviour bond.

Note ***Amend*** includes omit or substitute (see Legislation Act, dict, pt 1).

(3) A court may not impose or amend an additional condition of a good behaviour bond if the condition would be inconsistent with a core condition of the bond.

(4) The Magistrates Court may not impose or amend an additional condition of a good behaviour bond if the condition would be inconsistent with a condition applied to the bond by the Supreme Court.

(5) However, subsection (4) does not apply to the amendment of an additional condition if—

(a) the amendment changes a compliance requirement of the condition; and

(b) the amendment is incidental to a proceeding before the Magistrates Court.

(6) In this section:

compliance requirement, of an additional condition of a good behaviour bond, means—

(a) a period for compliance under the condition; or

(b) any of the following in relation to an activity the offender is required to attend or do under the condition:

(i) a time, day or place for the activity;

(ii) a provider of the activity; or

(c) anything else provided for under the condition that is prescribed under the regulations.

184 Good behaviour—effect of amendments on sureties

(1) This section applies if a court amends a good behaviour bond under section 182 (Good behaviour—amendment of bond).

(2) If the amendment extends the term of the good behaviour bond, a surety under the bond is not bound after the end of the term of the bond as previously agreed to by the surety (including at the time of a previous amendment of the bond) unless the surety agrees to be bound by the term of the bond as extended.

(3) If the amendment amends an additional condition of the good behaviour bond, a surety under the bond is not bound by the condition as amended unless the surety agrees to be bound by the amended condition.

(4) If the surety does not agree to be bound by the amended condition, the court must direct the extent (if any) to which the surety is to continue to be bound by the condition as in force before the amendment.

(5) If the court gives a direction under subsection (4), the condition binds the surety only to the extent stated in the direction.

185 Good behaviour—discharge of bond

(1) An interested person for a good behaviour bond may apply to the relevant court for the discharge of the bond.

(2) An interested person for the good behaviour bond may appear at the hearing of the application.

(3) The relevant court may, by order, discharge the good behaviour bond—

(a) if satisfied that the conduct of the offender makes it unnecessary that the offender should continue to be bound by the bond; and

(b) whether or not the term of the bond has ended.

(4) The relevant court must give each interested person for the good behaviour bond (whether or not the person appeared at the hearing)—

(a) written notice of the court's decision; and

(b) a copy of any order made by the court.

(5) If the relevant court discharges the good behaviour bond, the discharge takes effect at the time of effect stated in the order.

186 Good behaviour—when bonds and orders end

(1) A good behaviour bond ends—

(a) at the end of the term of the bond; or

(b) if the bond is earlier discharged under section 185 or cancelled under part 7.6 (Good behaviour—supervision of offenders)—when the bond is discharged or cancelled.

(2) The good behaviour order under which a good behaviour bond was entered into is taken to end when the bond ends.

Part 7.4 Good behaviour—community service work

187 Community service work—directions by chief executive

(1) This section applies if a good behaviour bond entered into by an offender includes a community service condition.

(2) The chief executive may give the offender directions for the purpose of enforcing the offender's obligations under the community service condition.

(3) The chief executive may also, in writing, direct the offender to attend a rehabilitation program for a stated number of hours.

(4) The number of hours stated in a direction under subsection (3) must be no more than 1/2 the number of hours of community service work the offender is required to perform under the bond.

(5) A direction to carry out community service work must, as far as practicable, avoid any interference with the times (if any) when the offender normally works or attends a school or other educational institution.

Note A direction to attend a rehabilitation program must also comply with this requirement (see s 195).

188 Community service work—directions to perform work

(1) A direction by the chief executive to an offender to carry out community service work under a good behaviour bond must state the following:

(a) the community service work to which the direction applies;

(b) the place (the ***approved place***) to which the offender is to report;

(c) the time when the offender is to report;

(d) the person (if any) to whom the offender is to report;

(e) the person mentioned in subsection (3) (a).

(2) However, the offender is not required to carry out work that the offender is not capable of doing.

(3) If the community service work to which the direction applies is not available at the approved place, or it is impracticable for the offender to carry out the work, the offender must—

(a) report to another place as directed to by the person identified in the direction for the purpose; and

(b) comply with the instructions of the person.

(4) The offender must comply with any reasonable directions given to the offender by a person in charge of the approved place, or the other place mentioned in subsection (3) (a), in relation to the community service work.

(5) For subsection (1), the regulations and corrections rules may prescribe the kinds of work that an offender may be directed to carry out and the circumstances in which a direction may be given.

189 Community service work—duty to report

If a good behaviour bond entered into by an offender includes a community service condition, the offender must report for community service work at the places and times directed by the chief executive.

Note For other provisions about community service work, see pt 15.1. In particular, ***community service work*** means work of a kind prescribed under the regulations (see s 386).

190 Community service work—how offender is to report

(1) An offender reporting for community service work under a good behaviour bond must comply with the reporting requirements prescribed under the regulations and corrections rules.

Examples of requirements that might be prescribed

1 the kinds of clothing, personal possessions and other things that an offender may or must not possess when reporting for community service work

2 cleanliness

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

(2) If an offender fails to comply with a prescribed reporting requirement when reporting for a period of community service work, and is directed by the chief executive to leave the reporting place—

(a) the offender must immediately leave the reporting place; and

(b) the offender is taken to have failed to report for the community service work.

Note A failure to comply is a breach of the offender's good behaviour obligations (see s 179).

191 Community service work—provision of test sample

(1) An offender reporting for community service work under a good behaviour bond must comply with any requirement made by the chief executive for the offender to provide a test sample.

Note If a person fails to comply with a requirement, the person is taken to have given a positive test sample (see s 59 (2) (a)).

(2) If an offender gives a positive test sample—

(a) the offender must immediately leave the reporting place; and

(b) the offender is taken to have failed to report for the community service work.

(3) For subsections (1) and (2), part 3.5 (Alcohol and drug testing of detainees) (other than section 62 (Alcohol and drug testing—random testing for statistical purposes)) applies in relation to the offender as if the offender were a detainee, and with any other necessary changes and any changes prescribed under the regulations.

192 Community service work—maximum daily hours

(1) This section applies to an offender if—

(a) the offender is required to carry out community service work under a good behaviour bond; or

(b) the chief executive has given the offender a direction under section 187 (3) to attend a rehabilitation program.

(2) The amount of time spent performing the community service work, or attending the rehabilitation program, must not exceed 8 hours on any single day.

(3) Only the time actually spent performing the community service work, or attending the rehabilitation program, may be counted towards fulfilling the requirements of the good behaviour bond.

(4) However, if the total time spent performing the community service work, or attending the rehabilitation program, on a particular day includes part of an hour, that part of the hour may be counted as a whole hour.

Examples

1 An offender, Sunny, is scheduled to perform 8 hours of community service work on a particular day. However, Sunny goes home sick after performing 2 hours and 10 minutes of community service work. He must be credited with having performed 3 hours work on that day.

2 Another offender, Fleur, is scheduled to perform 5 hours of community service work on that day. However, she works just 35 minutes because of bad weather. Fleur must be credited with having performed work for 1 hour on that day.

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

193 Community service work—disclosures about health

(1) An offender who is required to carry out community service work under a good behaviour bond must, while the bond is in force, disclose to the chief executive—

(a) any medical, physical or mental condition of which the offender is aware that substantially increases the risk to the offender of injury in performing work of any particular kind; and

(b) any significant change in that condition.

(2) The offender must make the disclosure—

(a) if the offender is aware of the condition when the offender enters into the good behaviour bond—as soon as possible after the offender enters into the bond; or

(b) in any other case—as soon as possible after the offender becomes aware of the condition or a significant change in the condition.

194 Community service work—reports about work

(1) This section applies if the Territory makes an agreement with an entity for an offender to participate in community service work undertaken by the entity.

(2) The chief executive must ensure that the agreement contains a requirement that the entity must, if asked by the chief executive, give the chief executive a written report about the offender's participation in the community service work.

Part 7.5 Good behaviour—rehabilitation programs

195 Rehabilitation programs—directions by chief executive

(1) This section applies if—

(a) a good behaviour bond for an offender includes a rehabilitation program condition under the *Crimes (Sentencing) Act 2004*; or

(b) the chief executive has given an offender a direction under section 187 (3) (Community service work—directions by chief executive) to attend a rehabilitation program.

(2) The chief executive may give the offender directions, in writing, for the purpose of enforcing the offender's obligations under the rehabilitation program condition.

(3) A direction by the chief executive to an offender to attend a rehabilitation program must state the following:

(a) the program to which the direction applies;

(b) the place to which the offender is to report;

(c) the time when the offender is to report;

(d) the person (if any) to whom the offender is to report.

(4) However, the direction must, as far as practicable, avoid any interference with the times (if any) when the offender normally works or attends a school or other educational institution.

196 Rehabilitation programs—duty to attend

An offender who is given a direction by the chief executive under section 195 (3) must attend the rehabilitation program in accordance with the direction.

197 Rehabilitation programs—reports about program

(1) This section applies if the Territory makes an agreement with an entity for an offender to participate in a rehabilitation program undertaken by the entity.

(2) The chief executive must ensure that the agreement contains a requirement that the entity must, if asked by the chief executive, give the chief executive a written report about the offender's participation in the rehabilitation program.

Part 7.6 Good behaviour—supervision of offenders

198 Good behaviour—duty of corrections officers

(1) This section applies if a corrections officer believes, on reasonable grounds, that an offender who has entered into a good behaviour bond has breached the offender's good behaviour obligations.

Note See s 179 for the good behaviour obligations.

(2) If the breach relates to a core condition of the offender's good behaviour bond, the corrections officer must tell the relevant court for the offender about the breach.

(3) If the breach relates to anything else, the corrections officer may tell the relevant court for the offender about the breach.

199 Good behaviour—arrest of offender without warrant

(1) If a police officer believes, on reasonable grounds, that an offender who has entered into a good behaviour bond has breached the offender's good behaviour obligations, the police officer may arrest the offender without a warrant.

(2) If a police officer arrests an offender under this section, the police officer must, as soon as practicable, bring the offender before—

(a) the relevant court for the offender; or

(b) if the relevant court is not sitting—a magistrate.

Note The offender may be remanded in custody or granted bail (see eg *Bail Act 1992*, s 8A (Entitlement to bail—breaches of good behaviour bonds etc)).

200 Good behaviour—arrest of offender with warrant

(1) A judge or magistrate may issue a warrant for the arrest of an offender who has entered into a good behaviour bond if the judge or magistrate is satisfied by information on oath that—

(a) there are reasonable grounds for suspecting that the offender has breached, or will breach, the offender's good behaviour obligations; or

(b) the offender failed to appear before a court in accordance with a voluntary agreement under section 201; or

(c) the offender has failed to comply with a summons under section 202.

(2) The warrant must—

(a) be in writing signed by the judge or magistrate; and

(b) be directed to all police officers or a named police officer; and

(c) state briefly the matter on which the information is based; and

(d) order the arrest of the offender and the bringing of the offender before the relevant court for the offender.

(3) If a police officer arrests an offender under this section, the police officer must, as soon as practicable, bring the offender before—

(a) the relevant court for the offender; or

(b) if the relevant court is not sitting—a magistrate.

Note The offender may be remanded in custody or granted bail (see eg *Bail Act 1992*, s 8A (Entitlement to bail—breaches of good behaviour bonds etc)).

201 Good behaviour—voluntary agreement to attend court

A police officer or corrections officer may ask an offender who has entered into a good behaviour bond to sign a voluntary agreement to appear before the relevant court for the offender.

202 Good behaviour—summons for offender to appear before court

(1) This section applies if an information is laid before a magistrate alleging that an offender who has entered into a good behaviour bond has breached the offender's good behaviour obligations.

(2) The magistrate may issue a summons directing the offender to appear before the relevant court for the offender to be dealt with under this part.

(3) The registrar of the Magistrates Court must ensure that a copy of the summons is given to each interested person for the good behaviour bond.

(4) An interested person may appear at a proceeding to which the summons relates.

203 Good behaviour—offence committed during term of bond

(1) This section applies if—

(a) a court (the ***first court***) requires an offender to enter into a good behaviour bond for an offence; and

(b) another court (the ***second court***) finds the offender guilty of another offence (the ***later offence***) that is punishable by imprisonment.

Note Commission of the later offence is a breach of a good behaviour bond (see s 180 (1) (a)).

(2) If the first court is the same as the second court, the court may take action under this part for the breach of the bond because of the commission of the later offence.

(3) If the first court is the Magistrates Court and the second court is the Supreme Court, the Supreme Court may take action under this part for the breach of the good behaviour bond for the first offence because of the commission of the later offence as if the Supreme Court had required the offender to enter the bond for the first offence.

(4) If the first court is the Supreme Court and the second court is the Magistrates Court, the Magistrates Court may, on convicting the offender, in addition to dealing with the offender for the later offence, commit the offender to the Supreme Court to be dealt with under section 204 for breach of the bond.

(5) For subsection (4), a magistrate may remand the offender in custody until the offender can be brought before the Supreme Court.

Note The offender may be remanded in custody or granted bail (see eg *Bail Act 1992*, s 8A (Entitlement to bail—breaches of good behaviour bonds etc)).

204 Good behaviour—actions by court for breach

(1) This section applies if a court before which an offender is brought for this part is satisfied that the offender has breached the offender's good behaviour obligations.

Note An offender may ***breach*** the obligations by failing to comply with them (see Legislation Act, dict, pt 1, def ***breach*** and def ***contravene***).

(2) The court may do 1 or more of the following:

(a) give the offender a formal warning;

(b) subject to section 183, impose conditions on the good behaviour bond or amend the additional conditions of the bond;

(c) give directions to the chief executive about the supervision of the offender;

(d) by order, cancel the bond;

(e) if the offender has given security under the bond—

(i) order the enforcement of payment of the security in accordance with the bond; and

(ii) order the cancellation of the bond on payment being made (if the term of the bond has not already ended);

(f) take no action.

(3) However, if the good behaviour order requiring the good behaviour bond to be entered into was made for the *Crimes (Sentencing) Act 2004*, section 17 (3) (Suspended sentences), the court must cancel the bond under subsection (2) (d) or order take action in relation to payment of security under the bond under subsection (2) (e) unless satisfied that—

(a) the breach was trivial; or

(b) there are good reasons for excusing the breach.

Note The court must also re-sentence the offender for the offence if the court cancels the bond or orders the enforcement of the security (see s 206).

(4) Action may be taken under this section in relation to a good behaviour bond, in relation to any matter arising during the term of the bond, even if the term has ended.

(5) The relevant court must give each interested person for the good behaviour bond (whether or not the person appeared at the hearing)—

(a) written notice of the court's decision; and

(b) a copy of any order made by the court.

205 Good behaviour—consequences of cancellation of bond with non-conviction order

(1) This section applies if—

(a) a good behaviour bond was entered into under the *Crimes (Sentencing) Act 2004*, section 16 (2) (b) (Non-conviction orders); and

(b) a court either—

(i) cancels the bond under section 204 (2) (d); or

(ii) takes action in relation to payment of security under the bond under section 204 (2) (e).

(2) The court must—

(a) convict the offender for the offence in relation to which the good behaviour bond was entered; and

(b) sentence the offender for the offence.

(3) The *Crimes (Sentencing) Act 2004* applies to the sentencing of the offender for the offence in the same way as it applies to the sentencing of an offender on a conviction for the offence.

206 Good behaviour—consequences of cancellation of bond with suspended sentence order

(1) This section applies if—

(a) a good behaviour order requiring an offender to enter into a good behaviour bond was made under the *Crimes (Sentencing) Act 2004*, section 17 (3) (Suspended sentences); and

(b) a court either—

(i) cancels the bond under section 204 (2) (d) (Good behaviour—actions by court for breach); or

(ii) takes action in relation to payment of security under the bond under section 204 (2) (e).

(2) The court must re-sentence the offender for the offence.

(3) The *Crimes (Sentencing) Act 2004* applies to the re-sentencing of the offender for the offence in the same way as it applies to the sentencing of an offender on a conviction for the offence.

Example

Desmond was convicted of an offence by the Magistrates Court. He was required to enter into a good behaviour bond in association with a suspended sentence order suspending a 6-month sentence of imprisonment. Desmond breached the bond. In re-sentencing Desmond, the court may impose a sentence of imprisonment to be served under a home detention order.

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

(4) To remove any doubt, an offender re-sentenced by a court under this section has the same rights of appeal as the offender would have had if sentenced by the court on being convicted of the offence.

207 Good behaviour—enforcement and recovery of security

(1) This section applies if a court orders—

(a) the cancellation of a good behaviour bond under section 204 (2) (d) (Good behaviour—actions by court for breach); or

(b) that action be taken in relation to payment of security under a good behaviour bond under section 204 (2) (e).

(2) On the filing of the order by the registrar of the court, the good behaviour bond has the same effect as a final judgment of the court in favour of the Territory against the offender and any surety bound by the bond.

Note ***Surety*** is defined in the dict.

(3) To remove any doubt, the security under the good behaviour bond may be enforced—

(a) as if it were a judgment mentioned in subsection (2); and

(b) whether or not the bond has ended; and

(c) whether the court sentences or re-sentences the offender for the offence.

Part 7.7 Good behaviour—other provisions

208 Good behaviour—exercise of functions by courts after bonds have ended

A court may exercise a function in relation to a good behaviour bond (including a function in relation to the breach of the bond) even though the bond has ended.

209 Good behaviour—regulations and corrections rules

The regulations and corrections rules may make provision in relation to good behaviour bonds and conditions to which good behaviour bonds are subject, including, for example, in relation to the following matters:

(a) the administration (including the management, control and supervision) of good behaviour bonds and offenders;

(b) the directions that the chief executive may give to offenders, including directions about the performance of community service work by an offender;

(c) the service of notices on offenders.

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

Chapter 8 Parole

Part 8.1 Parole—important concepts

210 Parole—definitions

In this Act:

additional condition, of a parole order, means—

(a) a condition included in the order under section 229; and

(b) if the condition is amended under this chapter—the condition as amended.

Note For the inclusion or amendment of additional conditions, see s 230 and s 240 (2) (b).

core condition, of a parole order for a sentenced offender, means a core condition under section 228 (1).

notice of a parole hearing—see section 215.

parole obligations, of a sentenced offender, means the offender's obligations under section 227.

parole order means a parole order made by the sentence administration board under any of the following provisions:

(a) section 215 (Parole—initial consideration by board);

(b) section 218 (Parole—decision of board after inquiry);

(c) section 220 (Parole—making of orders in exceptional circumstances).

victims register—see section 243.

Part 8.2 Release on parole

Division 8.2.1 Parole—eligibility

211 Parole—eligibility for release

(1) This section applies to a sentenced offender if the offender is a full-time detainee or a home detainee, whether or not a previous parole order in relation to the offender has been cancelled.

(2) The sentenced offender may be released on parole in accordance with this part.

(3) The sentenced offender is eligible for release on parole only if—

(a) the offender is subject to 1 or more sentences for which a nonparole period has been set; and

(b) the offender has served each nonparole period.

(4) This part does not authorise the release of the sentenced offender if the offender is required to be kept in custody in relation to an offence against a law of the Commonwealth or a State.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

212 Parole—order necessary for release on parole

A sentenced offender who is eligible for release on parole may be released on parole only in accordance with a parole order directing the release of the offender.

Division 8.2.2 Parole—decisions about release on parole

213 Parole—when board must consider release on parole

(1) The sentence administration board must consider whether or not a sentenced offender should be released on parole—

(a) a reasonable time before the offender's parole eligibility date; and

(b) if the offender is not released on parole on or after the parole eligibility date—at least once each successive year after the parole eligibility date (unless the offender is no longer eligible for release on parole); and

(c) if the offender is released on parole on or after the parole eligibility date but the parole order is cancelled and a further parole order is not subsequently made—at least once each successive year after the cancellation (unless the offender is no longer eligible for release on parole).

Note ***Parole eligibility date*** is defined in the dict.

(2) However, the sentence administration board may decline to consider the release of the sentenced offender on parole if the board has considered releasing the offender on parole within the previous 3-year period.

214 Parole—board to seek views of victims

(1) Before considering whether a sentenced offender should be released on parole, the sentence administration board must take reasonable steps to contact each victim of the offender's offence whose details are entered in the victims register.

Note 1 For the meaning of ***victim***, see s 14.

Note 2 If a victim is under 15 years old, see s (4).

(2) The sentence administration board may contact any other victim of the offence if the board is aware of the victim and is satisfied the circumstances justify contacting the victim.

(3) The sentence administration board must—

(a) give each victim contacted under this section information about the sentenced offender necessary for the victim to exercise the victim's rights under this section (for example, information about the offender's conduct to date while serving the offender's sentence and the core conditions for parole prescribed under the regulations); and

(b) ask the victim whether the victim wishes to—

(i) make a written submission to the board about the release of the offender on parole, including the likely effect on the victim, or on the victim's family, if the offender were to be released on parole; or

(ii) tell the board, in writing, about any concern of the victim or the victim's family about the need to be protected from violence or harassment by the offender; and

(c) tell the victim that any submission or concerns made in writing to the board within the time allowed under paragraph (d) will be considered in deciding whether the offender should be released on parole and, if so, whether the offender's parole order should be subject to additional conditions included in the order by the board; and

(d) allow the victim a reasonable time (not less than 7 days) within which to make a written submission or tell the board, in writing, about any concerns.

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

(4) For subsections (1) and (2), if the victim is under 15 years old, the board must, instead of contacting the victim, contact a person with parental responsibility for the victim.

Note ***Parental responsibility*** is defined in the *Children and Young People Act 1999*, s 17 (see dict).

215 Parole—initial consideration by board

Immediately after considering whether a sentenced offender should be released on parole, the sentence administration board must—

(a) make a written order (a ***parole order***) directing the release of the offender on parole on the offender's parole eligibility date or on a stated date within a reasonable time after the order is made; or

(b) if the board is of the opinion that the information currently before it does not justify the offender's release on parole—give the offender a written notice (a ***notice of a parole hearing***) telling the offender about its opinion.

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

216 Parole—notice of hearing

(1) A notice of a parole hearing given to a sentenced offender by the sentence administration board must—

(a) ask the offender to tell the secretary of the board, within 7 days after the day the offender receives the notice, if the offender wishes to make a submission to the board about being released on parole; and

(b) explain the effect of subsection (2); and

(c) be accompanied by a copy of every report and other document intended to be used by the board in deciding whether the offender should be released on parole.

Note Copies of certain documents need not be provided (see s 289).

(2) If, within 7 days after receiving the notice of a parole hearing, the sentenced offender does not tell the secretary of the sentence administration board that the offender wishes to make a submission about being released on parole, the board is taken to have refused to release the offender on parole.

217 Parole—further consideration by board

(1) This section applies if a sentenced offender who has been given a notice of a parole hearing tells the secretary of the sentence administration board, in accordance with the notice, that the offender wishes to make a submission to the board about being released on parole.

(2) If the offender makes a submission to the board, the chairperson of the sentence administration board must, as soon as practicable, arrange for the board to hold an inquiry to decide whether the sentenced offender should be released on parole.

Note For inquiries by the board, see pt 10.3.

(3) The inquiry must be conducted by way of a hearing.

(4) If the sentenced offender's parole eligibility date has not passed, the inquiry must, if practicable, be conducted before that date.

(5) If a sentenced offender does not make a submission to the sentence administration board within a reasonable time after telling the board that the offender wishes to make a submission, the board may refuse to release the offender on parole.

218 Parole—decision of board after inquiry

(1) This section applies if the sentence administration board conducts an inquiry under section 217 for a sentenced offender.

(2) After considering all the information before it about the sentenced offender, the sentence administration board must—

(a) make a written order (a ***parole order***) directing the release of the offender on parole on the offender's parole eligibility date or on a stated date within a reasonable time after the order is made; or

(b) refuse to release the offender on parole.

(3) However, the sentence administration board may defer making a decision about the release of the sentenced offender on parole.

(4) The sentence administration board may only defer making a decision under subsection (3)—

(a) once; and

(b) for no longer than 60 days.

(5) The sentence administration board must tell the sentenced offender, in writing, if it decides to defer making a decision about the release of the offender on parole.

219 Parole—general duty of board in making decisions

(1) The sentence administration board may make a parole order for a sentenced offender only if it has decided that the release of the offender is appropriate, having regard to the principle that the public interest is of primary importance.

(2) In deciding whether to make a parole order for a sentenced offender, the sentence administration board must consider the following matters:

(a) any relevant recommendations, observations and comments made by the court that sentenced the offender;

(b) the offender's antecedents;

(c) the likely effect on any victim of the offender's offence, and on the victim's family, of the offender being released on parole and, in particular, any concern, of which it is aware, expressed by or on behalf of a victim of the offence, or the victim's

family, about the need for protection from violence or harassment by the offender;

(d) any report required under the regulations in relation to the granting of parole to the offender;

(e) any other report prepared by or for the Territory in relation to the granting of parole to the offender;

Note For the power to request reports, see s 278.

(f) the offender's conduct to date while serving the offender's sentence;

(g) the offender's participation in and successful completion of activities (including education, counselling, personal development or treatment activities or programs) while serving the sentence;

(h) the likelihood that, if released on parole, the offender will comply with any conditions to which the parole order would be subject;

(i) whether release on parole is likely to assist the offender to adjust to lawful community life;

(j) any special circumstances in relation to the application;

(k) anything else prescribed under the regulations.

(3) Subsection (2) does not limit the matters that the sentence administration board may consider.

(4) In making a decision about the release of a sentenced offender on parole, the sentence administration board must consider any submission made, and concern expressed, to it by a victim of the offender's offence.

Division 8.2.3 Parole—release on parole in exceptional circumstances

220 Parole—making of orders in exceptional circumstances

(1) If the sentence administration board is satisfied that there are exceptional circumstances justifying the release on parole of a sentenced offender under this section, the board may make a written order (a ***parole order***) directing the release of the offender on parole on a parole date stated in the order.

(2) The sentence administration board may, in the order, state a parole date that is earlier than the sentenced offender's parole eligibility date only if satisfied that—

(a) there are exceptional circumstances justifying the release of the offender on parole before the parole eligibility date; and

(b) the number of days before the parole eligibility date does not exceed the number worked out at the rate of 4 days for every month, or part of a month, of detention actually served by the offender.

Note ***Parole eligibility date*** and ***parole date*** are defined in the dict.

(3) The sentence administration board may decide not to release a sentenced offender on parole under this section even if the board does not conduct a hearing.

(4) The following provisions of division 8.2.2 (Parole—decisions about release on parole) (and no other provisions of that division) apply to the making of a parole order under this section:

(a) section 214 (Parole—board to seek views of victims);

(b) section 219 (2) to (4) (Parole—general duty of board in making decisions).

Division 8.2.4 Parole—information about parole decisions

221 Parole—explanation of parole order

(1) If the sentence administration board makes a parole order for a sentenced offender, the board must ensure that reasonable steps are taken to explain to the offender in general terms (and in a language that the offender can readily understand)—

(a) the offender's parole obligations; and

(b) the consequences if the offender breaches the obligations.

Note An offender may breach the obligations by failing to comply with them (see Legislation Act, dict, pt 1, def ***breach***).

(2) The sentence administration board must also tell the sentenced offender—

(a) the offender's parole date; and

(b) when the parole order ends.

Note ***Parole date*** is defined in the dict.

(3) The sentence administration board must ensure that a written record of the explanation is given to the sentenced offender.

222 Parole—official notice and reasons for decision

(1) This section applies if the sentence administration board makes any of the following decisions (a ***relevant decision***):

(a) a decision to make a parole order for a sentenced offender;

(b) a decision to refuse to release a sentenced offender on parole under—

(i) section 218 (Parole—decision of board after inquiry); or

(ii) section 220 (Parole—making of orders in exceptional circumstances).

Note If, on an initial consideration of the release of a sentenced offender on parole, the board is of the opinion that the information currently before it does not justify the offender's release on parole, the board must give the offender a notice of a parole hearing (see s 215).

(2) As soon as practicable after the sentence administration board makes a relevant decision, the board must give each interested person—

(a) written notice of the decision; and

(b) a written statement of the board's reasons for the decision.

Example of statement of reasons

a copy of the transcript of the reasons given during a hearing

Note 1 Copies of certain documents need not be provided (see s 289).

Note 2 For what must be included in a statement of reasons, see the Legislation Act, s 179.

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

(3) If the sentence administration board's makes a parole order for the sentenced offender, the board must also give each interested person a copy of the parole order.

(4) In this section:

interested person means—

(a) the sentenced offender; or

(b) the chief executive; or

(c) the director of public prosecutions.

223 Parole—victim to be told about parole decisions

(1) This section applies if—

(a) the sentence administration board makes a relevant decision under section 222 (1) about a sentenced offender; and

(b) any of the following apply:

(i) a victim of the offender's offence has made a submission to the board under section 214 (Parole—board to seek views of victims) about the release of the offender on parole;

(ii) the board is aware of concerns expressed by or on behalf of a victim of the offender's offence about the need to protect the victim, or the victim's family, from violence or harassment by the offender;

(iii) details of a victim of the offender's offence are entered in the victims register.

(2) The sentence administration board must take reasonable steps to tell the victim, as soon as is practicable, about—

(a) the board's decision; and

(b) if the board decided to make a parole order—

(i) the sentenced offender's parole date; and

(ii) in general terms, the offender's parole obligations.

(3) The sentence administration board may, if the board considers it appropriate, also tell the victim the general area where the sentenced offender will, on release, live.

Note See also s 390 (Secrecy).

(4) For subsections (2) and (3), if the victim is under 15 years old, the board must, instead of giving the information to the victim, give the information to a person with parental responsibility for the victim.

Note ***Parental responsibility*** is defined in the *Children and Young People Act 1999*, s 17 (see dict).

Part 8.3 Parole—operation of orders

224 Parole—release under parole order

(1) A parole order is sufficient authority for anyone having custody of the parolee to release the parolee in accordance with the order.

Note A ***parolee*** is a sentenced offender in relation to whom a parole order is in force, whether or not the offender has been released on parole under the order (see s 11).

(2) A parolee who is to be released from detention must be released from detention on the parolee's parole date.

Note ***Parole date*** is defined in the dict.

(3) The parolee may be released from detention at any time on the parole date.

(4) However, if the parole date is a non-working day, the parolee may be released from detention at any time during the next previous day that is not a non-working day if the parolee asks to be released on that day.

(5) In this section:

non-working day means—

(a) a Saturday or Sunday; or

(b) a public holiday at the place where the parolee is being detained.

225 Parole—recision of order before release

(1) The sentence administration board may, by written order, rescind a parolee's parole order at any time before the parolee is released under the order.

(2) The sentence administration board may rescind a parole order under this section only if—

(a) since it made the order, it has become aware of information about the parolee; and

(b) it would not have made the order if it had been aware of the information when it decided to make the order.

226 Parole—effect of custody during order

(1) This section applies to a sentenced offender if—

(a) the offender is released under a parole order; and

(b) the offender is held in custody in relation to the offender's parole obligations.

Examples of custody in relation to parole obligations

a period during which the parolee is remanded in custody under s 234 (Parole—arrest of parolee without warrant) or s 280 (Warrant remanding offender in custody on adjournment)

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

(2) The period during which the sentenced offender is in custody is taken to be time during which the offender served the sentence of imprisonment mentioned in section 232 (Parole—sentence not discharged unless parole completed).

(3) To remove any doubt, if the parole order is cancelled under part 8.4 (Parole—supervision of offenders), any time after the cancellation takes effect must be disregarded for subsection (2).

227 Parole—obligations

The obligations of a sentenced offender while on release on parole under a parole order are—

(a) to comply with the order (including the core conditions and any additional conditions of the order); and

(b) to comply with the provisions of this Act that apply to the offender.

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

228 Parole—core conditions of orders

(1) A parole order for a sentenced offender is subject to the following core conditions:

(a) the offender must not commit an offence in the ACT or elsewhere punishable by imprisonment;

(b) if the offender is charged with an offence against a law in force in the ACT or elsewhere—the offender must tell the chief executive about the charge as soon as possible (but within 2 days) after being charged;

(c) if any of the offender's contact details change—the offender must tell the chief executive about the change as soon as possible after the offender knows the changed contact details (but within 2 days after the change is made);

(d) the offender must comply with any directions given to the offender under this Act by the chief executive;

(e) the offender must comply with any voluntary agreement to appear before the sentence administration board given by the offender under section 271 (3) (Board inquiries—offender to appear before board);

(f) the conditions (if any) prescribed under the regulations for this section that apply to the offender.

(2) In this section:

contact details means the offender's—

(a) home address and phone number; and

(b) work address and phone number; and

(c) mobile phone number.

229 Parole—additional conditions of orders

(1) A parole order for a sentenced offender is subject to any additional conditions that apply to the order.

Examples of additional conditions

1 a non-association or place restriction condition

2 a condition that the parolee participate in an activity (including participation in education, counselling, personal development or treatment activities or programs)

Note 1 A sentencing court may recommend conditions for the parole of the offender. In fixing conditions the board must have regard to the court's recommendations (see *Crimes (Sentencing) Act 2004*, s 74).

Note 2 For non-association and place restriction conditions, see ch 9.

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

(2) Subject to section 230 (Parole—restrictions on additional conditions), the sentence administration board may—

(a) include additional conditions in the parole order; or

(b) amend the additional conditions (if any) of the order.

Note ***Amend*** includes omit or substitute (see Legislation Act, dict, pt 1).

(3) An additional condition may be included or amended by the sentence administration board on—

(a) the board's initiative; or

(b) the application of the chief executive or the sentenced offender.

(4) The sentence administration board must give written notice of the inclusion or amendment of an additional condition to—

(a) the sentenced offender; and

(b) the chief executive.

(5) The inclusion or amendment of an additional condition takes effect when the written notice of the inclusion or amendment is given to the sentenced offender or, if the notice provides for a later time of effect, at that time.

230 Parole—restrictions on additional conditions

(1) The sentence administration board may not amend a core condition of a parole order.

Note ***Amend*** includes omit or substitute (see Legislation Act, dict, pt 1).

(2) The sentence administration board may not include an additional condition in, or amend an additional condition of, a parole order if the condition would be inconsistent with a core condition of the order.

(3) A court may not—

(a) amend a core condition of a parole order; or

(b) impose or amend an additional condition of a parole order.

231 Parole—directions by chief executive

The chief executive may give a parolee directions for the purpose of—

(a) enforcing the parolee's parole obligations; or

(b) giving effect to the objects of this Act (see section 6).

232 Parole—sentence not discharged unless parole completed

(1) If a sentenced offender is released on parole, the offender is taken to be under sentence of imprisonment, and not to have served any period of detention that remained to be served on the parole date, unless—

(a) the parole ends without the parole order being cancelled; or

(b) the offender is otherwise discharged from that detention.

(2) If the parole ends without the parole order being cancelled, the sentenced offender is taken to have served the period of detention that remained to be served on the parole date and to have been discharged from the detention.

(3) If the parole order is cancelled after the end of the parole with effect from a date before the end of the parole, this section has effect as if the parole had not ended without the parole order being cancelled.

Part 8.4 Parole—supervision of offenders

233 Parole—duty of corrections officers

(1) This section applies if a corrections officer believes, on reasonable grounds, that an offender has breached the offender's parole obligations.

Note See s 227 for the parole obligations.

(2) If the breach relates to a core condition of the offender's parole order, the corrections officer must tell the sentence administration board about the breach.

(3) If the breach relates to anything else, the corrections officer may tell the sentence administration board about the breach.

234 Parole—arrest of offender without warrant

(1) If a police officer believes, on reasonable grounds, that an offender has breached the offender's parole obligations, the police officer may arrest the offender without a warrant.

(2) If a police officer arrests an offender under this section, the police officer must, as soon as practicable, bring the offender before—

(a) the sentence administration board; or

(b) if the board is not sitting—a magistrate.

Note The offender may be remanded in custody or granted bail (see eg *Bail Act 1992*, s 8A (Entitlement to bail—breaches of good behaviour bonds etc)).

235 Parole—arrest of offender with warrant

(1) If a judge or magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that the offender has breached, or will breach, the offender's parole obligations, the judge or magistrate may issue a warrant for the offender's arrest.

(2) The warrant must—

(a) be in writing signed by the judge or magistrate; and

(b) be directed to all police officers or a named police officer; and

(c) state briefly the matter on which the information is based; and

(d) order the arrest of the offender and the bringing of the offender before the sentence administration board.

(3) If a police officer arrests an offender under this section, the police officer must, as soon as practicable, bring the offender before—

(a) the sentence administration board; or

(b) if the board is not sitting—a magistrate.

Note The offender may be remanded in custody or granted bail (see eg *Bail Act 1992*, s 8A (Entitlement to bail—breaches of good behaviour bonds etc)).

236 Parole—when board may hold inquiry

(1) The sentence administration board may conduct an inquiry in relation to a parole order for an offender if—

(a) the board has reason to suspect that the offender has breached, or will breach, the offender's parole obligations; or

(b) the chief executive applies to the board under subsection (2) for the cancellation of the parole order; or

(c) the offender applies to the board for the cancellation of the parole order.

Note 1 See s 227 for the parole obligations.

Note 2 The inquiry may be conducted whether or not the parole order has ended (see s 286).

(2) The chief executive must apply to the sentence administration board for an order cancelling an offender's parole order if—

(a) the offender is convicted of an offence against a law of a place outside the Territory; and

(b) the offender is sentenced to a term of imprisonment that is to be served by full-time detention in a correctional centre (however described) that is not completely suspended.

Note For an offence against an ACT law, see s 241 and s 242.

237 Parole—board to give notice of grounds for inquiry

(1) This section applies if the sentence administration board proposes to conduct an inquiry under section 236 in relation to an offender's parole order.

(2) The sentence administration board must give the offender reasonable notice of—

(a) the grounds on which the board is proposing to conduct the inquiry; and

(b) the time and place fixed for the inquiry.

(3) Notice of the time and place fixed for the inquiry must also be given to the chief executive and the director of public prosecutions.

(4) The chief executive and the director of public prosecutions may appear at the inquiry.

238 Parole—cancellation of orders

(1) The sentence administration board must make an order cancelling an offender's parole order if—

(a) the board has held an inquiry into the order; and

(b) the offender appeared at a hearing held by the board for the inquiry; and

Note The order may be cancelled if the offender fails to appear before the board (see s (4)).

(c) the board is satisfied that section 236 (2) (a) and (b) (Parole—when board may hold inquiry) applies in relation to the offender.

(2) The sentence administration board may make an order cancelling an offender's parole order if—

(a) the board has held an inquiry in relation to the order; and

(b) the offender appeared at a hearing held by the board for the inquiry; and

Note The order may be cancelled if the offender fails to appear before the board (see s (4)).

(c) the board is satisfied that a circumstance mentioned in subsection (3) applies in relation to the offender.

(3) For subsection (2) (c), the circumstances are as follows:

(a) that the offender has breached the offender's parole obligations;

(b) for an application by the offender for the cancellation of the parole order—that the order should be cancelled.

(4) The sentence administration board may also make an order cancelling the parole order if—

(a) the offender fails to appear before the board when required do so; or

(b) the offender fails to appear before the board in breach of an agreement under section 271 (3) (Board inquiries—offender to appear before board).

Note Also, an arrest warrant may be issued for an offender who fails to appear before the board (see s 271 (4)).

239 Parole—when cancellation order takes effect

(1) An order under section 238 cancelling a parole order for an offender takes effect on the date stated in the order.

(2) The date stated in the order must be—

(a) the date the order is made; or

(b) if the sentence administration board is satisfied that the offender breached the offender's parole obligations—the date when it appears to the board that the offender breached the obligations; or

(c) if the board is satisfied that the offender breached the obligations on 2 or more separate days—the date when it appears to the board that the offender first breached the obligations.

Note Section 232 (3) deals with the effect of cancelling a parole order with effect from a date before the end of the parole order.

240 Parole—other action available to board

(1) This section applies if—

(a) the sentence administration board has conducted an inquiry under section 236 (Parole—when board may hold inquiry) in relation to an offender's parole order; and

(b) the board does not cancel the order under section 238.

(2) The sentence administration board may do 1 or more of the following:

(a) give the offender a formal warning;

(b) subject to section 230 (Parole—restrictions on additional conditions), include additional conditions in, or amend the additional conditions of, the order;

(c) give directions to the chief executive about the supervision of the offender;

(d) take no action.

(3) To give effect to any additional condition or amended condition mentioned in subsection (2) (b), the sentence administration board may, by warrant, remand the offender in custody until a stated date or the happening of a stated event.

(4) The sentence administration board must not remand the offender in custody under this section—

(a) more than once for the same breach; or

(b) for longer than 30 days for a breach.

(5) The day the sentence administration board remands the offender, and the stated date or the day the stated event happens, are both counted for subsection (4) (b).

241 Parole—cancellation for ACT offence by parolee

(1) This section applies if a sentenced offender who is on release on parole under a parole order is—

(a) convicted of an offence against a law in force in the ACT while on release on parole under the order; and

(b) sentenced for the offence to a term of imprisonment that is to be served by full-time detention that is not completely suspended.

Note If a parolee is convicted of an offence against a law of a place outside the Territory, see s 238 (1).

(2) The parole order is automatically cancelled on the day the sentenced offender is convicted of the offence.

242 Parole—cancellation for ACT offence by former parolee

(1) This section applies if a sentenced offender who was on release on parole under a parole order is—

(a) convicted of an offence that was committed against a law in force in the ACT while the parole order was in force; and

(b) sentenced for the offence to a term of imprisonment that is to be served by full-time detention in a correctional centre that is not completely suspended.

Note If a parolee is convicted of an offence against a law of a place outside the Territory, see s 238 (1).

(2) The parole order is automatically cancelled with effect from the day the offence was committed.

Note Section 232 (3) deals with the effect of cancelling a parole order with effect from a date before the end of parole.

Part 8.5 Parole—other provisions

243 Parole—victims register

(1) The secretary of the sentence administration board must maintain a register (the ***victims register***) for this chapter.

(2) The secretary must comply with subsection (3) if—

(a) the secretary receives information about a victim of an offence from a court under the *Crimes (Sentencing) Act 2004*, section 78 (2) (e) (Nonparole periods—information for sentence board secretary); or

(b) a request is made by or on behalf of a victim of a relevant offender's offence to the secretary to enter information about the victim in the victims register.

(3) The secretary must—

(a) enter the information in the victims register; and

(b) advise the victim, orally or in writing, about—

(i) the role of the sentence administration board; and

(ii) the rights of victims in relation to the granting of parole to sentenced offenders.

(4) For subsection (3) (b), if a victim is under 15 years old, the secretary must, instead of giving the required advice to the victim, give the advice to a person with parental responsibility for the victim.

Note ***Parental responsibility*** is defined in the *Children and Young People Act 1999*, s 17 (see dict).

(5) In this section:

relevant offender means an offender sentenced to imprisonment for whom a court has set a nonparole period.

244 Parole—order not invalidated by failure to comply with procedural requirements

Failure to comply with a procedural requirement of this Act in relation to the making of a parole order does not invalidate the order.

245 Parole—searching and testing of offenders

(1) The regulations and corrections rules may make provision in relation to—

(a) the testing of parolees for alcohol or drugs and when the presence of alcohol or drugs in a parolee is a breach of the parolee's parole obligations; and

(b) the searching of parolees, including the kinds of searches that may be carried out in relation to parolees.

(2) A parolee must comply with any requirement made by the chief executive for the parolee to provide a test sample.

Note If a person fails to comply with a requirement, the person is taken to have given a positive test sample (see s 59 (2) (a)).

(3) If a parolee gives a positive test sample, the parolee is taken to have failed to comply with the parolee's parole obligations.

(4) For subsection (2), part 3.5 (Alcohol and drug testing of detainees) (other than section 62 (Alcohol and drug testing—random testing for statistical purposes)) applies in relation to the parolee as if the parolee were a detainee, and with any other necessary changes and any changes prescribed under the regulations.

246 Parole—regulations and corrections rules

The regulations and corrections rules may make provision in relation to parole, including, for example, in relation to the following matters:

(a) the administration (including the control, management and supervision) of parolees and parole orders;

(b) the directions that the chief executive may give to parolees, including directions about a parolee attending education, counselling, personal development or treatment activities or programs as directed by the chief executive;

(c) the service of notices on parolees.

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

Chapter 9 Non-association and place restriction conditions

247 Non-association and place restriction—definitions

(1) In this Act:

non-association condition, of a relevant authority for a remandee or offender, means—

(a) a non-association condition included in the authority under the *Crimes (Sentencing) Act 2004*; or

(b) a condition of the authority prohibiting the remandee or offender from doing 1 of the following (as directed by the authority) with a stated person for a stated period or until the happening of a stated event:

(i) being with the person or attempting to be with the person;

(ii) being with the person or communicating in any way with the person, or attempting to be with the person or to communicate in any way with the person.

place restriction condition, of a relevant authority for a remandee or offender, means—

(a) a place restriction condition of the authority under the *Crimes (Sentencing) Act 2004*; or

(b) a condition of the authority prohibiting the remandee or offender from doing both of the following for a stated period or until the happening of a stated event:

(i) being in or visiting a place or area stated in the authority;

(ii) attempting to be in, or to visit, the place or area stated in the authority.

(2) In this chapter:

relevant authority, for a remandee or offender, means—

(a) a good behaviour bond; or

(b) a home detention order; or

(c) an interstate leave permit; or

(d) a local leave order; or

(e) a local leave permit; or

(f) a parole order; or

(g) a periodic detention order; or

(h) any other instrument prescribed under the regulations.

248 Non-association and place restriction—when conditions may be made

The chief executive or the sentence administration board may include a non-association condition or place restriction condition in, or otherwise apply such a condition to, a relevant authority for a remandee or offender only if satisfied that it is necessary and reasonable to do so for the purpose of—

(a) enforcing the remandee's or offender's obligations under this Act; or

(b) giving effect to the objects of this Act (see section 6).

249 Non-association and place restriction—disclosure of identifying information

(1) This section applies if—

(a) a non-association condition is in force in relation to a relevant authority; and

(b) the condition applies in relation to someone else (the ***associated person***).

(2) A person commits an offence if the person publishes or broadcasts—

(a) the fact that a named person is the associated person; or

(b) any information that could reasonably identify the associated person.

Maximum penalty: 10 penalty units.

(3) Subsection (2) does not apply to the publication or broadcast of information—

(a) to a relevant person; or

(b) in the interests of justice by or at the direction of a court to someone named by the court; or

(c) if the information is relevant to a court proceeding—as part of the official report of the proceeding.

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

(5) In this section:

relevant person, in relation to the publication or broadcast of information under subsection (2), means any of the following:

(a) the offender;

(b) the associated person;

(c) a police officer;

(d) anyone involved in the administration of—

(i) the relevant authority; or

(ii) a penalty (other than the authority) for the offence in relation to which the authority was made;

(e) anyone involved in a proceeding for failure to comply with the non-association condition;

(f) anyone stated in the non-association condition as someone to whom the information may be published or broadcast;

(g) anyone else to whom the information is required or permitted to be published or broadcast under a law of the ACT, the Commonwealth or a State.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

250 Non-association and place restriction—when conditions not contravened

(1) A remandee or offender does not breach a non-association condition or place restriction condition by doing anything required or allowed to be done under an order of a court.

(2) A remandee or offender does not breach a non-association condition by associating with a person if the remandee or offender associates with the person unintentionally and ends the association immediately on becoming aware of it.

(3) In this section:

associate with, a person, means—

(a) being with the person; or

(b) communicating in any way with the person.

order, of a court, includes a sentence imposed by the court.

Chapter 10 Sentence administration board

Part 10.1 Sentence administration board—establishment and membership

251 Board—establishment

The Sentence Administration Board is established.

252 Board—functions

The functions of the board are—

(a) to consider the release on parole of sentenced offenders for whom a court has set a nonparole period; and

(b) to decide additional conditions of—

(i) home detention orders for sentenced offenders; and

(ii) parole orders and periodic detention orders; and

Note Functions for a home detention order for a remandee are exercised by the relevant court (see ch 5).

(c) to monitor—

(i) home detention orders for sentenced offenders; and

(ii) parole orders and periodic detention orders; and

(d) to decide the consequences of sentenced offenders failing to comply with their obligations under home detention orders, parole orders and periodic detention orders; and

(e) to provide advice to the Minister about offenders at the Minister's request; and

(f) to exercise any other function given to the board under this Act or any other Territory law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def ***entity***).

253 Board—membership

The board consists of the members appointed under section 254.

254 Board—appointment of members

(1) The Minister must appoint the following members to the board:

(a) a chairperson;

(b) at least 1 deputy chairperson and not more than 2 deputy chairpeople;

(c) not more than 8 other members.

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

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

(2) The Minister may appoint a person to be chairperson or deputy chairperson only if the person is a judicially qualified person.

(3) The members mentioned in subsection (1) (a) and (b) are the ***judicial members*** of the board, and the members mentioned in subsection (1) (c) are the ***non-judicial members*** of the board.

(4) The *Supreme Court Act 1933*, section 16 (Holding other judicial offices) does not apply to the appointment of a judge as a judicial member.

(5) The *Magistrates Court Act 1930*, section 10E (Magistrates not to undertake other work) does not apply to the appointment of a magistrate as a judicial member.

(6) The appointment of a person who is a judge or magistrate as a judicial member does not affect the person's office of judge or magistrate.

(7) A person who is a judge or magistrate may exercise the powers of his or her office as judge or magistrate even though the person is a judicial member.

(8) In this section:

judicially qualified person means—

(a) a judge or retired judge; or

(b) a magistrate or retired magistrate; or

(c) a person qualified to be appointed as a resident judge.

255 Board—term of appointments

(1) A member of the board must be appointed for a term of not longer than 3 years.

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

(2) The instrument appointing, or evidencing the appointment of, a member of the board must state whether the person is appointed as chairperson, deputy chairperson or a non-judicial member.

256 Board—ending of appointments

(1) The Minister may end the appointment of a member of the board—

(a) for misbehaviour;or

(b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions; or

(c) if the member becomes bankrupt or executes a personal insolvency agreement; or

(d) if the member is absent, except on leave granted by the Minister, from 3 consecutive meetings of the board; or

(e) if the member is convicted, in the ACT, of an offence punishable by imprisonment for at least 1 year; or

(f) if the member is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or

(g) if the member contravenes section 265 (Board proceedings—disclosure of interests by members of board); or

(h) for a judicial member—if the member is no longer a judicially qualified person.

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

(2) In this section:

judicially qualified person—see section 254 (8) (Board—appointment of members).

257 Board—conditions of appointment generally

A member of the board holds the position on the conditions not provided by this Act or another Territory law that are decided by the Minister.

258 Board—divisions

(1) The chairperson of the board may, in writing, establish divisions of the board.

Note 1 This section is subject to s 270 (Board inquiries—constitution of divisions).

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

(2) A division is to consist of—

(a) at least 1, and not more than 2, judicial members; and

(b) at least 2, and not more than 4, non-judicial members.

(3) The chairperson of the board may delegate the functions of the board to a division.

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

(4) Part 10.2 (Sentence administration board—proceedings) and part 10.3 (Sentence administration board—inquiries) apply to a division of the board in the same way as they apply to the board, except so far as they otherwise provide.

259 Board—delegation of chairperson's functions

The chairperson of the board may delegate to a deputy chairperson the chairperson's functions under the following provisions:

(a) section 217 (1) (Parole—further consideration by board);

(b) section 258 (1) (Board—divisions);

(c) section 260 (2) and (3) (Board proceedings—time and place of meetings);

(d) section 262 (Board proceedings—conduct of proceedings).

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

Part 10.2 Sentence administration board—proceedings

260 Board proceedings—time and place of meetings

(1) Meetings of the board are to be held at the times and places it decides.

(2) However, the chairperson of the board may at any time call a meeting.

(3) The chairperson must give the other members reasonable notice of a meeting called by the chairperson.

(4) The board may adjourn a proceeding, for any reason it considers appropriate, to a time and place decided by it.

261 Board proceedings—presiding member at meetings

At a meeting of the board, the chairperson or another judicial member nominated by the chairperson presides.

262 Board proceedings—conduct of proceedings

(1) Subject to section 270 (Board inquiries—constitution of divisions), business may be carried out at a meeting of the board only if 3 members are present, including at least 1 judicial member and at least 2 non-judicial members.

(2) At a meeting of the board each member has a vote on each question to be decided.

(3) A question is decided by a majority of the votes of members present and voting but, if the votes are equal, the judicial member presiding has a casting vote.

(4) The board may conduct its proceedings (including its meetings) as it considers appropriate.

(5) A meeting may be held using a method of communication, or a combination of methods of communication, that allows a member taking part to hear what each other member taking part says without the members being in each other's presence.

(6) A member who takes part in a meeting conducted under subsection (4) is taken to be present at the meeting.

(7) A resolution of the board is a valid resolution, even though it is not passed at a meeting of the board, if—

(a) all members agree, in writing, to the proposed resolution; and

(b) notice of the resolution is given under procedures decided by the board.

263 Board proceedings—procedure

(1) The board is not bound by the rules of evidence and may be informed of anything in any way it considers appropriate, but must observe natural justice.

(2) Proceedings before the board—

(a) are not to be open to the public, unless the board decides in a particular case that the proceeding is to be conducted completely or partly in public; and

(b) are to be conducted with as little formality and technicality, and as quickly, as fairness to any affected person and the requirements of this Act allow.

(3) Without limiting subsection (2) (a)—

(a) a person other than an eligible person is not entitled to be present at a meeting (including a hearing) of the board, unless the presiding judicial member otherwise directs; and

(b) a person (other than a member of the board or the secretary of the board) is not entitled to be present at the board's deliberations for an inquiry, unless the presiding judicial member otherwise directs.

(4) A decision of the board is not invalid only because of any informality or lack of form.

(5) In this section:

eligible person means—

(a) a member of the board, or

(b) the secretary of the board; or

(c) the director of public prosecutions; or

(d) for a hearing of the board at which an offender is entitled under section 279 (Board inquiries—rights of offenders at hearings) to make submissions to the board—

(i) the offender; or

(ii) a lawyer representing the offender; or

(iii) someone else representing the offender with the board's consent; or

(e) for any hearing of the board—a person who is required to appear before, or produce a document to, the board at the hearing.

264 Board proceedings—minutes

(1) The board must keep minutes of its proceedings.

(2) In particular, the board must note the following decisions in its minutes:

(a) a decision to make, or refuse to make, a parole order for a sentenced offender;

(b) a decision mentioned in section 281 (1) (Board inquiries—official notice of decisions and reasons).

265 Board proceedings—disclosure of interests by board members

(1) A board member who has a material interest in an issue being considered, or about to be considered, by the board must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a board meeting.

(2) The disclosure must be recorded in the board's minutes and, unless the board otherwise decides, the member must not—

(a) be present when the board considers the issue; or

(b) take part in a decision of the board on the issue.

Example

Albert, Boris and Chloe are members of the board. They have an interest in an issue being considered at a board meeting and they disclose the interest as soon as they become aware of it. Albert's and Boris' interests are minor but Chloe has a direct financial interest in the issue.

The board considers the disclosures and decides that because of the nature of the interests:

- Albert may be present when the board considers the issue but not take part in the decision
- Boris may be present for the consideration and take part in the decision.

The board does not make a decision allowing Chloe to be present or take part in the board's decision. Accordingly, Chloe cannot be present for the consideration of the issue or take part in the decision.

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

(3) Any other board member who also has a material interest in the issue must not be present when the board is considering its decision under subsection (2).

(4) In this section:

associate, of a person, means—

(a) the person's business partner; or

(b) a close friend of the person; or

(c) a family member of the person.

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

indirect interest—without limiting the kinds of indirect interests a person may have, a person has an ***indirect interest*** in an issue if any of the following has an interest in the issue:

(a) an associate of the person;

(b) a corporation with not more than 100 members that the person, or an associate of the person, is a member of;

(c) a subsidiary of a corporation mentioned in paragraph (b);

(d) a corporation that the person, or an associate of the person, is an executive officer of;

(e) the trustee of a trust that the person, or an associate of the person, is a beneficiary of;

(f) a member of a firm or partnership that the person, or an associate of the person, is a member of;

(g) someone else carrying on a business if the person, or an associate of the person, has a direct or indirect right to participate in the profits of the business.

material interest—a board member has a ***material interest*** in an issue if the member has—

(a) a direct or indirect financial interest in the issue; or

(b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the member's functions in relation to the board's consideration of the issue.

266 Board proceedings—authentication of board documents

Any document requiring authentication by the board is sufficiently authenticated if it is signed by—

(a) the judicial member who presided at the meeting of the board that dealt with the proceeding in relation to which the document was prepared; or

(b) in the absence of that member, any other member who was present at that meeting or the secretary of the board.

267 Board proceedings—evidentiary certificate about board decisions

A certificate given by the secretary of the board that records any decision of the board is admissible in any legal proceeding and is evidence of the matters recorded.

268 Board proceedings—proof of certain matters relating to board not required

In any legal proceeding, proof is not required, until evidence is given to the contrary, of—

(a) the constitution of the board; or

(b) any decision or recommendation of the board; or

(c) the appointment of, or holding of office by, any member of the board; or

(d) the presence or nature of a quorum at any meeting of the board.

Part 10.3 Sentence administration board—inquiries

269 Board inquiries—power to hold inquiries and hearings

(1) For the exercise of a function of the board, the board may hold an inquiry.

(2) The board may hold hearings for an inquiry.

(3) The board may hear, receive and examine evidence for the purpose of an inquiry.

270 Board inquiries—constitution of divisions

(1) An inquiry by the board must be conducted by a division of the board.

(2) A division of the board for an inquiry must be constituted by—

(a) 1 judicial member; and

(b) 2 or 3 non-judicial members.

271 Board inquiries—offender to appear before board

(1) This section applies to an inquiry by the board in relation to an offender.

(2) A judicial member may call on the offender to appear before the board.

(3) A judicial member, the chief executive or a police officer may ask the offender to sign a voluntary agreement to appear before the board.

(4) If the offender does not appear before the board in accordance with subsection (2), or an agreement under subsection (3), a judicial member may issue, or authorise the issue of, a warrant for the offender's arrest.

(5) However, if a judicial member considers that the offender will not appear if called on to do so or for any other reason a warrant should be immediately issued for the offender, the judicial member may, without calling on the offender to appear before the board, issue, or authorise the issue of, a warrant for the offender's arrest.

(6) A warrant under this section must—

(a) be signed by a judicial member or the secretary of the board; and

(b) be directed to all police officers or a named police officer; and

(c) order the arrest of the offender and the bringing of the offender before the board.

(7) If a police officer arrests an offender under this section, the police officer must, as soon as practicable, bring the offender before—

(a) the sentence administration board; or

(b) if the board is not sitting—a magistrate.

Note The offender may be remanded in custody or granted bail (see eg *Bail Act 1992*, s 8A (Entitlement to bail—breaches of good behaviour bonds etc)).

272 Board inquiries—board may require appearance of people and production of documents

(1) A judicial member may, by written notice given to a person, require the person to do either or both of the following:

(a) to appear and answer questions before the board at a stated reasonable time and place;

(b) to produce to the board within a stated reasonable time a stated document in the possession or control of the person that is relevant to a proceeding of the board.

Note 1 For how the notice may be given, see the Legislation Act, pt 19.5.

Note 2 ***Document*** includes anything from which images, sounds, messages or writings can be produced or reproduced, see the Legislation Act, dict, pt 1.

(2) The notice must—

(a) state that the requirement is made under this section; and

(b) contain a statement to the effect that failure to comply with the notice is an offence; and

(c) contain a statement about the effect of section 276 (Board inquiries—privileges against selfincrimination and exposure to civil penalty).

(3) If a document is produced to the board, the board may take possession of the document for the period that it considers necessary for the proceeding before it.

(4) This section does not require a person to produce a document to the board if the Minister certifies in writing that production of it may—

(a) endanger an offender or anyone else; or

(b) otherwise be contrary to the public interest.

273 Board inquiries—failure to comply with notice under s 272

(1) A person who is given a notice under section 272 (1) (a) commits an offence if the person fails to appear before the board in accordance with the notice.

Maximum penalty: 50 penalty units.

(2) A person who is given a notice under section 272 (1) (b) commits an offence if the person fails to comply with the notice.

Maximum penalty: 50 penalty units.

Note The Legislation Act, s 171 deals with client legal privilege.

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

274 Board inquiries—giving evidence and answering questions

(1) The judicial member presiding at an inquiry by the board may require a person who appears before the board to answer questions on oath or affirmation.

(2) For subsection (1), the judicial member presiding may administer an oath or affirmation to the person that the answers the person is to give will be true.

Note For the taking of an oath or the making of an affirmation, see the *Oaths and Affirmations Act 1984*.

(3) The judicial member presiding may require a person who appears before the board to answer a question that is reasonably related to the proceeding before it.

(4) The judicial member presiding may disallow a question put to a person if, in the judicial member's opinion, the question is unfair or unduly prejudicial.

275 Board inquiries—other offences relating to s 272

(1) A person commits an offence if—

(a) the person is required by a notice under section 272 (1) (a) (Board inquiries—board may require appearance of people and production of documents) to appear and answer questions before the board; and

(b) the person appears before the board; and

(c) the judicial member presiding requires the person to swear an oath or make an affirmation that the answers the person is to give will be true; and

(d) the person fails to swear the oath or make the affirmation.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if—

(a) the person is required by a notice under section 272 (1) (a) to appear and answer questions before the board; and

(b) the person appears before the board; and

(c) the judicial member presiding requires the person to answer a question; and

(d) the person fails to answer the question.

Maximum penalty: 50 penalty units.

(3) A person commits an offence if—

(a) the person is required by a notice under section 272 (1) (a) to appear and answer questions before the board; and

(b) the person appears before the board; and

(c) the person fails to continue to attend as required by the judicial member presiding until excused from further attendance.

Maximum penalty: 50 penalty units.

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

276 Board inquiries—privileges against selfincrimination and exposure to civil penalty

(1) This section applies if—

(a) a person appears before the board in accordance with a requirement under section 272 (1) (a) (Board inquiries—board may require appearance of people and production of documents); and

(b) the judicial member presiding requires the person to answer a question.

(2) This section also applies if a person is required by a notice under section 272 (1) (b) to produce a document.

(3) The person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to answer the question or produce the document.

Note The Legislation Act, s 171 deals with client legal privilege.

(4) However, any information, document or thing obtained, directly or indirectly, because of the answer to the question or the production of

the document is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence against this part or the Criminal Code, part 3.4 (False or misleading statements, information and documents).

277 Board inquiries—misconduct before board

(1) A person commits an offence if, at a hearing before the board, the person—

(a) threatens or insults the board; or

(b) unreasonably interrupts, or interferes with, the hearing; or

(c) disobeys a reasonable direction of the judicial member presiding; or

(d) does anything else that would, if the board were a court of record, be a contempt of the court.

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

(2) For this section, if a person appears at a hearing before the board by an audiovisual link or audio link, the conduct of the person and of anyone else who is visible or audible to the board by means of the audiovisual link or audio link are taken to be engaged in at the hearing before the board.

(3) In this section:

audio link—see the *Evidence (Miscellaneous Provisions) Act 1991*, section 16.

audiovisual link—see the *Evidence (Miscellaneous Provisions) Act 1991*, dictionary.

278 Board inquiries—reports about offenders

(1) This section applies to the following people:

(a) the chief executive;

(b) the commissioner for corrective services under the *Crimes (Administration of Sentences) Act 1999* (NSW).

(2) The person must, if asked by the board, give the secretary of the board a report about an offender.

279 Board inquiries—rights of offenders at hearings

At a hearing held by the board for an inquiry in relation to an offender, the offender—

(a) may be represented by a lawyer or, with the board's consent, by anyone else; and

(b) may make submissions to the board about matters relevant to the hearing; and

(c) may produce documents and exhibits to the board; and

(d) may give evidence on oath; and

(e) may otherwise present evidence, orally or in writing, to the board, and address the board, on matters relevant to the hearing.

280 Board inquiries—warrant remanding offender in custody on adjournment

(1) This section applies if—

(a) an offender appears before the board at a hearing for an inquiry about whether the offender has breached the offender's

obligations under a home detention order, parole order or periodic detention order; and

(b) the board adjourns (or again adjourns) the hearing of the inquiry.

(2) The board may, by warrant, remand the offender in custody to appear before the board at the adjourned hearing.

(3) The warrant must be in writing signed by a judicial member or the secretary of the board.

(4) The board may remand the offender in custody under this section—

(a) only twice for the same inquiry; and

(b) for no longer than 15 days each time the board adjourns the hearing of the inquiry; and

(c) if the offender has previously been remanded in custody for the same inquiry—only if the hearing of the inquiry was adjourned on the 2nd occasion because of circumstances beyond the board's control.

(5) However, if the board is satisfied that there are exceptional circumstances justifying the remand of the offender under this section, the board may remand the offender for 3 or more additional periods of no longer than 15 days each time.

(6) In working out a period for subsection (4) (b) and (5), the day the board adjourns the hearing of the inquiry, and the day the offender appears before the board at the adjourned hearing, are both counted.

(7) This section does not prevent a court giving the offender bail under the *Bail Act 1992*.

281 Board inquiries—official notice of decisions and reasons

(1) This section applies if the board makes any of the following decisions (a ***relevant decision***) in relation to an offender:

(a) a decision cancelling a home detention order under—

(i) section 125 (Home detention—mandatory cancellation for offender); or

(ii) section 126 (Home detention—discretionary cancellation for offender);

(b) a decision mentioned in section 128 (2) (Home detention—other action available to board for offenders);

(c) a decision under section 161 (Periodic detention—reduction of detention periods on health or compassionate grounds);

Note For decisions about leave of absence by periodic detainees, see s 158.

(d) a decision cancelling a periodic detention order under—

(i) section 167 (Periodic detention—mandatory cancellation by board); or

(ii) section 168 (Periodic detention—discretionary cancellation by board);

(e) a decision mentioned in section 171 (2) (Periodic detention—other actions available to board);

(f) a decision cancelling a parole order under section 238 (Parole—cancellation of orders);

(g) a decision mentioned in section 240 (2) (Parole—other actions available to board for breach of order).

Note For decisions to grant or refuse to grant parole, see div 8.2.2.

(2) As soon as practicable after the board makes a relevant decision, the board must give each interested person—

(a) written notice of the decision; and

(b) a copy of any order made by the board in relation to the relevant decision; and

(c) a written statement of the board's reasons for the decision.

Example of statement of reasons

a copy of the transcript of the reasons given during a hearing

Note 1 Copies of certain documents need not be provided (see s 289).

Note 2 For what must be included in a statement of reasons, see the Legislation Act, s 179.

Note 3 For additional information that the board must give the chief executive in relation to a disciplinary breach by a periodic detainee, see s 43 (6).

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

(3) The board may give a court written notice of a relevant decision and a copy of any order made by the board in relation to the decision and of its reasons for the decision.

Example of when board might notify a court of a relevant decision

In sentencing Stu for an offence, a court made a periodic detention order and a good behaviour order. The good behaviour order required Stu to enter into a good behaviour bond. The board cancels the periodic detention order. The board may give the relevant court for the bond notice of the board's decision so that the court may consider whether it should take any action in relation to the bond.

(4) In this section:

interested person means—

(a) the offender; or

(b) the chief executive; or

(c) the director of public prosecutions.

282 Board inquiries—warrant committing offender to correctional centre

(1) This section applies if the board—

(a) cancels an offender's home detention order, periodic detention order or parole order under this Act; or

(b) is satisfied that an offender's home detention order, periodic detention order or parole order has been automatically cancelled under this Act.

(2) A judicial member or the secretary of the board must issue a warrant committing the offender to full-time detention for the relevant period.

(3) However, subsection (2) does not apply if a court has issued a warrant committing the offender to full-time detention for the relevant period.

283 Board inquiries—record of hearings

(1) The judicial member presiding must ensure that a sound or audiovisual record is made of the hearing of an inquiry by the board in relation to an offender.

(2) An eligible person for the inquiry may ask for—

(a) a copy of part or all of record of the hearing; and

(b) if a transcript of part or all of the record has been prepared—a copy of part or all of the transcript.

Note 1 Copies of certain documents need not be provided (see s 289).

Note 2 A fee may be determined under s 397 for this section.

Note 3 If a form is approved under s 398 for this provision, the form must be used.

(3) If a transcript of the record of the hearing is not available, the secretary of the board may authorise an eligible person to purchase a transcript of part or all of the record of the hearing.

(4) In this section:

eligible person means—

(a) the chief executive; or

(b) the director of public prosecutions; or

(c) the offender; or

(d) a lawyer representing the offender; or

(e) someone else representing the offender with the board's consent.

Note 1 For the keeping of the record of proceedings, see the *Territory Records Act 2002*.

Note 2 For the admissibility of a record of proceedings, see the *Evidence Act 1995* (Cwlth), s 5, s 157 and dict, def ***Australian court*** and def ***public record***.

284 Board inquiries—witness allowances and expenses

(1) A person who is required to appear before, or produce a document to, the board at a hearing for an inquiry in relation to an offender is entitled to be paid the reasonable allowances and expenses that the board decides.

(2) This section does not apply to—

(a) the offender; or

(b) a witness who is a full-time detainee in a correctional centre (however described) in the ACT or elsewhere.

285 Board inquiries—protection of witnesses etc

(1) A lawyer representing an offender, or someone else representing an offender with the board's consent, at a hearing of the board for an inquiry has the same protection as a barrister has in appearing for a party in a proceeding in the Supreme Court.

(2) A witness at a hearing for an inquiry before the board has the same protection as a witness in a proceeding in the Supreme Court.

Part 10.4 Sentence administration board—other provisions

286 Board generally—exercise of functions after orders have ended

The board may exercise a function in relation to a home detention order, parole order or periodic detention order (including a function for breach of the order) even though the order has ended.

287 Board generally—effect of board warrants

(1) A warrant issued by a judicial member or the secretary of the board under this Act has the same effect as a warrant issued by a court.

(2) All courts and people acting judicially must take judicial notice of a warrant issued by a judicial member or the secretary of the board under this Act.

288 Board generally—secretary and assistant secretaries

(1) The chief executive may appoint a public servant as secretary of the board.

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

(2) The chief executive may appoint 1 or more public servants as assistant secretaries of the board.

(3) Subject to any direction of the chief executive, an assistant secretary may exercise any of the functions of the secretary.

Note The functions of an assistant secretary may be exercised by a person occupying the position of assistant secretary (see Legislation Act, s 200).

289 Board generally—security of information

The board or the secretary of the board must not disclose to an offender a document, or any part of a document, containing any of the following details about a victim of the offender:

(a) the victim's home or business address;

(b) any email address for the victim;

(c) any contact phone or fax number for the victim.

Note For the meaning of ***victim***, see s 14.

(2) This Act does not require a person to be given a copy of a document, or any part of a document, if there is, in a judicial member's opinion, a substantial risk that giving it to a person would—

(a) adversely affect the security or good order and discipline of a correctional centre (however described) in the ACT or elsewhere; or

(b) jeopardise the conduct of a lawful investigation; or

(c) endanger the person or anyone else; or

(d) otherwise prejudice the public interest.

290 Board generally—regulations about procedure

The regulations may make provision in relation to the procedures of the board, including, for example, the board's procedure.

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

Chapter 11 Transfer of prisoners

Part 11.1 Interstate transfer of prisoners

Division 11.1.1 Interstate transfer—preliminary

291 Interstate transfer—definitions

In this part:

ACT prisoner means a person subject to an ACT sentence of imprisonment, but does not include a person subject to a Commonwealth sentence of imprisonment.

ACT sentence of imprisonment means a sentence of imprisonment for an offence against an ACT law, and includes—

(a) a sentence under which default imprisonment is ordered; and

(b) an indeterminate sentence; and

(c) a translated sentence;

but does not include an order under the *Children and Young People Act 1999* for the committal of a child to an institution or State institution within the meaning of that Act, or the period of such a committal.

arrest warrant, for a person, means a warrant to apprehend or arrest the person or commit the person to prison, except—

(a) a warrant under which the term of imprisonment that the person is liable to serve is default imprisonment; or

(b) a warrant to secure the attendance of the person.

Commonwealth sentence of imprisonment means a sentence of imprisonment for an offence against a law of the Commonwealth or a non-participating Territory.

corresponding ACT court, in relation to a court of a participating State, means an ACT court declared under section 295 (1) (Interstate transfer—corresponding courts and interstate laws) to be a corresponding court in relation to the participating State court.

corresponding Minister, of a participating State, means the State Minister responsible for the administration of the State's interstate law.

default imprisonment means imprisonment in default of—

(a) payment of any fine, penalty, costs or other amount of money of any kind imposed or ordered to be paid by a court, judge, magistrate or justice of the peace; or

(b) entering into a bond or recognisance to be of good behaviour or keep the peace.

Governor, of a participating State, means—

(a) for a State other than the Northern Territory—the State's Governor or anyone exercising the functions of the Governor; or

(b) for the Northern Territory—the Administrator of the Northern Territory or anyone exercising the functions of the Administrator.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

indeterminate sentence means a sentence of, or order or direction for, imprisonment or detention—

(a) for life; or

(b) during the pleasure of—

(i) the Governor-General; or

(ii) the Governor of a participating State;

and includes such a sentence, order or direction resulting from the operation of any law.

interstate law means a law declared under section 295 (Interstate transfer—corresponding courts and interstate laws) to be an interstate law for this part.

interstate sentence of imprisonment means—

(a) a State sentence of imprisonment within the meaning of an interstate law; or

(b) for the Northern Territory—a Territory sentence of imprisonment within the meaning of the *Prisoners (Interstate Transfer) Act 1983* (NT).

joint prisoner means a person subject to both—

(a) an ACT sentence of imprisonment or an interstate sentence of imprisonment; and

(b) a Commonwealth sentence of imprisonment.

non-participating Territory means an external Territory or the Jervis Bay Territory.

order of transfer means an order issued under any of the following provisions for the transfer of a prisoner to a participating State or non-participating Territory:

(a) section 296 (Interstate transfer—requests from ACT and joint prisoners for transfer to participating State);

(b) section 297 (Interstate transfer—requests from ACT and joint prisoners for transfer to non-participating Territory);

(c) section 305 (Interstate transfer—order of transfer);

(d) section 306 (8) (Interstate transfer—review of Magistrates Court decision);

(e) section 311 (1) (Interstate transfer—return of prisoner to participating State).

participating State means a State in which an interstate law is in force.

prison means—

(a) a correctional centre; or

(b) a police lockup in the ACT.

prisoner means an ACT prisoner or joint prisoner.

prison officer means—

(a) a person appointed or employed to assist in the management of a prison; or

(b) an escort.

release on parole includes—

(a) release on probation; and

(b) any other form of conditional release in the nature of parole.

relevant security, in relation to a person, means a security given by the person—

(a) with or without sureties; and

(b) by bond, recognisance or otherwise; and

(c) to the effect that the person will comply with conditions relating to his or her behaviour.

remission instrument means an instrument of remission under section 394 (Remission of penalties).

sentence of imprisonment—see section 292 (1).

subject to a sentence of imprisonment—see section 293 (1).

translated sentence means a sentence of imprisonment that is taken under section 317 (Interstate transfer—translated sentences) to have been imposed on a person by an ACT court.

292 Interstate transfer—meaning of *sentence of imprisonment* etc

(1) In this part:

sentence of imprisonment means—

(a) an ACT sentence of imprisonment; or

(b) an interstate sentence of imprisonment; or

(c) if relevant, a Commonwealth sentence of imprisonment.

(2) For this part, a sentence of imprisonment resulting (or originally resulting) from the operation of a law of the ACT, a State or a non-participating Territory must, except as prescribed under regulations, be taken to have been imposed (or originally imposed) by a court of the ACT, the State or the non-participating Territory.

(3) In this part, a reference to a sentence of imprisonment being served in the ACT includes a reference to a sentence of imprisonment being served in New South Wales under this Act.

293 Interstate transfer—person *subject to* sentence of imprisonment

(1) A reference in this part to a person ***subject to*** a sentence of imprisonment does not include a reference to a person who has completed serving the sentence.

(2) The following people on whom a sentence of imprisonment has been imposed are taken, for this part, to have completed serving the sentence:

(a) a person—

(i) who has been released from serving a part of the sentence on parole or on licence to be at large; and

(ii) in relation to whom action can no longer be taken under a law of the ACT, the Commonwealth, a participating State or a non-participating Territory to require the person to serve all of part of the remainder of the sentence;

(b) a person—

(i) who has been released from serving all or part of the sentence on giving a relevant security; and

(ii) in relation to whom—

(A) action can no longer be taken under a law of the ACT, the Commonwealth, a participating State or a non-participating Territory in relation to a breach of a condition of the security; or

(B) action cannot, because of the end of the security, be taken under any such law to require the person to serve all or part of the sentence;

(c) a person who has been pardoned under section 393 (Grant of pardon);

(d) a person whose sentence, or the remaining part of whose sentence, has been remitted under section 394 (Remission of penalties);

(e) a person who, because of the exercise of the prerogative of mercy, is no longer required to serve the sentence or the remaining part of the sentence.

294 Interstate transfer—effect of warrant of commitment issued by justice of the peace

If a justice of the peace of a participating State, in the exercise of his or her powers, issues a warrant of commitment while not constituting a court, the sentence of imprisonment imposed by the warrant is taken, for this part, to have been imposed by a court.

295 Interstate transfer—corresponding courts and interstate laws

(1) The Minister may, in writing, declare that—

(a) a State law is an interstate law for this part; and

(b) a stated ACT court is, for this part, a corresponding court in relation to a stated court of a participating State.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

(2) The Minister may make a declaration under subsection (1) in relation to a State law only if the Minister is satisfied that the law substantially corresponds to the provisions of this part and contains provisions that are mentioned in this part as provisions of an interstate law that correspond to stated provisions of this part.

(3) A declaration under subsection (1) is a notifiable instrument.

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

Division 11.1.2 Interstate transfer—prisoner's welfare

296 Interstate transfer—requests from ACT and joint prisoners for transfer to participating State

(1) This section applies if the Minister—

(a) receives a written request by an ACT prisoner or joint prisoner serving a sentence of imprisonment in the ACT for the prisoner's transfer to a participating State; and

(b) is of the opinion that the prisoner should be transferred to that State in the interests of his or her welfare.

(2) The Minister must give the corresponding Minister a written request asking the Minister to accept the transfer of the prisoner to the participating State.

(3) The Minister may issue an order for the transfer of the prisoner to the participating State if the Minister—

(a) has given the corresponding Minister a request under subsection (2); and

(b) received from the Minister written notice of consent to the transfer of the prisoner to the participating State.

Note For the operation of the order for a joint prisoner, see s 298.

(4) In deciding whether the prisoner should be transferred to the participating State, the Minister must primarily have regard to the welfare of the prisoner.

(5) However, the Minister may also have regard to anything else the Minister considers relevant, including—

(a) the administration of justice; and

(b) the security of a prison to which the prisoner might be transferred; and

(c) the security, safety and welfare of the prisoners in that prison; and

(d) the security, safety and welfare of the community.

(6) If the Minister decides not to issue an order for the transfer of the prisoner, the Minister must give the prisoner a written statement of the Minister's reasons for the decision.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

297 Interstate transfer—requests from ACT and joint prisoners for transfer to non-participating Territory

(1) This section applies if the Minister—

(a) receives a written request by an ACT prisoner or joint prisoner serving a sentence of imprisonment in the ACT for the prisoner's transfer to a non-participating Territory; and

(b) is of the opinion that the prisoner should be transferred to that Territory in the interests of his or her welfare.

(2) If the request is made by an ACT prisoner, the Minister must give the Commonwealth Attorney-General a written request asking the Attorney-General to consent to the transfer.

(3) The Minister may issue an order for the transfer of the ACT prisoner to the non-participating Territory if the Minister—

(a) has given the Commonwealth Attorney-General a request under subsection (2); and

(b) received from the Commonwealth Attorney-General written notice of consent to the transfer of the prisoner to the non-participating Territory.

(4) If the request is made by a joint prisoner, the Minister may issue an order for the transfer of the prisoner to the non-participating Territory.

Note For the operation of the order for a joint prisoner, see s 298.

(5) In deciding whether the prisoner should be transferred to the non-participating Territory, the Minister must primarily have regard to the welfare of the prisoner.

(6) However, the Minister may also have regard to anything else the Minister considers relevant, including anything mentioned in section 296 (5).

(7) If the Minister decides under this section not to issue an order for the transfer of the prisoner, the Minister must give the prisoner a written statement of the Minister's reasons for the decision.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

298 Interstate transfer—effect of div 11.1.2 orders on joint prisoners

An order of transfer issued under this division in relation to a joint prisoner has no effect—

(a) to the extent that, apart from this section, it authorises or requires the doing of anything under this division in relation to the prisoner as a prisoner subject to a Commonwealth sentence of imprisonment; and

(b) unless—

(i) a transfer order corresponding to the order of transfer under this division is in force under the *Transfer of Prisoners Act 1983* (Cwlth) in relation to the prisoner; or

(ii) the transfer of the prisoner is otherwise authorised under that Act.

299 Interstate transfer—repeated requests for transfer

A request under this division made by a prisoner for transfer to a participating State or non-participating Territory need not be considered by the Minister if it is made within 1 year after a similar request is made by the prisoner.

300 Interstate transfer—receipt of request for transfer to ACT

(1) This section applies if the Minister receives a request to accept the transfer of an imprisoned person to the ACT made under—

(a) the provision of an interstate law that corresponds to section 296 (Interstate transfer—requests from ACT and joint prisoners for transfer to participating State); or

(b) the *Transfer of Prisoners Act 1983* (Cwlth), part 2.

(2) The Minister must—

(a) consent, or refuse to consent, to the transfer; and

(b) give written notice of the consent or refusal to the Minister who made the request.

(3) In deciding whether to consent, or refuse to consent, to the transfer, the Minister must primarily have regard to the welfare of the imprisoned person.

(4) However, the Minister may also have regard to anything else the Minister considers relevant, including anything mentioned in section 296 (5).

(5) If the Minister refuses to consent to the transfer of the imprisoned person, the Minister must give the person a written statement of the Minister's reasons for the decision.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

301 Interstate transfer—reports

(1) For the purpose of exercising a function under this division, the Minister may be informed in any way the Minister considers appropriate and, in particular, may have regard to any report of a parole or prison authority of the ACT or any participating State.

(2) A report of a parole or prison authority may be sent to a corresponding Minister to assist the Minister in exercising a function under the relevant interstate law.

Division 11.1.3 Interstate transfer—trials and sentences

302 Interstate transfer—request for transfer to participating State

(1) This section applies if—

(a) a prisoner serving a sentence of imprisonment in the ACT is the subject of an arrest warrant issued under the law of a participating State, the Commonwealth or a non-participating Territory; and

(b) the ACT Attorney-General receives a transfer request from—

(i) the relevant Attorney-General, accompanied by a copy of the warrant; or

(ii) the Minister under subsection (3).

(2) The ACT Attorney-General must—

(a) consent, or refuse to consent, to the transfer; and

(b) give the relevant Attorney-General, or the Minister, written notice of the consent or refusal.

(3) If the Minister receives a transfer request from a prisoner serving a sentence of imprisonment in the ACT, the Minister must refer the request to the Attorney-General.

(4) However, the Minister need not refer the transfer request to the Attorney-General if it is made within 1 year after a similar request is made by the prisoner.

(5) If the Attorney-General refuses to consent to the transfer of a prisoner, the Attorney-General must give the prisoner a written statement of the Attorney-General's reasons for the decision.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

(6) In this section:

relevant Attorney-General, in relation to an arrest warrant, means—

(a) for a warrant issued under the law of a participating State—the State Attorney-General; or

(b) for a warrant issued under the law of the Commonwealth or a non-participating Territory—the Commonwealth Attorney-General.

transfer request, for a prisoner serving a sentence of imprisonment in the ACT, means a written request for the transfer of the prisoner to a participating State or non-participating Territory to be dealt with according to law.

303 Interstate transfer—necessary consents

(1) An order of transfer must be issued under this division only if—

(a) the ACT Attorney-General has, in writing, consented to the transfer; and

(b) for the transfer of a prisoner to a participating State (including a transfer to which paragraph (c) (ii) applies)—the State Attorney-General has, in writing, either consented to or requested the transfer; and

(c) for a request for transfer—

(i) to a non-participating Territory; or

(ii) for the purpose of an arrest warrant issued under Commonwealth law;

the Commonwealth Attorney-General has, in writing, either consented to or requested the transfer.

(2) A certificate signed by the chief executive certifying that any consent or request for subsection (1) for the transfer of a prisoner to a stated participating State or non-participating Territory has been given or made is, unless evidence to the contrary is given, proof that the consent or request has been given or made.

304 Interstate transfer—order for prisoner to be brought before Magistrates Court

(1) If the Magistrates Court is satisfied that section 303 (1) applies in relation to a prisoner, the court must, by written order, direct the person in charge of the prison where the prisoner is being held to bring the prisoner before the court at a stated place and time for a decision about whether an order of transfer should be issued for the prisoner.

(2) Notice of the order must be served on the Attorney-General and on the prisoner.

(3) At a hearing under the order—

(a) the prisoner is entitled to be represented by a lawyer; and

(b) the Attorney-General is entitled to appear or to be represented.

305 Interstate transfer—order of transfer

At a hearing under section 304 (1) in relation to a prisoner, the Magistrates Court must—

(a) issue an order for the transfer of the prisoner to the participating State or non-participating Territory stated in the certificate mentioned in section 303 (2) (Interstate transfer—necessary consents); or

(b) refuse to issue the order if, on the prisoner's application, the court is satisfied that—

(i) it would be harsh, oppressive or not in the interests of justice to issue the order; or

(ii) the trivial nature of the charge or complaint against the prisoner does not justify the transfer.

306 Interstate transfer—review of Magistrates Court decision

(1) Within 14 days after a decision is made under section 305 in relation to a prisoner, any of the following may apply to the Supreme Court for review of the decision:

(a) the prisoner;

(b) the Attorney-General;

(c) anyone else who asked for or consented to the transfer of the prisoner.

(2) On application under subsection (1), the Supreme Court may review the decision.

(3) The following are entitled to appear, and to be represented, at the review:

(a) the prisoner;

(b) the Attorney-General;

(c) anyone else who asked for or consented to the transfer of the prisoner.

(4) A prisoner may only be represented at the review by a lawyer.

(5) For the review, the Supreme Court may, by written order, direct the person in charge of the prison where the prisoner is being held to bring the prisoner to the stated place of review at a stated time.

(6) The review is by way of rehearing on the evidence (if any) given before the Magistrates Court and on any additional evidence given before the Supreme Court.

(7) On the review of the decision, the Supreme Court may—

(a) confirm the decision; or

(b) set aside the decision and substitute a new decision.

(8) For the purpose of giving effect to a substituted decision under subsection (7) (b), the Supreme Court may issue an order for the transfer of the prisoner to a stated participating State or non-participating Territory.

307 Interstate transfer—effect of div 11.1.3 orders on joint prisoners

An order of transfer issued under this division in relation to a joint prisoner has no effect—

(a) to the extent that, apart from this section, it authorises or requires the doing of anything under this division in relation to the prisoner as a prisoner subject to a Commonwealth sentence of imprisonment has been imposed; and

(b) unless—

(i) a transfer order corresponding to the order of transfer under this division is in force under the *Transfer of Prisoners Act 1983* (Cwlth) in relation to the prisoner; or

(ii) the transfer of the prisoner is otherwise authorised under that Act.

308 Interstate transfer—execution of orders for prisoners to be brought before courts

If an order is made under section 304 (1) (Interstate transfer—order for prisoner to be brought before Magistrates Court) or section 306 (5) (Interstate transfer—review of Magistrates Court decision)—

(a) the person in charge to whom it is directed must execute the order, or cause the order to be executed by a prison officer, police officer or escort; and

(b) the prisoner must, while the order is being executed, be kept in the custody of the person executing the order; and

(c) the person executing the order must afterwards return the prisoner to the custody from which the person has been brought.

309 Interstate transfer—request by Attorney-General for transfer of imprisoned person to ACT

If a person who is the subject of an arrest warrant issued under an ACT law is imprisoned in a participating State, the ACT Attorney-General may give the State Attorney-General a written request (accompanied by a copy of the warrant) for the transfer of the person to the ACT to be dealt with according to law.

310 Interstate transfer—request by imprisoned person for transfer to ACT

(1) This section applies if—

(a) a person is imprisoned in a participating State; and

(b) the person is the subject of an arrest warrant issued under an ACT law; and

(c) the State Attorney-General has given written notice to the ACT Attorney-General that the State Attorney-General has consented to a request made by the person to be transferred to the ACT to enable the imprisoned person to be dealt with according to law.

(2) The ACT Attorney-General must—

(a) consent, or refuse to consent, to the transfer; and

(b) give the State Attorney-General written notice of the consent or refusal.

(3) If the Attorney-General refuses to consent to the transfer of a prisoner, the Attorney-General must give the prisoner a written statement of the Attorney-General's reasons for the decision.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

Division 11.1.4 Interstate transfer—return to original jurisdiction

311 Interstate transfer—return of prisoner to participating State

(1) The Minister must, subject to section 312 (Interstate transfer—prisoner's request to serve sentence in ACT), issue an order for the return transfer of a prisoner to a participating State or non-participating Territory if—

(a) the prisoner was transferred to the ACT under an order issued under—

(i) the provision of the State interstate law corresponding to section 305 (Interstate transfer—order for transfer) or section 306 (8) (Interstate transfer—review of Magistrates Court decision); or

(ii) the *Transfer of Prisoners Act 1983* (Cwlth), part 3; and

(b) as far as the Minister is aware, each complaint or information alleging an offence by the person against ACT or Commonwealth law has been finally dealt with according to law, and as a result—

(i) the prisoner did not become liable to serve any sentence of imprisonment in the ACT; or

(ii) in any other case—the total period of imprisonment that the prisoner is liable to serve in the ACT (including any period of imprisonment under any translated sentence originally imposed by an ACT court) is shorter than the total period of imprisonment remaining to be served under—

(A) any translated sentence (other than a translated sentence originally imposed by an ACT court); and

(B) any sentence of imprisonment to which the person is subject for an offence against a law of the Commonwealth or a non-participating Territory.

(2) For subsection (1) (b), a complaint or information alleging an offence by the prisoner is taken to be ***finally dealt*** with if—

(a) the prisoner is tried for the offence, and—

(i) the time within which an appeal against the decision may be lodged, a review of the decision applied for, or a retrial ordered, has ended; and

(ii) any appeal or review has been decided or withdrawn, or any proceeding (including appeal) in relation to a retrial has been concluded; or

(b) the complaint or information is withdrawn, or a nolle prosequi (or similar instrument) is filed in relation to the offence.

(3) In deciding the period, or the total period, remaining to be served under a sentence or sentences of imprisonment mentioned in subsection (1) (b) (ii)—

(a) any entitlement to remissions is disregarded; and

(b) a period of imprisonment that includes a period to be served under an indeterminate sentence is taken to be longer than any period of imprisonment that does not include such a period; and

(c) if an ACT sentence of imprisonment that the prisoner became liable to serve in the ACT (other than a translated sentence) is cumulative with any translated sentence originally imposed by a court other than an ACT court, any translated sentence is taken—

(i) not to be a translated sentence; and

(ii) to be a sentence that the prisoner is liable to serve in the ACT.

(4) This section does not apply to a prisoner if the prisoner is subject to an indeterminate sentence (other than a translated sentence) imposed on the prisoner by an ACT court.

312 Interstate transfer—prisoner's request to serve sentence in ACT

(1) Section 311 does not apply in relation to a prisoner if, on the prisoner's written request to the Minister, the Minister and the relevant Minister (or relevant Ministers) agree in writing that it is in the interests of the welfare of the prisoner to serve his or her imprisonment in the ACT.

(2) In this section:

relevant Minister means—

(a) if the prisoner is an ACT prisoner transferred from a participating State—the corresponding Minister of the participating State; or

(b) if the prisoner is a joint prisoner transferred from a participating State—

(i) the corresponding Minister of the participating State; and

(ii) the Commonwealth Attorney-General; or

(a) if the prisoner is a joint prisoner transferred from a non-participating Territory—the Commonwealth Attorney-General.

313 Interstate transfer—effect of div 11.1.4 orders on joint prisoners

An order of transfer issued under this division in relation to a joint prisoner has no effect—

(a) to the extent that, apart from this section, it authorises or requires the doing of anything under this division in relation to the prisoner as a prisoner subject to a Commonwealth sentence of imprisonment; and

(b) unless—

(i) a transfer order corresponding to the order of transfer under this division is in force under the *Transfer of Prisoners Act 1983* (Cwlth) in relation to the prisoner; or

(ii) the transfer of the prisoner is otherwise authorised under that Act.

Division 11.1.5 Interstate transfer—operation of transfer orders

314 Interstate transfer—transfer in custody of escort

(1) An order of transfer—

(a) must direct the person in charge of the prison where the prisoner is detained to deliver the prisoner into the custody of an escort; and

(b) authorises the person in charge to follow the direction; and

(c) authorises the escort to have custody of the prisoner for the purpose of taking the prisoner from the ACT to the prison stated in the order and deliver the prisoner into the custody of the person in charge of that prison.

(2) An order of transfer under an interstate law, or under the *Transfer of Prisoners Act 1983* (Cwlth), or both, for the transfer of a prisoner to the ACT authorises the people escorting the prisoner under that law or Act (while in the ACT) to have custody of the prisoner for the purpose of taking the prisoner to the prison stated in the order and delivering the prisoner into the custody of the person in charge of the prison.

(3) In this section:

escort means 1 or more of the following:

(a) a corrections officer;

(b) a police officer;

(c) an escort.

prison includes a prison within the meaning of an interstate law.

prisoner includes a prisoner within the meaning of an interstate law or the *Transfer of Prisoners Act 1983* (Cwlth).

315 Interstate transfer—transfer of sentence with prisoner

(1) This section applies to a prisoner if, under an order of transfer, the prisoner is transferred to a participating State or non-participating Territory.

(2) From the time the prisoner arrives in the State or Territory, any ACT sentence of imprisonment, including a translated sentence, to which the prisoner is subject ceases to have effect in the ACT except—

(a) for the purpose of an appeal against, or review of, a conviction, judgment, sentence or order of an ACT court; or

(b) in relation to any period of imprisonment served by the prisoner in the ACT; or

(c) in relation to any remittance to the Minister of an amount paid in discharge (or partial discharge) of a sentence of default imprisonment originally imposed on the prisoner by an ACT court.

316 Interstate transfer—information sent to participating State

(1) If, under an order of transfer, a prisoner is transferred to a participating State, the Minister must send to the corresponding State Minister, or to a person designated by that Minister for the purpose—

(a) the order of transfer; and

(b) the warrant of commitment, or any other authority for commitment, for any sentence of imprisonment that the prisoner was serving, or was liable to serve, immediately before the prisoner left the ACT; and

(c) a report, and other documents, under subsection (2) relating to the prisoner; and

(d) details of any subsequent changes to information in the report, accompanied by any relevant orders or other documents.

(2) For subsection (1) (c), a report relating to a prisoner must—

(a) contain the information that appears likely to assist any court, authority or officer in the relevant State; and

(b) be accompanied by the documents, including records relating to the prisoner's conduct, that appear likely to assist any court, authority or officer in the relevant State; and

(c) include details of the following:

(i) the prisoner's convictions;

(ii) the prisoner's sentences and minimum terms of imprisonment;

(iii) periods of imprisonment served by the prisoner;

(iv) the prisoner's entitlements to remissions;

(v) the prisoner's release on probation or parole.

(3) A reference in this section to an order or other document is a reference to the original or a copy certified in the way prescribed under the regulations.

317 Interstate transfer—translated sentences

(1) This section applies if—

(a) an interstate sentence of imprisonment is imposed, or a translated sentence within the meaning of an interstate law is taken to be imposed under that law, on a person by a court of a participating State; and

(b) that person is brought into the ACT in accordance with an order under an interstate law of the State for the person's transfer to the ACT.

(2) If this section applies in relation to a person—

(a) the sentence mentioned in subsection (1) (a) is taken to have been lawfully imposed on the person by a corresponding ACT court; and

(b) a direction or order given or made by a court of the participating State in relation to the start of the sentence is (as far as practicable) taken to have been lawfully given or made by the corresponding ACT court; and

(c) subject to this division, ACT laws apply as if the sentence, direction or order were a lawful sentence, direction or order of the corresponding ACT court.

318 Interstate transfer—operation of translated sentences generally

(1) If, in relation to a translated sentence, a court of the relevant participating State has fixed a minimum term of imprisonment (shorter than the translated sentence) during which the person subject to the sentence is not entitled to be released on parole, then, subject to this division, the minimum term is taken to have been fixed by the corresponding ACT court.

(2) If a translated sentence or a minimum term that is taken under subsection (1) to have been fixed by a corresponding ACT court—

(a) is amended or set aside on review by (or appeal to) a court of the relevant participating State—the sentence or minimum term is taken to have been amended to the same extent, or to have been set aside, by a corresponding ACT court; or

(b) is otherwise amended or ceases to have effect because of action taken by any entity in the participating State—the sentence is taken to have been amended to the same extent, or to have

ceased to have effect, because of action taken by an appropriate ACT entity.

(3) This division does not permit in the ACT any appeal against or review of any conviction, judgment, sentence or minimum term made, imposed or fixed in relation to the person by a court of the participating State.

319 Interstate transfer—indeterminate translated sentences

(1) If a translated sentence is an indeterminate sentence requiring that the person who is the subject of the sentence be detained during the pleasure of the Governor of the participating State where the sentence was imposed, the person must be detained during the pleasure of the Governor-General.

(2) The Executive may grant a pardon under section 393 (Grant of pardon) to a person who is subject to a translated sentence as if the person were an offender convicted in the ACT of an offence against an ACT law.

(3) If the Governor of the participating State where the sentence of imprisonment was imposed on the person has given an indication about what the Governor may have done had the person not been transferred to the ACT, the Executive may give effect to that indication in granting a pardon to the person under section 393.

(4) Subsection (2) does not apply in relation to the conviction of a person for an offence against a law of a non-participating Territory.

320 Interstate transfer—effect of translated sentences before transfer to ACT

(1) A person who is subject to a translated sentence is taken to have served in the ACT the period of the translated sentence that, up to the time of transfer to the ACT, the person has served in relation to the sentence in a participating State, including—

(a) any period that is taken by the provision of an interstate law corresponding to this subsection to have been served in a participating State; and

(b) any period spent in custody while being transferred to a prison in the ACT.

(2) A person who is subject to the translated sentence is, subject to subsection (3), taken to be entitled under a remission instrument to any remission of the person's translated sentence for which, up to the time of transfer to the ACT, the person was eligible in relation to the sentence of imprisonment in the participating State, including any remission of sentence taken by an interstate law to have been earned in a participating State.

(3) For subsection (2), a remission of the translated sentence is not to be taken into account if—

(a) the person subject to the sentence was eligible for remission up to the time of the person's transfer to the ACT; and

(b) the remission is attributable to a part of the sentence not served or not to be served in the participating State from which the person was transferred.

(4) Any remission of a translated sentence under a remission instrument, except a remission mentioned in subsection (2), is worked out from the time of arrival in the ACT of the person subject to the sentence.

321 Interstate transfer—default imprisonment for translated sentences

(1) This section applies if a person (the ***prisoner***) is serving a translated sentence by which default imprisonment was ordered.

(2) If this section applies, and any part of the default amount is paid by or on behalf of the prisoner to the person in charge of the prison where the prisoner is held—

(a) the term of default imprisonment is reduced by a period that bears to the term of default imprisonment the same proportion as the part paid bears to the total amount that was payable; and

(b) the prisoner is entitled to be released from detention at the end of the reduced period, subject to any other sentence of imprisonment; and

(c) the person in charge must send the amount paid to the corresponding Minister of the participating State where the translated sentence was originally imposed.

(3) If this section applies, and on review by (or appeal to) a court of the participating State where the default sentence was imposed, or because of any other action taken by any entity in the participating State—

(a) the default amount is reduced—

(i) the term of default imprisonment is reduced by a period that bears to the term of default imprisonment the same

proportion as the amount of the reduction bears to the total of the default amount; and

(ii) the prisoner is entitled to be released from detention at the end of that reduced period, subject to any other sentence of imprisonment; or

(b) the obligation to pay the default amount is set aside—the prisoner is entitled to be released from detention immediately, subject to any other sentence of imprisonment.

(4) In this section:

default amount, in relation to a sentence of default imprisonment, means the amount in default of payment of which the default imprisonment was ordered.

Division 11.1.6 Interstate transfer—other provisions

322 Interstate transfer—notification to prisoners of decisions

The Attorney-General must tell a prisoner of any decision made by the Attorney-General in relation to the prisoner for this part.

323 Interstate transfer—lawful custody for transit through ACT

(1) This section applies if, in relation to a person imprisoned in a participating State or non-participating Territory (the ***prisoner***)—

(a) an order of transfer is made under an interstate law, under the *Transfer of Prisoners Act 1983* (Cwlth), or both, for the transfer of the prisoner to a State or non-participating Territory; and

(b) while transferring the prisoner under the order an escort (however described) brings the prisoner into the ACT.

(2) While the prisoner being transferred under the transfer order is in the ACT—

(a) the escort is authorised to have custody of the prisoner for the purpose of taking the prisoner from the ACT to the prison stated in the order and delivering the prisoner into the custody of the person in charge of the prison; and

(b) if the escort asks the person in charge of a prison to detain the prisoner and gives the person a copy of the transfer order (certified by the escort to be a true copy)—the person in charge of a prison is authorised to detain the prisoner, as though the prisoner were an ACT prisoner, for the time the escort asks for, or for the shorter or longer time that is necessary to execute the transfer order; and

(c) if the person in charge of a prison has the custody of the prisoner under paragraph (b)—the person is authorised to deliver the prisoner back into the escort's custody if the escort asks and produces the transfer order.

324 Interstate transfer—escape from custody of person being transferred

(1) A person in the custody of an escort under section 323 who escapes from the custody may be apprehended without warrant by the escort, a police officer or anyone else.

(2) If a person in custody under section 323—

(a) has escaped and been apprehended; or

(b) has attempted to escape;

the person may be taken before a magistrate who may, despite the terms of any order of transfer issued under an interstate law, by warrant—

(c) order the person to be returned to the participating State where the order of transfer under which the person was being transferred at the time of the escape or attempt to escape was issued; and

(d) for that purpose, order the person to be delivered into the custody of an escort.

(3) A person who is the subject of a warrant issued under subsection (2) may be detained as an ACT prisoner until the earlier of the following:

(a) the person being delivered into the custody of an escort in accordance with the warrant;

(b) the end of 7 days after the day the warrant is issued.

(4) If a person who is the subject of a warrant issued under subsection (2) is not, in accordance with the warrant, delivered into the custody of an escort within 7 days after the day the warrant is issued, the warrant has no further effect.

(5) This section does not apply to a person to whom the *Crimes Act 1914* (Cwlth), section 47 applies under the *Transfer of Prisoners Act 1983* (Cwlth), section 26 (2).

(6) In this section:

escort, in relation to a person who (while in the ACT) escapes, or attempts to escape from custody while being transferred under a transfer order issued under the interstate law of a participating State, means—

(a) in subsection (1)—the escort accompanying the person at the time of the escape or attempted escape; or

(b) in any other case—any of the following:

(i) the escort within the meaning of paragraph (a);

(ii) a prison officer or police officer of the participating State;

(iii) a person appointed, in writing, by the corresponding Minister of the participating State to escort the person back to the State.

325 Interstate transfer—offence for escape from custody

(1) A person commits an offence if—

(a) the person is in custody under an order of transfer under which the person is being transferred from the ACT to a participating State or non-participating Territory; and

(b) the person escapes from custody; and

(c) at the time the person escapes from custody, the person is not in the ACT or the participating State or non-participating Territory.

Maximum penalty: imprisonment for 7 years.

(2) A sentence imposed on a person for an offence against subsection (1) must be served after the end of the term of any other sentence that the person was serving at the time the offence was committed.

(3) A person in custody under an order of transfer who escapes from the custody is not serving his or her sentence of imprisonment while the person is unlawfully at large.

(4) This section does not apply to a person to whom the *Crimes Act 1914* (Cwlth), section 47 applies under the *Transfer of Prisoners Act 1983* (Cwlth), section 26 (2).

326 Interstate transfer—revocation of order of transfer on escape from custody

(1) The Magistrates Court may revoke an order of transfer if it appears to the court, on application made to it under this section by a person prescribed under the regulations, that the person in relation to whom the order was issued has, while being transferred in accordance with the order, committed an offence against the law of the ACT, the Commonwealth, a participating State or a non-participating Territory.

(2) This section applies whether or not the person has been charged with or convicted of the offence.

Part 11.2 International transfer of prisoners

327 International transfer—meaning of Cwlth Act

In this part:

Commonwealth International Transfer Act means the *International Transfer of Prisoners Act 1997* (Cwlth).

328 International transfer—terms defined Cwlth Act

A term defined in the Commonwealth International Transfer Act has the same meaning in this part.

329 International transfer—object of pt 11.2

The object of this part is to give effect to the scheme for the international transfer of prisoners set out in the Commonwealth International Transfer Act by enabling the prisoners to be transferred to and from the ACT.

330 International transfer—minister's functions

The Minister may exercise any function given to the Minister under the Commonwealth International Transfer Act.

331 International transfer—functions of prison officers, police officers etc

(1) A prison officer, police officer and any other officer of the ACT may exercise any function given or expressed to be given to the officer—

(a) under the Commonwealth International Transfer Act or a law of a State or another Territory that provides for the international transfer of prisoners; or

(b) in accordance with any arrangements made under section 332.

(2) It is lawful for a prison officer, police officer or other officer of the ACT—

(a) to hold and deal with any prisoner in accordance with the terms of a warrant issued under the Commonwealth International Transfer Act in relation to the prisoner; and

(b) to take any action in relation to a prisoner transferred, or to be transferred, to or from Australia in accordance with the Commonwealth International Transfer Act that the officer is authorised to take under that Act.

332 International transfer—arrangements for administration of Cwlth Act

(1) The Chief Minister may, in accordance with the Commonwealth International Transfer Act, section 50, make arrangements for the administration of that Act including arrangements relating to the exercise by ACT officers of functions under the Commonwealth International Transfer Act.

(2) An arrangement may be varied or ended in accordance with the Commonwealth International Transfer Act.

333 International transfer—prisoners transferred to Australia

(1) A prisoner who is transferred to Australia under the Commonwealth International Transfer Act must be treated for a relevant enforcement law as if the prisoner were a federal prisoner serving a sentence of imprisonment imposed under a Commonwealth law.

(2) Without limiting subsection (1), enforcement laws relating to the following matters apply to a prisoner who is transferred to Australia under the Commonwealth International Transfer Act:

(a) conditions of imprisonment and treatment of prisoners;

(b) release on parole of prisoners;

(c) classification and separation of prisoners;

(d) removal of prisoners between prisons, hospitals and other places;

(e) treatment of mentally impaired prisoners;

(f) eligibility for participation in prison programs, including release under a prerelease permit scheme (however called);

(g) temporary absence from prison (for example, to work or seek work, to attend a funeral or visit a relative suffering a serious illness, or to attend a place of education or training);

(h) transfer of prisoners between States and Territories.

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

(3) Any direction given by the Commonwealth Attorney-General under the Commonwealth International Transfer Act, section 44 or section 49 must be given effect in the ACT.

(4) In this section:

enforcement law means any of the following about the detention of prisoners:

(a) an ACT law; or

(b) a law of the Commonwealth, a State or another Territory; or

(c) a practice or procedure lawfully observed.

334 International transfer—prisoners transferred from Australia

(1) ACT laws about the enforcement of a sentence of imprisonment imposed by an ACT court on a person cease to apply to a prisoner on whom such a sentence has been imposed who is transferred from Australia under the Commonwealth International Transfer Act to complete serving such a sentence of imprisonment.

(2) This section does not limit the power of the Executive to grant a pardon or remit a sentence of imprisonment or other penalty.

Chapter 12 Transfer of community-based sentences

Part 12.1 Transfer of community-based sentences—preliminary

335 Community-based sentence transfer—definitions

In this chapter:

community-based sentence—see section 338.

corresponding community-based sentence law—see section 341.

interstate authority—see section 342 (2).

interstate jurisdiction—see section 339 (4).

interstate sentence—see section 340 (2).

jurisdiction—see section 339 (1).

local authority—see section 342 (1).

local register—see section 345.

local sentence—see section 340 (1).

offender, in relation to a community-based sentence, means the person on whom the sentence was imposed.

originating jurisdiction, for a community-based sentence, means the jurisdiction where the sentence was originally imposed.

participating jurisdiction—see section 339 (3).

registration criteria—see section 350.

sentence means an order, decision or other sentence (however described), and includes part of a sentence.

serve a sentence includes—

(a) comply with or satisfy the sentence; or

(b) do anything else in accordance with the sentence.

this jurisdiction—see section 339 (2).

336 Community-based sentence transfer—purpose of ch 12

The purpose of this chapter is to allow community-based sentences imposed in participating jurisdictions to be transferred, by registration, between participating jurisdictions.

337 Community-based sentence transfer—application of ch 12

(1) This chapter applies only to sentences imposed by courts on adults convicted or found guilty of offences.

(2) This chapter does not apply to—

(a) a parole order; or

(b) a sentence to the extent that it imposes a fine or other financial penalty (however described); or

(c) a sentence to the extent that it requires the making of reparation (however described).

(3) In this section:

parole order—see section 362 (Parole order transfer—definitions).

Part 12.2 Important concepts—transfer of community-based sentences

338 Community-based sentence transfer—what is a *community-based sentence*?

(1) A ***community-based sentence*** is—

(a) for this jurisdiction—any of the following:

(i) a home detention order and the sentence of imprisonment (or the part of the sentence of imprisonment) in relation to which the order is made;

(ii) a good behaviour bond;

(iii) a periodic detention order;

(iv) a sentence declared under the regulations to be a community-based sentence; and

(b) for an interstate jurisdiction—a sentence that is a community-based sentence under the corresponding community-based sentence law of the jurisdiction.

(2) For subsection (1) (a) (i), the home detention order, and the sentence of imprisonment (or the part of the sentence of imprisonment) imposed in relation to it, are taken to be a single community-based sentence.

339 Community-based sentence transfer—jurisdictions and participating jurisdictions

(1) A ***jurisdiction*** is a State or the ACT.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

(2) ***This jurisdiction*** is the ACT.

(3) A ***participating jurisdiction*** is this jurisdiction or a State declared under the regulations to be a participating jurisdiction.

(4) An ***interstate jurisdiction*** is a participating jurisdiction other than this jurisdiction.

340 Community-based sentence transfer—local and interstate sentences

(1) A ***local sentence*** is a community-based sentence in force in this jurisdiction.

Note For the effect of interstate registration of a local sentence, see s 358.

(2) An ***interstate sentence*** is a community-based sentence in force in an interstate jurisdiction.

Note For the effect of registration in this jurisdiction of an interstate sentence, see s 355.

341 Community-based sentence transfer—what is a *corresponding community-based sentence law*?

A ***corresponding community-based sentence law*** is—

(a) a law of an interstate jurisdiction corresponding, or substantially corresponding, to this chapter; or

(b) a law of an interstate jurisdiction that is declared under the regulations to be a corresponding community-based sentence law, whether or not the law corresponds, or substantially corresponds, to this chapter.

342 Community-based sentence transfer—local and interstate authorities

(1) The ***local authority*** is the person appointed under section 343 as the local authority for this jurisdiction.

(2) The ***interstate authority*** for an interstate jurisdiction is the entity that is the local authority for the jurisdiction under the corresponding community-based sentence law of the jurisdiction.

Part 12.3 Administration

343 Community-based sentence transfer—appointment of local authority

The chief executive may appoint a public servant to be the local authority for this jurisdiction.

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

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

344 Community-based sentence transfer—delegation by local authority

The local authority may delegate the authority's functions under this chapter to another public servant.

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

345 Community-based sentence transfer—local register

(1) The local authority must keep a register (the ***local register***) of interstate sentences registered under this chapter.

(2) The local authority may correct a mistake or omission in the local register.

Part 12.4 Transfer of community-based sentences—registration of interstate sentences in ACT

346 Community-based sentence transfer—request for transfer of interstate sentence

The local authority may register an interstate sentence in this jurisdiction at the request of the interstate authority for the interstate jurisdiction in which the sentence is in force.

347 Community-based sentence transfer—form of request for registration

(1) The local authority must consider the request if the request—

(a) is in writing; and

(b) states the following particulars:

(i) the offender's name;

(ii) the offender's date of birth;

(iii) the offender's last-known address;

(iv) any other particulars required by the local authority; and

(c) is accompanied by the documents mentioned in subsection (2).

(2) The documents to accompany the request are as follows:

(a) a copy of the interstate sentence certified by the interstate authority;

(b) a copy of the offender's consent for the registration of the sentence in this jurisdiction;

(c) a copy of any relevant pre-sentence report about the offender held by the interstate jurisdiction in relation to any offence committed by the offender for which the offender is subject to a sentence;

(d) a copy of any relevant psychological or other assessment of the offender held by the interstate authority;

(e) details held by the interstate jurisdiction of—

(i) the offender's criminal record (whether in or outside Australia); and

(ii) the offender's compliance with the interstate sentence and any other relevant non-custodial sentence;

(f) a statement by the interstate authority explaining what part of the sentence has been served in the interstate jurisdiction or any other interstate jurisdiction before the making of the request;

(g) a statement by the interstate authority that the authority has explained to the offender, in language likely to be readily understood by the offender, that, if the sentence is registered in this jurisdiction—

(i) the offender will be bound by the requirements of the law of this jurisdiction in relation to the sentence; and

(ii) a breach of the sentence may result in the offender being resentenced in this jurisdiction for the offence; and

(iii) the other consequences for a breach of the sentence in this jurisdiction may be different from the consequences for a

breach of the sentence in the interstate jurisdiction, and, in particular, the penalties for breach of the sentence may be different;

(h) any other document required by the local authority.

(3) For subsection (2) (c), the offender is ***subject to*** a sentence if the sentence has not been fully served and has not been discharged.

(4) In considering the request, the local authority may take into account any other information or other documents given to the local authority by the interstate authority.

348 Community-based sentence transfer—request for additional information

The local authority may ask the interstate authority for additional information about the interstate sentence or the offender.

349 Community-based sentence transfer—withdrawal of offender's consent

The offender may withdraw consent to the registration of the interstate sentence at any time before (but not after) its registration by giving written notice to the local authority.

350 Community-based sentence transfer—registration criteria

(1) The ***registration criteria*** are that—

(a) the offender has consented to the sentence being registered in this jurisdiction and has not withdrawn the consent; and

(b) there is a corresponding community-based sentence under the law of this jurisdiction; and

(c) the offender can comply with the sentence in this jurisdiction; and

(d) the sentence can be safely, efficiently and effectively administered in this jurisdiction.

(2) For this section, there is a corresponding community-based sentence under the law of this jurisdiction for the interstate sentence if—

(a) a community-based sentence under the law of this jurisdiction corresponds, or substantially corresponds, to the interstate sentence; or

(b) a community-based sentence under the law of this jurisdiction is declared under the regulations to correspond to the interstate sentence, whether or not the sentence corresponds, or substantially corresponds, to the interstate sentence.

351 Community-based sentence transfer—decision on request

(1) The local authority may decide—

(a) to register the interstate sentence; or

(b) to register the sentence if the offender meets preconditions imposed under section 352; or

(c) not to register the sentence.

(2) In deciding whether to register the interstate sentence, the local authority must have regard to the registration criteria, but may have regard to any other relevant matter.

(3) The local authority—

(a) may decide not to register the interstate sentence even if satisfied the registration criteria are met; but

(b) must not decide to register the interstate sentence (with or without preconditions) unless satisfied that the registration criteria are met.

(4) The local authority may decide whether to register the interstate sentence, or to impose any preconditions, on the information and documents given to the authority under this part, and any other information or documents available to the authority, without hearing the offender.

(5) To remove any doubt, the local authority may decide to register the interstate sentence even if—

(a) the interstate jurisdiction is not the originating jurisdiction for the sentence; or

(b) the sentence has previously been registered in this jurisdiction or this jurisdiction is the originating jurisdiction for the sentence; or

(c) the authority has previously decided not to register the sentence in this jurisdiction.

Note For the effect of registration in this jurisdiction of an interstate sentence, see s 355.

(6) If the local authority decides not to register the interstate sentence, the authority must give written notice of the decision to the offender and the interstate authority.

352 Community-based sentence transfer—preconditions for registration

(1) The local authority may impose preconditions for the registration of the interstate sentence that the offender must meet to show that the offender can comply, and is willing to comply, with the sentence in this jurisdiction.

Examples of preconditions

1 The offender must satisfy the local authority before a stated time that the offender is living in this jurisdiction.

2 The offender must report to a stated person in this jurisdiction at a stated time and place (or another time and place agreed between the local authority and the offender).

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

(2) If the local authority decides to impose preconditions, the local authority must give written notice of the decision and the preconditions to the offender and the interstate authority.

(3) The local authority may, by written notice to the offender and the interstate authority, amend or revoke any precondition.

353 Community-based sentence transfer—how interstate sentence registered

(1) If the local authority decides to register the interstate sentence in this jurisdiction without imposing preconditions for the registration of the sentence, the local authority must register the sentence by entering the required details in the local register.

(2) If the local authority decides to impose preconditions for the registration of the interstate sentence, the local authority must register the sentence by entering the required details in the local

register only if the authority is satisfied that the preconditions have been met.

(3) In this section:

required details means the details of the offender and the interstate sentence prescribed under the regulations.

354 Community-based sentence transfer—notice of registration

(1) If the local authority registers the interstate sentence in this jurisdiction, the local authority must give written notice of the registration to the offender and the interstate authority.

(2) The notice must state the date the sentence was registered.

355 Community-based sentence transfer—effect of registration generally

(1) If the interstate sentence is registered in this jurisdiction, the following provisions apply:

(a) the sentence becomes a community-based sentence in force in this jurisdiction, and ceases to be a community-based sentence in force in the interstate jurisdiction;

(b) the sentence is taken to have been validly imposed by the appropriate court of this jurisdiction;

(c) the sentence continues to apply to the offender in accordance with its terms despite anything to the contrary under the law of this jurisdiction;

(d) the offence (the ***relevant offence***) for which the sentence was imposed on the offender is taken to be an offence against the

law of this jurisdiction, and not an offence against the law of the originating jurisdiction;

(e) the penalty for the relevant offence is taken to be the relevant penalty for the offence under the law of the originating jurisdiction, and not the penalty for an offence of that kind (if any) under the law of this jurisdiction;

(f) any part of the sentence served in an interstate jurisdiction before its registration is taken to have been served in this jurisdiction;

(g) the offender may be dealt with in this jurisdiction for a breach of the sentence, whether the breach happened before or after the registration of the sentence;

(h) the law of this jurisdiction applies to the sentence and any breach of it with any necessary changes and the changes (if any) prescribed under the regulations.

(2) Subsection (1) (d) and (e) do not apply if this jurisdiction is the originating jurisdiction.

(3) This section does not affect any right, in the originating jurisdiction, of appeal or review (however described) in relation to—

(a) the conviction or finding of guilt on which the interstate sentence was based; or

(b) the imposition of the interstate sentence.

(4) Any sentence or decision imposed or made on an appeal or review mentioned in subsection (3) has effect in this jurisdiction as if it were validly imposed or made on an appeal or review in this jurisdiction.

(5) This section does not give any right to the offender to an appeal or review (however described) in this jurisdiction in relation to the conviction, finding of guilt or imposition of sentence mentioned in subsection (3).

(6) In this section:

appropriate court, of this jurisdiction, means—

(a) if the interstate sentence was imposed by a court of summary jurisdiction or by a court on appeal from a court of summary jurisdiction—the Magistrates Court; and

(b) in any other case—the Supreme Court.

Part 12.5 Transfer of community-based sentences—registration of ACT sentences interstate

356 Community-based sentence transfer—request for transfer of local sentence

The local authority may request the interstate authority for an interstate jurisdiction to register a local sentence in the interstate jurisdiction.

357 Community-based sentence transfer—response to request for additional information

The local authority may, at the request of the interstate authority or on its own initiative, give the interstate authority any additional information about the local sentence or the offender.

358 Community-based sentence transfer—effect of interstate registration

(1) If the local sentence is registered in the interstate jurisdiction, the following provisions have effect:

(a) the sentence becomes a community-based sentence in force in the interstate jurisdiction, and ceases to be a community-based sentence in force in this jurisdiction;

(b) the offender may be dealt with in the interstate jurisdiction for a breach of the sentence, whether the breach happened before or after the registration of the sentence;

(c) if the sentence is registered in the local register—the sentence ceases to be registered.

(2) If this jurisdiction is the originating jurisdiction for the local sentence, this section does not affect any right of appeal or review (however described) in relation to—

(a) the conviction or finding of guilt on which the sentence was based; or

(b) the imposition of the sentence.

(3) To remove any doubt, this section does not prevent the local sentence from later being registered in this jurisdiction.

Part 12.6 Transfer of community-based sentences—other provisions

359 Community-based sentence transfer—inaccurate information about local sentence registered interstate

(1) This section applies if—

(a) a community-based sentence that was a local sentence is registered in an interstate jurisdiction; and

(b) the local authority becomes aware that information about the sentence or the offender recorded in the register kept under the corresponding community-based sentence law of the interstate jurisdiction (the ***interstate register***) is not, or is no longer, accurate.

(2) The local authority must tell the interstate authority for the interstate jurisdiction how the information in the interstate register needs to be changed to be accurate.

(3) Without limiting subsection (2), the local authority must tell the interstate authority about—

(a) any part of the sentence served in this jurisdiction between the making of the request to register the sentence in the interstate jurisdiction and its registration in the interstate jurisdiction; or

(b) the outcome of any appeal or review in this jurisdiction affecting the sentence.

360 Community-based sentence transfer—dispute about accuracy of information in interstate register

(1) This section applies if—

(a) a community-based sentence that was a local sentence is registered in an interstate jurisdiction; and

(b) the offender claims, in writing, to the interstate authority for the interstate jurisdiction that the information recorded about the sentence or the offender in the register kept under the corresponding community-based sentence law of the interstate jurisdiction (the ***interstate register***) is not, or is no longer, accurate, and states in the claim how the information is inaccurate.

(2) The interstate authority may send the local authority—

(a) a copy of the claim; and

(b) an extract from the interstate register containing the information that the offender claims is inaccurate.

(3) The local authority must check whether the information in the extract is accurate, having regard to the offender's claims.

(4) If the local authority is satisfied that the information is accurate, the local authority must tell the interstate authority.

(5) If the local authority is satisfied that the information is inaccurate, the local authority must give the interstate authority the correct information.

361 Community-based sentence transfer—evidentiary certificates for registration and registered particulars

(1) A certificate that appears to be signed by or on behalf of the local authority or the interstate authority for an interstate jurisdiction, and states a matter that appears in or can be worked out from the register kept under this chapter or a corresponding community-based sentence law, is evidence of the matter.

(2) A certificate under subsection (1) may state a matter by reference to a date or period.

(3) A certificate that appears to be signed by or on behalf of the local authority or the interstate authority for an interstate jurisdiction, and states any matter prescribed under the regulations, is evidence of the matter.

(4) A certificate that appears to be signed by or on behalf of the local authority or the interstate authority for an interstate jurisdiction and states any of the following details is evidence of the matter:

(a) details of a community-based sentence or the offender in relation to a community-based sentence;

(b) details of any part of a community-based sentence that has or has not been served.

(5) A court must accept a certificate mentioned in this section as proof of the matters stated in it if there is no evidence to the contrary.

(6) A court must or may admit into evidence other documents prescribed under the regulations in the circumstances prescribed under the regulations.

Chapter 13 Transfer of parole orders

362 Parole order transfer—definitions

In this chapter:

corresponding parole law means a law of a State or another Territory that is declared to be a corresponding parole law under section 363.

designated authority, for a State or another Territory, means the entity with powers under the corresponding parole law of the State or Territory that correspond to those of the Minister under section 364.

parole order means—

(a) a parole order under this Act or under a law of a State or another Territory relating to parole; or

(b) an authority under a law of a State or another Territory for the release on parole of a person from lawful detention.

Note A reference to an instrument includes a reference to the instrument as originally made and as amended (see Legislation Act, s 102).

sentence of imprisonment includes an order, direction, declaration or other authority under which a person may be lawfully detained in a correctional centre (however described).

363 Parole order transfer—declaration of corresponding parole laws

(1) The Minister may, in writing, declare that a law of a State or another Territory is a corresponding parole law for this chapter.

(2) A declaration under subsection (1) is a notifiable instrument.

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

364 Parole order transfer—registration requests

(1) The Minister may, on the written request of the designated authority for a State or another Territory, in writing, direct the secretary of the sentence administration board to register under this Act a parole order that was, on the date of the request, in force under a law of the State or Territory.

(2) The Minister may, by written notice addressed to the designated authority for a State or another Territory, request that a parole order in force in the ACT be registered under the corresponding parole law of the State or Territory.

365 Parole order transfer—documents for registration requests

(1) If the Minister makes a request under section 364 (2), the Minister must send to the designated authority for the relevant State or Territory—

(a) the parole order to which the request applies; and

(b) the judgment or order under which the parolee became liable to the imprisonment to which the parole order applies or a certificate of conviction or warrant of commitment that is evidence, or shows, that the parolee became liable to the imprisonment; and

(c) particulars in writing of the address of the parolee last known to the Minister; and

(d) all documents relating to the parolee that were before the entity that made the parole order and any other documents relating to the parolee that appear to be likely to be of assistance to any relevant entity of the State or Territory, including, in particular, details about class of prisoner and of any convictions, sentences of imprisonment, minimum terms of imprisonment, periods of imprisonment served, remissions earned and other grants of parole; and

(e) a written report about the parolee containing additional information that appears likely to be of assistance to any relevant entity in the State or Territory.

(2) A reference in subsection (1) to a parole order, judgment, order or other document is a reference to the original or to a copy certified as a true copy by the person with custody of the original.

366 Parole order transfer—consideration of requests

(1) The Minister must not direct the registration of a parole order under this Act unless the Minister is satisfied, after having considered the relevant documents given to the Minister by the designated authority for the relevant State or Territory, that—

(a) having regard to the interests of the parolee, it is desirable that the parole order be registered under this Act; and

(b) the parolee—

(i) has consented to, or has requested, the registration of the parole order under this Act; or

(ii) is living in the ACT.

(2) The Minister must not make a request for the registration of a parole order under the corresponding parole law of a State or another Territory unless the Minister is satisfied that—

(a) having regard to the interests of the parolee, it is desirable that the parole order be registered under the corresponding parole law; and

(b) either—

(i) the parolee has consented to, or has requested, the registration of the parole order under the corresponding parole law; or

(ii) there are reasonable grounds for believing that the parolee is living in the State or Territory.

367 Parole order transfer—registration

(1) If the Minister directs the secretary of the sentence administration board under section 364 (1) (Parole order transfer—registration requests) to register a parole order under this Act, the secretary must register the order by endorsing on the order, or a copy of the order, a memorandum signed by the secretary to the effect that the order was registered under this Act on the date of endorsement.

(2) If the secretary of the sentence administration board registers a parole order under subsection (1), the secretary must—

(a) ensure that written notice of the registration, and the date of registration, of the order—

(i) is served personally on the parolee; and

(ii) is given to the designated authority for the relevant State or Territory; and

(b) give the chairperson of the board a copy of the documents required under paragraph (c) to be kept in a register; and

(c) while the parole order is in force in the ACT, but subject to section 365 (1) (Parole order transfer—documents for registration requests), keep in a register—

(i) the endorsed order or endorsed copy of the order; and

(ii) the judgment or order under which the parolee became liable to imprisonment to which the parole order applies, or a certificate of conviction or warrant of commitment that is evidence, or shows, that the parolee became liable to the imprisonment, or a copy of the judgment, order, certificate of conviction or warrant of commitment.

(3) A reference in this section to a copy of a parole order or a copy of a judgment, order, certificate of conviction or warrant of commitment is a reference to a copy certified as a true copy by the person with custody of the original.

368 Parole order transfer—effect of registration under this Act

(1) While a parole order (including a parole order that was, at any time, in force in the ACT) is registered under this Act, ACT law applies in relation to the order and the parolee.

(2) If a parole order registered under this Act was made under a law of a State or another Territory, subsection (1) has effect as if—

(a) each sentence of imprisonment to which the parolee was subject immediately before the making of the parole order had been imposed by the appropriate ACT court; and

(b) each period of imprisonment served by the parolee for the purpose of such a sentence had been served for the purpose of a sentence imposed by the appropriate ACT court; and

(c) the parole order had been made and were in force under chapter 8 (Parole).

(3) For subsection (2), the ***appropriate ACT court***, in relation to a sentence of imprisonment, is—

(a) if the sentence was imposed by a court of summary jurisdiction or a court on appeal from a court of summary jurisdiction—the Magistrates Court; and

(b) in any other case—the Supreme Court.

(4) If a parole order registered under this Act is cancelled under chapter 8 (Parole), the parolee is liable to serve a sentence of imprisonment equal to the period for which the parolee was liable to be imprisoned on the day the parolee was released on parole under the order.

369 Parole order transfer—effect of transfer to another jurisdiction

On the registration under a corresponding parole law of a State or another Territory of a parole order that was, immediately before the registration, in force in the ACT—

(a) the parole order ceases to be in force in the ACT; and

(b) if the parole order was registered under this Act—the parole order ceases to be registered; and

(c) each sentence of imprisonment to which the parolee was subject immediately before that registration ceases to have effect in the ACT.

370 Parole order transfer—evidence of registration

(1) An instrument that purports to be a memorandum endorsed on a parole order, or a copy of the parole order, on a stated date under section 367 (1) (Parole order transfer—registration), and to have been signed by the secretary of the sentence administration board, is evidence that the parole order was registered under this Act on that date.

(2) A parole order registered under this Act is admissible in evidence in any court by the production of a copy of the order certified as a true copy by the secretary of the sentence administration board, and the copy is evidence of the matters stated in the order.

Chapter 14 Correctional centres and administration

371 Correctional centres—declaration

(1) The Minister may, in writing, declare a place to be a correctional centre.

(2) The Minister may, in writing, declare a correctional centre, or a part of a correctional centre, to be a periodic detention centre or remand centre.

(3) A declaration under subsection (1) or (2) is a notifiable instrument.

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

372 Temporary remand centres—declaration

(1) The Minister may, in writing, declare a place other than a correctional centre, or a part of a correctional centre, to be a temporary remand centre.

(2) A declaration of a place as a temporary remand centre must state the period (not longer than 1 year) for which the place is declared to be a temporary remand centre.

(3) To remove any doubt, a place may be declared to be a temporary remand centre for a continuous period of longer than 1 year under 2 or more consecutive declarations under subsection (1).

(4) If a place declared to be a temporary remand centre is a police station or court building cell, this Act—

(a) applies in relation to the place only to the extent that it is used for this Act; and

(b) does not apply in relation to a person who is not a detainee unless the person is appointed under this Act.

(5) A declaration under subsection (1) is a notifiable instrument.

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

373 Corrections officers—appointment

(1) The chief executive may appoint a public servant as a corrections officer for this Act.

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

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

(2) The instrument appointing, or evidencing the appointment of, a person as a corrections officer may designate the person as a particular kind of corrections officer, including, for example, as a community corrections officer or custodial corrections officer.

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

374 Corrections officers—duty to comply with Act

A corrections officer must comply with this Act.

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

375 Medical officer—appointment

(1) The chief executive must appoint at least 1 medical officer for each correctional centre (other than a temporary remand centre).

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

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

(2) The instrument appointing, or evidencing the appointment of, a person as a medical officer must state the correctional centres for which the person is appointed.

(3) A person is eligible for appointment as a medical officer only if the person is a doctor.

376 Medical officer—functions

(1) A medical officer has the following functions:

(a) to provide health services to detainees;

(b) to protect the health of detainees (including preventing the spread of contagious diseases in correctional centres);

(c) to exercise any other functions given to a medical officer under this Act.

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

(2) For subsection (1), a medical officer must visit each correctional centre for which the medical officer is appointed at least once a week.

(3) A medical officer may give written directions to the chief executive for subsection (1) (b).

(4) The chief executive must ensure that each direction for subsection (1) (b) is complied with unless the chief executive is of the opinion that complying with the direction would prejudice the security of the correctional centre.

377 Identity cards—corrections staff

(1) The chief executive must give each corrections officer and medical officer an identity card that states the person's name and appointment as a corrections officer or medical officer, and shows—

(a) a recent photograph of the person; and

(b) the date of issue of the card; and

(c) the date of expiry of the card; and

(d) anything else prescribed under the regulations.

(2) A person commits an offence if—

(a) the person ceases to be a corrections officer or medical officer; and

(b) the person does not return the person's identity card to the chief executive as soon as practicable (but within 7 days) after the day the person ceases to be a corrections officer or medical officer.

Maximum penalty: 1 penalty unit.

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

378 Official visitors—appointment

(1) The Minister must appoint at least 2 people as official visitors for this Act.

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

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

(2) A person may be appointed as an official visitor only if—

(a) the person possesses qualifications or experience that will assist the person in the exercise of the functions of an official visitor; and

(b) the person is not a public employee.

(3) An official visitor must be appointed for a term of not longer than 3 years.

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

(4) An official visitor holds the position on the conditions not provided by this Act or another Territory law that are decided by the Minister.

379 Official visitors—functions

(1) The functions of an official visitor are—

(a) to inspect correctional centres and places outside correctional centres where detainees are directed to work; and

(b) to inquire into complaints by detainees; and

(c) to exercise any other functions given to an official visitor under this Act.

Note For complaints by detainees and an official visitor's functions in relation to complaints, see s 65 and s 66.

(2) For subsection (1), an official visitor—

(a) must, as far as practicable, visit each correctional centre at least once a week; and

(b) may visit a place outside a correctional centre where a full-time detainee or periodic detainee has been directed to work; and

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

(3) If the official visitor is not satisfied that the centre or place is being conducted in accordance with this Act, the official visitor must give the Minister a written report about the matter.

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

(4) A corrections officer must give an official visitor any reasonable help the official visitor asks for to exercise the official visitor's functions under this Act.

380 Official visitors—ending of appointment

(1) The Minister may end the appointment of an official visitor—

(a) for misbehaviour;or

(b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the official visitor's functions; or

(c) if the official visitor becomes bankrupt or executes a personal insolvency agreement or

(d) if the official visitor fails to inspect a correction centre under section 379 (2) (a) for 3 consecutive weeks without the Minister's leave; or

(e) if the official visitor is convicted, in the ACT, of an offence punishable by imprisonment for at least 1 year; or

(f) if the official visitor is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been convicted in the ACT, would be punishable by imprisonment for at least 1 year.

(2) An official visitor's appointment ends automatically if the official visitor becomes a public employee.

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

381 Corrections rules—power to make

(1) The chief executive may, with the Minister's written approval, make corrections rules for this Act.

(2) The corrections rules—

(a) may deal with matters also dealt with in this Act or the regulations; but

(b) must not be inconsistent with this Act or the regulations.

(3) Without limiting subsection (2), the corrections rules may include guidelines about the exercise of a function delegated by the chief executive to a corrections officer.

(4) The corrections rules may apply, adopt or incorporate an instrument, as in force from time to time.

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

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

(5) Subject to section 382, the corrections rules are a disallowable instrument.

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

382 Corrections rules—provisions about security etc

(1) The chief executive may, in writing, certify that—

(a) a stated provision of the corrections rules applies to—

(i) the security of a correctional centre; or

(ii) the safety of a detainee or anyone else inside a correctional centre; or

(iii) the monitoring of a home detainee; or

(iv) anything else prescribed under the regulations; and

(b) the publication of the provision would be contrary to the public interest.

(2) The certificate must state in general terms the matter to which the provision (the ***exempt provision***) applies.

(3) A certificate under subsection (1) is a notifiable instrument.

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

(4) The following provisions of the Legislation Act do not apply in relation to an exempt provision:

(a) section 61 (Notification of registrable instruments);

(b) section 62 (Effect of failure to notify registrable instrument);

(c) section 64 (Presentation of subordinate laws and disallowable instruments);

(d) section 65 (Disallowance by resolution of Assembly);

(e) section 68 (Amendment by resolution of Assembly).

Note For the inspection of corrections rules, including exempt provisions, by an official visitor, a judge or magistrate or a member of the Legislative Assembly, see s 383.

383 Corrections rules—inspection

(1) The chief executive must ensure that a copy of the corrections rules (other than any exempt provision) is available for inspection free of charge by the public during business hours at an office of the administrative unit for which the chief executive is responsible.

(2) The chief executive must also ensure that a copy of the rules (including any exempt provision) is always available at the correctional centres to which they apply for inspection by—

(a) an official visitor; or

(b) a judge or magistrate; or

(c) the member of the Legislative Assembly nominated by the Assembly for section 70 (Detention generally—inspections by judicial officers and Assembly members).

Note A copy of the rules (other than an exempt provision) must be made available to detainees, see s 64 (Detention generally—detainees to be told about rights and obligations).

384 Correctional centres—searching and testing of people entering etc

(1) Part 3.4 (Searching of detainees and property) and part 3.5 (Alcohol and drug testing of detainees) apply to the searching and testing of anyone (other than a detainee) entering, leaving or inside a correctional centre as if—

(a) the person were a detainee; and

(b) any other necessary changes, and any changes prescribed under the regulations, were made.

Examples of people other than detainees

1 people visiting detainees

2 people carrying out repairs or maintenance work

3 corrections officers

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

(2) Without limiting subsection (1), the regulations may make provision in relation to the searching of, or the taking of a test sample from, anyone (other than a detainee) entering, leaving or inside a correctional centre.

385 Correctional centres—arrangements by Chief Minister with other jurisdictions

(1) The Chief Minister may make arrangements with—

(a) the Governor of NSW in relation to people remanded in custody by an ACT court and the serving by detainees of their sentences in NSW; and

(b) the Governor of a State in relation to the detention in the ACT of people remanded in custody by a State court or offenders sentenced to imprisonment by a State court.

(2) The arrangements may include provision for—

(a) the exercise by NSW officers of functions in relation to detainees who are serving their sentences in NSW; and

(b) the exercise by public employees of functions in relation to people who are in detention in the ACT; and

(c) reports by State officers or public employees about people to whom the arrangements apply.

(3) In this section:

Governor, of a State, includes the Administrator of the Northern Territory.

State officer means a person employed by, or under a contract for services with, a State or a State instrumentality or authority.

Chapter 15 Miscellaneous

Part 15.1 Community service work

386 Community service work—definitions

(1) In this Act:

community service work means work of a kind prescribed under the regulations.

(2) In this division:

offender means an offender who carries out community service work—

(a) while a full-time detainee; or

(b) under a community service order; or

(c) under a home detention order; or

(d) under a periodic detention order.

person involved, in community service work, includes each of the following entities (other than an offender carrying out the work):

(a) an entity for whose benefit the work is carried out;

(b) an entity who directs or supervises the work;

(c) an entity who owns or occupies the premises or land where the work is carried out.

387 Community service work—limitation on work

The chief executive must not direct or allow an offender to carry out community service work if, in performing the work, the offender would take the place of someone who would otherwise be employed in that work as a regular employee.

388 Community service work—protection for conduct of offenders

(1) A person involved in community service work does not incur civil liability to a defined person for conduct engaged in by an offender in carrying out the work.

Note 1 ***Person involved*** does not include an offender (see s 386 (2)).

Note 2 A person my engage in conduct by omitting to do an act (see dict, def ***conduct*** and def ***engage in***).

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

(3) However, subsections (1) and (2) do not apply if the conduct was, or was a necessary part of, conduct that was expressly required by the person involved but the conduct was neither approved nor required by the chief executive.

(4) In this section:

defined person, in relation to community service work, means a person other than an offender carrying out the work.

389 Community service work—protection of people involved

(1) A person involved in community service work is not civilly liable to an offender by whom the work is carried out for an act or omission by the person involved in the course of the work.

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

(3) However, subsections (1) and (2) do not apply if—

(a) the community service work was not work approved by the chief executive; or

(b) the conduct was, or was a necessary part of, conduct that was intended to cause injury, loss or damage.

Part 15.2 Administration of Act

390 Secrecy

(1) In this section:

another jurisdiction means the Commonwealth or a State.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

corresponding corrections law means—

(a) a law of another jurisdiction that is declared under the regulations to be a corresponding corrections law; or

(b) any other law of another jurisdiction that substantially corresponds to this Act.

court includes any entity with power to require the production of documents or the answering of questions.

informed person means anyone who is exercising or has exercised a function under this Act or is or was otherwise involved in the administration of this Act.

produce includes allow access to.

protected information means—

(a) information about a person that is disclosed to, or obtained by, an informed person because of the exercise of a function under this Act or because the person was involved in the administration of this Act; or

(b) an exempt provision (or the contents of an exempt provisions) of the corrections rules.

(2) An informed person must not—

(a) make a record of protected information; or

(b) directly or indirectly divulge or communicate protected information to anyone else; or

(c) produce to anyone a document containing protected information.

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

(3) Subsection (2) does not apply if the informed person makes the record, divulges or communicates the information, or produces the document, in the exercise of a function of the person under this Act or another Territory law.

(4) Subsection (2) does not prevent an informed person from divulging or communicating protected information—

(a) for information mentioned in subsection (1), definition of ***protected information***, paragraph (a)—with the consent of the person the information is about; or

(b) to a person administering or enforcing a corresponding corrections law of another jurisdiction; or

(c) to a law enforcement agency; or

Note ***Law enforcement agency*** is defined in the dict.

(d) if authorised by the chief executive because—

(i) there are reasonable grounds for believing that a person's life or physical safety is in danger; or

(ii) it is otherwise in the public interest; or

(e) if the information only tells someone of the place where a detainee is being held in detention; or

(f) if the information is disclosed under the regulations.

Note For other provisions about the disclosure of information, see

- s 96 (about the release of information to victims whose details are entered in the victims register);
- s 223 (about the disclosure of parole decisions and other information to victims).

(5) An informed person need not divulge or communicate protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another Territory law.

(6) The chief executive may authorise the disclosure of protected information under subsection (4) (d) (ii) only if the chief executive certifies that the disclosure of the information is necessary in the public interest.

391 Evidentiary certificates by chief executive and analysts

(1) A certificate that appears to be signed by the chief executive, and that states any of the following matters, is evidence of the stated matter:

(a) that a stated person was convicted or found guilty of a stated offence;

(b) that a person's appointment as an appointed person was or was not in force;

(c) that a stated person is or was a full-time detainee, home detainee or periodic detainee or a person subject to a good behaviour bond;

(d) that a stated place is, or was, a correctional centre, periodic detention centre or temporary remand centre;

(e) that a stated person was or was not in the custody of the chief executive or in detention in a stated correctional centre;

(f) that a stated detainee was found or not found to have committed a stated disciplinary breach;

(g) that a stated direction, order or permit by the chief executive was or was not given to, or in relation to, a stated person;

Examples

1 a custody association direction, a local leave order and interstate leave permit

2 an order to pay reparation under s 46 (Discipline—reparation for property damage)

3 an order in relation to a periodic detainee under s 151 (1) (Periodic detention—changes of days and times of attendance)

(h) that a stated direction, order or permit was or was not amended, was amended in a stated way, extended, cancelled or revoked;

Example

the extension of a custody association direction under s 25

(i) that a stated person who is, or was, a full-time detainee, home detainee or periodic detainee, or a person subject to a good behaviour bond, provided, or failed to provide, a stated test sample;

(j) that a stated periodic detainee reported late, or failed to report, for a stated detention period;

(k) that a stated person who is, or was, a full-time detainee, home detainee or periodic detainee, or a person subject to a good behaviour bond, failed to comply with this Act in a stated way;

(l) that a stated document is a copy of a document made, given, issued or received under this Act.

Examples

1 a parole order for chapter 13 (Transfer of parole orders)

2 a request by the interstate authority for an interstate jurisdiction for the transfer of a community-based sentence under chapter 12

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

(2) A certificate that appears to be signed by the chief executive, and states any matter prescribed under the regulations for this section, is evidence of the stated matter.

(3) A certificate mentioned in subsection (1) or (2) may state a matter by reference to a date or period.

(4) A certificate of the results of the analysis of a substance, signed by an analyst, is evidence of the facts stated in the certificate.

(5) A court or the sentence administration board must accept a certificate or other document mentioned in this section as proof of the matters stated in it if there is no evidence to the contrary.

(6) However, a certificate of a matter mentioned in subsection (1) (g) to (l), or subsection (4), must not be admitted in evidence by a court, or in a proceeding by the sentence administration board, unless the court or board is satisfied that reasonable efforts have been made to serve a copy of the certificate on the person concerned.

(7) In this section:

analyst means an analyst under the *Drugs of Dependence Act 1989*.

appointed person means—

(a) an analyst; or

(b) a corrections officer; or

(c) a medical officer; or

(d) an official visitor; or

(e) a member of the sentence administration board; or

(f) the secretary of the sentence administration board.

392 Protection of officials from liability

(1) In this section:

official means any of the following:

(a) the Minister;

(b) the chief executive;

(c) a corrections officer;

(d) a medical officer;

(e) an official visitor;

(f) a member of the sentence administration board;

(g) the secretary of the sentence administration board;

(h) anyone else exercising functions under this Act.

(2) An official does not incur civil liability for an act or omission done honestly and without recklessness for this Act.

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

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

Part 15.3 Pardons and remission of penalties

393 Grant of pardon

(1) The Executive may, in writing, grant a pardon to a person in relation to an offence of which the person has been convicted or found guilty.

(2) The pardon discharges the person from any further consequences of the conviction or finding of guilt for the offence.

394 Remission of penalties

The Executive may, in writing, remit partly or completely any of the following in relation to a person convicted or found guilty of an offence:

(a) a sentence of imprisonment;

(b) a fine or other financial penalty;

(c) a forfeiture of property.

Part 15.4 Other matters

395 Release on licence

The *Removal of Prisoners (Territories) Act 1923* (Cwlth), section 8A applies, so far as it is capable of applying, in relation to a full-time detainee in a NSW correctional centre as if the detainee had been removed to the NSW correctional centre under that Act.

396 Criminology or penology research

(1) In this section:

disclose information means give or communicate the information in any way.

research means research in relation to criminology or penology, including—

(a) the administration (including the operation and management) of correctional centres; or

(b) services provided to remandees or offenders under this Act.

(2) A person may apply to the chief executive for approval to conduct research that involves the person obtaining access to—

(a) information or facilities administered by the chief executive; or

(b) a person exercising a function under this Act; or

(c) a person in detention, or being supervised, under this Act.

(3) In deciding whether to approve research by the person, the chief executive may have regard to any recommendations made by an ethics committee established by the chief executive in accordance with the regulations.

(4) If the chief executive approves the conduct of research by a person, the chief executive may—

(a) give the approval subject to conditions (including conditions about the purposes for which the research may be used); and

(b) give access to information, facilities or people in any way the chief executive considers appropriate.

(5) A person commits an offence if—

(a) the conduct of research by the person is approved by the chief executive; and

(b) the person either—

(i) contravenes a condition to which the approval is subject; or

(ii) discloses information that identifies a person or would allow the identity of a person to be worked out.

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

(6) Subsection (5) (b) (ii) does not apply if the person has consented to the disclosure of the information.

397 Determination of fees

(1) The Minister may, in writing, determine fees for this Act.

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

(2) A determination is a disallowable instrument.

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

398 Approved forms

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

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

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

(3) An approved form is a notifiable instrument.

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

399 Regulation-making power

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

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

(2) The regulations may apply, adopt or incorporate an instrument, as in force from time to time.

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

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

(3) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 30 penalty units for offences against the regulations.

Chapter 16 Transitional

Part 16.1 Preliminary

400 Application—ch 16

(1) The purpose of this chapter is to provide for how this Act applies to an offender subject to a sentence or order (including an order for remand) made by a court for an offence committed, or allegedly committed, before the commencement day.

(2) To remove any doubt, this chapter does not prevent the application of the law of the Territory as in force immediately before the commencement day to a proceeding, including an appeal or retrial, for an offence committed, or allegedly committed, before the commencement day.

Note The *Crimes (Sentencing) Act 2004*, s 151 (Application of Act—offences on or after commencement day) provides for the application of the Territory law as in force immediately before the commencement day in relation to proceedings for offences committed (or allegedly committed) before the commencement day.

401 Definitions—ch 16

In this chapter:

amend, a direction or order of a court, the sentencing administration board, the chief executive or a corrections officer, includes all of the following:

(a) amend a condition of the direction or order;

(b) include a new condition in the direction or order;

(c) omit a condition from the direction or order;

(d) extend or reduce the term of the direction or order.

commencement day means the day the *Crimes (Sentencing) Act 2004*, part 13 (Transitional) commences.

consequential amendments Act means the *Crimes (Sentencing Legislation) Consequential Amendments Act 2004*.

ends—a sentence administration proceeding ***ends*** when—

(a) a court, or the sentence administration board, makes a final order, direction or finding in the proceeding, or the proceeding in the court or the board has otherwise concluded; and

(b) either—

(i) the period (if any) within which any appeal may be made to a court in relation to the proceeding has ended, and no appeal has been made; or

(ii) if any appeal to a court has been made in relation to the proceeding—the proceeding in any such appeal has concluded.

offender includes an accused person who is on remand.

old sentence administration law, for an offence (or alleged offence), means the law of the Territory as in force immediately before the commencement day in relation to the administration, performance and enforcement of sentences and orders (including orders for remand) made in relation to the offence (or alleged offence).

Examples

1 The *Crimes Act 1900*, pt 18 (Conditional release of offenders) and pt 19 (Community service orders).

2 The *Rehabilitation of Offenders (Interim) Act 2001*, pt 2.3, 2.4 and 2. 5 (which deal with the administration and performance of home detention orders) and pt 3.3, 3.4 and 3.5 (which deal with the administration of parole orders).

3 The *Remand Centres Act 1976*.

4 The *Periodic Detention Act 1995*, div 2.2, 2.3 and 2.5 (which deal with the administration, performance and enforcement of periodic detention orders) and pt 3 (Corrective services administration).

Note 1 The legislation in the examples, and other aspects of the old sentence administration law, are repealed or amended by the consequential amendments Act.

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

sentence administration proceeding means any of the following proceedings under the old sentence administration law in relation to an offender who is subject to an order or direction of a court, the sentence administration board, the director of corrections under the old sentence administration law, the chief executive or a corrections officer:

(a) a proceeding in relation to a parole order;

(b) a proceeding in relation to a breach of the order or direction;

(c) a proceeding for the cancellation, rescission, revocation or discharge of the order or direction (for any reason), other than an appeal to a court in relation to an order under the *Crimes Act 1900*, as in force before the commencement day;

(d) a proceeding to amend the order or direction, other than an appeal to a court in relation to an order under the *Crimes Act 1900*, as in force before the commencement day;

(e) a proceeding for leave of absence in relation to the order or direction.

starts—a sentence administration proceeding ***starts*** at the earliest of the following times:

(a) an application is filed, or an information is sworn, to start the proceeding;

(b) a warrant for the offender's arrest is issued for the offender in relation to the proceeding;

(c) a summons is issued for the offender in relation to the proceeding;

(d) the offender signs a voluntary agreement to attend before a court in relation to the proceeding;

(e) in the case of a proceeding in relation to the breach of a direction or order—the breach is brought to a court's attention in the course of a proceeding in relation to another matter.

402 Application of Act to sentenced offenders and sentences

This Act applies in relation to sentenced offenders and their sentences, whether the offender was sentenced before or after the commencement of this Act.

Part 16.2 Transitional—detention

403 Imprisonment—offence committed before commencement day

(1) This section applies if, in a proceeding for an offence committed before the commencement day (whether the proceeding starts or ends before, on or after the commencement day)—

(a) a court sentences the offender to imprisonment; and

(b) if the sentence was imposed before the commencement day—the term of the sentence (including any time served, or to be served, while the offender is released on parole) has not ended.

Note A court may sentence an offender to imprisonment under the old sentence administration law in a proceeding that starts or ends before, on or after the commencement day if the offence for which the sentence is imposed was committed before the commencement day (see *Crimes (Sentencing) Act 2004*, s 151 (Application of Act—offences on or after commencement day)).

(2) If the sentence was imposed before the commencement day, this Act applies to the administration, performance and enforcement of the sentence on and after the commencement day.

(3) If the sentence is imposed on or after the commencement day, this Act applies to the administration, performance and enforcement of the sentence from the time when it is imposed.

404 Remand—offence allegedly committed before commencement day

(1) This section applies if, in a proceeding for an offence allegedly committed before the commencement day (whether the proceeding starts before, on or after the commencement day)—

(a) a court makes an order for the remand of the offender in custody; and

(b) if the order was made before the commencement day—the offender is still on remand for the alleged offence.

(2) If the order for remand was made before the commencement day, this Act applies in relation to the administration, performance and enforcement of the order on and after the commencement day.

(3) If the order for remand was made on or after the commencement day, this Act applies in relation to the administration, performance and enforcement of the order from the time when the order was made.

Note Section 406 deals with orders for remand on home detention in proceedings in relation to offences allegedly committed before the commencement day.

405 Home detention sentencing orders—Rehabilitation of Offenders (Interim) Act 2001, s 6

(1) This section applies if, in a proceeding in relation to an offence committed before the commencement day (whether the proceeding starts or ends before, on or after the commencement day)—

(a) a court sentences the offender to imprisonment and makes an order under the *Rehabilitation of Offenders (Interim) Act 2001*, section 6 (the ***old home detention order***) for the sentence to be served by home detention; and

(b) if the old home detention order was made before the commencement day—the order is still in force.

Note A court may make an order under the *Rehabilitation of Offenders (Interim) Act 2001*, s 6 for the home detention of the offender in a proceeding that starts or ends before, on or after the commencement day if the offence for which the order is made was committed before the commencement day (see *Crimes (Sentencing) Act 2004*, s 151 (Application of Act—offences on or after commencement day)).

(2) If the old home detention order was made before the commencement day, on and after the commencement day—

(a) the old home detention order (as in force immediately before the commencement day) is taken to be a home detention order (the ***new home detention order***) under the *Crimes (Sentencing) Act 2004*; and

(b) the old standard conditions, and any additional conditions included in the old home detention order (as in force immediately before the commencement day) apply to the new home detention order; and

(c) the term of the new home detention order ends at the same time as the term of the old home detention order (as in force immediately before the commencement day), unless the term is amended under this Act; and

(d) the new core conditions do not apply to the new home detention order.

(3) However, if the old home detention order was made before the commencement day, and, on the commencement day, a sentence administration proceeding had started (but not ended) in relation to the order, on and after the commencement day—

(a) the proceeding may be continued under the old sentence administration law; and

(b) the old sentence administration law applies to the proceeding as if this Act and the consequential amendments Act had not been enacted; and

(c) the order continues in force under the old sentence administration law until the proceeding ends, subject to that law; and

(d) subsection (2) (a) to (d) applies to the order (as amended, if at all) from immediately after the time the proceeding ends, unless the order ceases to be in force because of the proceeding.

(4) If the old home detention order was made on or after the commencement day—

(a) the old home detention order is, from immediately after the time it is made, taken to be a home detention order (the ***new home detention order***) under the *Crimes (Sentencing) Act 2004*; and

(b) any conditions included in the old home detention order apply to the new home detention order; and

(c) the term of the new home detention order ends at the same time as the term of the old home detention order, unless the term is amended under this Act; and

(d) the new core conditions apply to the new home detention order; and

(e) the old standard conditions do not apply to the new home detention order.

(5) To remove any doubt, this Act (including division 5.3.4 (Home detention—supervision of offenders) applies in relation to a new home detention order mentioned in subsection (2) or (4) as if the order had been made under the *Crimes (Sentencing) Act 2004*, subject to subsection (2) (d) (if applicable).

(6) In this section:

new core conditions, in relation to the new home detention order, mean the core conditions for the order under section 102 (Home detention orders—core conditions).

old standard conditions, in relation to the old home detention order, mean the standard conditions for the order prescribed by regulations made for the *Rehabilitation of Offenders (Interim) Act 2001*, section 18 (1) (a).

406 Home detention remand orders—Rehabilitation of Offenders (Interim) Act 2001, s 7

(1) This section applies if, in a proceeding in relation to an offence committed before the commencement day (whether the proceeding starts before, on or after the commencement day)—

(a) remands the offender in custody and makes an order under the *Rehabilitation of Offenders (Interim) Act 2001*, section 7 (the ***old home detention order***) for the remand to be served by home detention; and

(b) if the old home detention order was made before the commencement day—the order is still in force.

Note A court may make an order under the *Rehabilitation of Offenders (Interim) Act 2001*, s 7 for the home detention of the alleged offender in a proceeding that starts before, on or after the commencement day if the offence for which the order is made was allegedly committed before the

commencement day (see *Crimes (Sentencing) Act 2004*, s 151 (Application of Act—offences on or after commencement day)).

(2) If the old home detention order was made before the commencement day, on and after the commencement day—

(a) the old home detention order (as in force immediately before the commencement day) is taken to be a home detention order (the ***new home detention order***) under the *Crimes (Sentencing) Act 2004*; and

(b) the old standard conditions, and any additional conditions included in the old home detention order (as in force immediately before the commencement day) apply to the new home detention order; and

(c) the new core conditions do not apply to the new home detention order.

(3) However, if the old home detention order was made before the commencement day, and, on the commencement day, a sentence administration proceeding had started (but not ended) in relation to the order, on and after the commencement day—

(a) the proceeding may be continued under the old sentence administration law; and

(b) the old sentence administration law applies to the proceeding as if this Act and the consequential amendments Act had not been enacted; and

(c) the order continues in force under the old sentence administration law until the proceeding ends, subject to that law; and

(d) subsection (2) (a) to (c) applies to the order (as amended, if at all) from immediately after the time the proceeding ends,

unless the order ceases to be in force because of the proceeding.

(4) If the old home detention order is made on or after the commencement day—

(a) the old home detention order is, from immediately after the time it is made, taken to be a home detention order (the ***new home detention order***) under the *Crimes (Sentencing) Act 2004*; and

(b) any conditions included in the old home detention order apply to the new home detention order; and

(c) the new core conditions apply to the new home detention order; and

(d) the old standard conditions do not apply to the new home detention order.

(5) To remove any doubt, this Act (including division 5.3.3 (Home detention—supervision of remandees) applies in relation to a new home detention order mentioned in subsection (2) or (4) as if the order had been made under the *Crimes (Sentencing) Act 2004*, subject to subsection (2) (d) (if applicable).

(6) In this section:

new core conditions, in relation to the new home detention order, mean the core conditions for the order under section 102 (Home detention orders—core conditions).

old standard conditions, in relation to the old home detention order, mean the standard conditions for the order that are prescribed by regulations made for the *Rehabilitation of Offenders (Interim) Act 2001*, section 18 (1) (a).

407 Periodic detention orders—Periodic Detention Act 1995, s 4

(1) This section applies if, in a proceeding in relation to an offence committed before the commencement day (whether the proceeding starts or ends before, on or after the commencement day)—

(a) a court sentences the offender to imprisonment and makes an order under the *Periodic Detention Act 1995*, section 4 (the ***old periodic detention order***) for the sentence to be served by periodic detention; and

(b) if the old periodic detention order was made before the commencement day—the order is still in force.

Note A court may make an order under the *Periodic Detention Act 1995*, s 4 for the periodic detention of the offender in a proceeding that starts or ends before, on or after the commencement day if the offence for which the order is made was committed before the commencement day (see *Crimes (Sentencing) Act 2004*, s 151 (Application of Act—offences on or after commencement day)).

(2) If the old periodic detention order was made before the commencement day, on and after the commencement day—

(a) the old periodic detention order (as in force immediately before the commencement day) is taken to be a periodic detention order (the ***new periodic detention order***) under the *Crimes (Sentencing) Act 2004*; and

(b) the old core conditions, and any additional conditions included in the old periodic detention order (as in force immediately before the commencement day) apply to the new periodic detention order; and

(c) the term of the new periodic detention order ends when the offender has served the number of detention periods to be

served under the old periodic detention order (as in force immediately before the commencement day), unless the term is amended under this Act; and

(d) the number of detention periods required to be served by the offender under the new periodic detention order is the number of detention periods remaining to be served under the old periodic detention order, as worked out immediately before the commencement day, subject to any change in the number of detention periods the offender is required to serve under this Act; and

(e) the new core conditions do not apply to the new periodic detention order.

(3) However, if the old periodic detention order was made before the commencement day, and, on the commencement day, a sentence administration proceeding had started (but not ended) in relation to the order, on and after the commencement day—

(a) the proceeding may be continued under the old sentence administration law; and

(b) the old sentence administration law applies to the proceeding as if this Act and the consequential amendments Act had not been enacted; and

(c) the order continues in force under the old sentence administration law until the proceeding ends, subject to that law; and

(d) subsection (2) (a) to (e) applies to the order (as amended, if at all) from immediately after the time the proceeding ends, unless the order ceases to be in force because of the proceeding.

(4) If the old periodic detention order is made on or after the commencement day—

(a) the old periodic detention order is, from immediately after the time it is made, taken to be a periodic detention order (the ***new periodic detention order***) under the *Crimes (Sentencing) Act 2004*; and

(b) any conditions included in the old periodic detention order apply to the new periodic detention order; and

(c) the term of the new periodic detention order ends when the offender has served the number of detention periods to be served under the old periodic detention order, unless the term is amended under this Act; and

(d) the new core conditions apply to the new periodic detention order; and

(e) the old standard conditions do not apply to the new periodic detention order.

(5) To remove any doubt, this Act (including part 6.4 (Periodic detention—supervision of offenders) applies in relation to a new home detention order mentioned in subsection (2) or (4) as if the order had been made under the *Crimes (Sentencing) Act 2004*, subject to subsection (2) (c) (if applicable).

(6) In this section:

new core conditions, in relation to the new periodic detention order, mean the core conditions for the order under section 140 (Periodic detention orders—core conditions).

old core conditions, in relation to the old periodic detention order, mean the core conditions for the order under the *Periodic Detention Act 1995*, section 5.

Part 16.3 Transitional—non-detention

408 Conditional release without conviction—Crimes Act 1900, s 402 (1)

(1) This section applies if, in a proceeding in relation to an offence committed before the commencement day (whether the proceeding starts or ends before, on or after the commencement day)—

(a) a court makes an order under the *Crimes Act 1900*, section 402 (1) (the ***s 402 (1) order***) for the conditional release of the offender, without proceeding to conviction, and requiring the offender to enter into a recognisance; and

(b) if the s 402 (1) order was made before the commencement day—the order is still in force.

Note A court may make an order under the *Crimes Act 1900*, s 402 (1) for the offender in a proceeding that starts or ends before, on or after the commencement day if the offence for which the order is made was committed before the commencement day (see *Crimes (Sentencing) Act 2004*, s 151 (Application of Act—offences on or after commencement day)).

(2) If the s 402 (1) order was made before the commencement day, and the offender has entered into a recognisance as required by the order, on and after the commencement day—

(a) the s 402 (1) order (as in force immediately before the commencement day) is taken to be a non-conviction order under the *Crimes (Sentencing) Act 2004* that is a good behaviour order under that Act; and

(b) the recognisance is taken to be a good behaviour bond entered into under the good behaviour order; and

(c) the good behaviour bond is taken to—

(i) include any conditions included in the s 402 (1) order or the recognisance (as in force immediately before the commencement day); and

(ii) require the giving of any security, with or without sureties, that is required by the s 402 (1) order; and

(d) the term of the good behaviour bond ends at the same time as the term of the s 402 (1) order (as in force immediately before the commencement day), unless the term is amended under this Act; but

(e) the core conditions under this Act, section 180 (Good behaviour orders—core conditions) do not apply to the good behaviour bond.

(3) If the s 402 (1) order was made before the commencement day, and the offender has, immediately before the commencement day, failed to enter into a recognisance in accordance with the order, section 178 (Failure to enter good behaviour bond—consequences) applies to the offender as if the offender had failed to enter into a good behaviour bond in accordance with a good behaviour order under the *Crimes (Sentencing) Act 2004*.

Note Section 178 gives the court the power to sentence an offender if the offender fails to enter a good behaviour bond in accordance with a good behaviour order made for the offence.

(4) If the s 402 (1) order was made, or the recognisance was entered into, before the commencement day, and, on the commencement day, a sentence administration proceeding had started (but not ended) in relation to the order or recognisance, on and after the commencement day—

(a) the proceeding may be continued under the old sentence administration law; and

(b) the old sentence administration law applies to the proceeding as if this Act and the consequential amendments Act had not been enacted; and

(c) the order and the recognisance (if any) entered into under the order continue in force under the old sentence administration law until the proceeding ends, subject to that law; and

(d) subsection (2) (a) to (e) applies to the order or recognisance (as amended, if at all) from immediately after the time the proceeding ends, unless the order or recognisance ceases to be in force because of the proceeding.

(5) If the s 402 (1) order is made on or after the commencement day, and the offender enters into a recognisance as required by the order—

(a) the s 402 (1) order is, from immediately after the time the recognisance is entered into, taken to be a non-conviction order under the *Crimes (Sentencing) Act 2004* that is a good behaviour order under that Act; and

(b) the recognisance is, from immediately after the time it is entered into, taken to be a good behaviour bond entered into under the good behaviour order; and

(c) the good behaviour bond is taken to—

(i) include any conditions included in the s 402 (1) order or the recognisance; and

(ii) require the giving of any security, with or without sureties, that is required by the s 402 (1) order; and

(d) the term of the good behaviour bond ends at the same time as the term of the s 402 (1) order, unless the term is amended under this Act; and

(e) the core conditions under this Act, section 180 (Good behaviour orders—core conditions) apply to the good behaviour bond.

(6) If the s 402 (1) order is made on or after the commencement day, and the offender fails to enter into a recognisance in accordance with the order, section 178 (Failure to enter good behaviour bond—consequences) applies to the offender as if the offender had failed to enter into a good behaviour bond in accordance with a good behaviour order under the *Crimes (Sentencing) Act 2004*.

(7) To remove any doubt, this Act (including part 7.6 (Good behaviour—supervision of offenders) applies in relation to a good behaviour bond mentioned in subsection (2) or (5) as if the good behaviour bond had been entered into under a good behaviour order that was made under the *Crimes (Sentencing) Act 2004*, subject to subsection (2) (e) (if applicable).

409 Conditional release of convicted offenders—Crimes Act 1900, s 403 (1) (a)

(1) This section applies if, in a proceeding in relation to an offence committed before the commencement day (whether the proceeding starts or ends before, on or after the commencement day)—

(a) a court convicts the offender and makes an order under the *Crimes Act 1900*, section 403 (1) (a) (the ***s 403 (1) (a) order***) for the conditional release of the offender and requiring the offender to enter into a recognisance; and

(b) if the s 403 (1) (a) order was made before the commencement day—the order is still in force.

Note A court may make an order under the *Crimes Act 1900*, s 403 (1) (a) for the offender in a proceeding that starts or ends before, on or after the commencement day if the offence for which the order is made was committed before the commencement day (see *Crimes (Sentencing) Act 2004*, s 151 (Application of Act—offences on or after commencement day)).

(2) If the s 403 (1) (a) order was made before the commencement day, and the offender has entered into a recognisance as required by the order, on and after the commencement day—

(a) the s 403 (1) (a) order (as in force immediately before the commencement day) is taken to be a good behaviour order under the *Crimes (Sentencing) Act 2004*; and

(b) the recognisance is taken to be a good behaviour bond entered into under the good behaviour order; and

(c) the good behaviour bond is taken to—

(i) include any conditions included in the s 403 (1) (a) order or the recognisance (as in force immediately before the commencement day); and

(ii) require the giving of any security, with or without sureties, that is required by the s 403 (1) (a) order; and

(d) the term of the good behaviour bond ends at the same time as the term of the s 403 (1) (a) order (as in force immediately before the commencement day), unless the term is amended under this Act; and

(e) the core conditions under this Act, section 180 (Good behaviour orders—core conditions) do not apply to the good behaviour bond.

(3) If the s 403 (1) (a) order was made before the commencement day, and the offender has, immediately before the commencement day, failed to enter into a recognisance in accordance with the order, section 178 (Failure to enter good behaviour bond—consequences) applies to the offender as if the offender had failed to enter into a good behaviour bond in accordance with a good behaviour order under the *Crimes (Sentencing) Act 2004*.

Note Section 178 gives the court the power to re-sentence an offender if the offender fails to enter a good behaviour bond in accordance with a good behaviour order made for the offence.

(4) If the s 403 (1) (a) order was made, or the recognisance was entered into, before the commencement day, and, on the commencement day, a sentence administration proceeding had started (but not ended) in relation to the order or recognisance, on and after the commencement day—

(a) the proceeding may be continued under the old sentence administration law; and

(b) the old sentence administration law applies to the proceeding as if this Act and the consequential amendments Act had not been enacted; and

(c) the order and the recognisance (if any) entered into under the order continue in force under the old sentence administration law until the proceeding ends, subject to that law; and

(d) subsection (2) (a) to (e) applies to the order or recognisance (as amended, if at all) from immediately after the time the proceeding ends, unless the order or recognisance ceases to be in force because of the proceeding.

(5) If the s 403 (1) (a) order is made on or after the commencement day, and the offender enters into a recognisance as required by the order—

(a) the s 403 (1) (a) order is, from immediately after the time the recognisance is entered into, taken to be a good behaviour order under the *Crimes (Sentencing) Act 2004*; and

(b) the recognisance is, from immediately after the time it is entered into, taken to be a good behaviour bond entered into under the good behaviour order; and

(c) the good behaviour bond is taken to—

(i) include any conditions included in the s 403 (1) (a) order or the recognisance; and

(ii) require the giving of any security, with or without sureties, that is required by the s 403 (1) (a) order; and

(d) the term of the good behaviour bond ends at the same time as the term of the s 403 (1) (a) order, unless the term is amended under this Act; and

(e) the core conditions under this Act, section 180 (Good behaviour orders—core conditions) apply to the good behaviour bond.

(6) If the s 403 (1) (a) order is made on or after the commencement day, and the offender fails to enter into a recognisance in accordance with the order, section 178 (Failure to enter good behaviour bond—consequences) applies to the offender as if the offender had failed to enter into a good behaviour bond in accordance with a good behaviour order under the *Crimes (Sentencing) Act 2004*.

(7) To remove any doubt, this Act (including part 7.6 (Good behaviour—supervision of offenders) applies in relation to a good behaviour bond mentioned in subsection (2) or (5) as if the good behaviour bond had been entered into under a good behaviour order that was made under the *Crimes (Sentencing) Act 2004*, subject to subsection (2) (e) (if applicable).

410 Conditional release and suspended sentences—Crimes Act 1900, s 403 (1) (b)

(1) This section applies if, in a proceeding in relation to an offence committed before the commencement day (whether the proceeding starts or ends before, on or after the commencement day)—

(a) a court makes an order (the ***s 403 (1) (b) order***) for the offender under the *Crimes Act 1900*, section 403 (1) (b) sentencing the offender to imprisonment but suspending the offender's sentence entirely or in part, and requiring the offender to enter into a recognisance; and

(b) if the s 403 (1) (b) order was made before the commencement day—the order is still in force.

Note A court may make an order under the *Crimes Act 1900*, s 403 (1) (b) for the offender in a proceeding that starts or ends before, on or after the commencement day if the offence for which the order is made was committed before the commencement day (see *Crimes (Sentencing) Act 2004*, s 151 (Application of Act—offences on or after commencement day)).

(2) If the s 403 (1) (b) order was made before the commencement day, and the offender has entered into a recognisance as required by the order, on and after the commencement day—

(a) the s 403 (1) (b) order (as in force immediately before the commencement day) is taken to be a suspended sentence order

under the *Crimes (Sentencing) Act 2004* suspending the offender's sentence on the same terms as the s 403 (1) (b) order; and

(b) the recognisance is taken to be a good behaviour bond entered into under a good behaviour order under the *Crimes (Sentencing) Act 2004*; and

(c) the good behaviour bond is taken to—

(i) include any conditions included in the s 403 (1) (b) order or the recognisance (as in force immediately before the commencement day); and

(ii) require the giving of any security, with or without sureties, that is required by the s 403 (1) (b) order; and

(d) the term of the good behaviour bond ends at the same time as the term of the s 403 (1) (b) order (as in force immediately before the commencement day), unless the term is amended under this Act; and

(e) the core conditions under this Act, section 180 (Good behaviour orders—core conditions) do not apply to the good behaviour bond.

(3) If the s 403 (1) (b) order was made before the commencement day, and the offender has, immediately before the commencement day, failed to enter into a recognisance in accordance with the order, section 178 (Failure to enter good behaviour bond—consequences) applies to the offender as if the offender had failed to enter into a good behaviour bond in accordance with a good behaviour order under the *Crimes (Sentencing) Act 2004*.

Note Section 178 gives the court the power to re-sentence an offender if the offender fails to enter a good behaviour bond in accordance with a good behaviour order made for the offence.

(4) If the s 403 (1) (b) order was made, or the recognisance was entered into, before the commencement day, and, on the commencement day, a sentence administration proceeding had started (but not ended) in relation to the order or recognisance, on and after the commencement day—

(a) the proceeding may be continued under the old sentence administration law; and

(b) the old sentence administration law applies to the proceeding as if this Act and the consequential amendments Act had not been enacted; and

(c) the order and the recognisance (if any) entered into under the order continue in force under the old sentence administration law until the proceeding ends, subject to that law; and

(d) subsection (2) (a) to (e) applies to the order or recognisance (as amended, if at all) from immediately after the time the proceeding ends, unless the order or recognisance ceases to be in force because of the proceeding.

(5) If the s 403 (1) (b) order is made on or after the commencement day, and the offender enters into a recognisance as required by the order—

(a) the s 403 (1) (b) order is, from immediately after the time the recognisance is entered into, taken to be a suspended sentence order under the *Crimes (Sentencing) Act 2004* suspending the offender's sentence on the same terms as the s 403 (1) (b) order; and

(b) the recognisance is, from immediately after the time it is entered into, taken to be a good behaviour bond entered into under a good behaviour order under the *Crimes (Sentencing) Act 2004*; and

(c) the good behaviour bond is taken to—

(i) include any conditions included in the s 403 (1) (b) order or the recognisance; and

(ii) require the giving of any security, with or without sureties, that is required by the s 403 (1) (b) order; and

(d) the term of the good behaviour bond ends at the same time as the term of the s 403 (1) (b) order, unless the term is amended under this Act; and

(e) the core conditions under this Act, section 180 (Good behaviour orders—core conditions) apply to the good behaviour bond.

(6) If the s 403 (1) (b) order is made on or after the commencement day, and the offender fails to enter into a recognisance in accordance with the order, section 178 (Failure to enter good behaviour bond—consequences) applies to the offender as if the offender had failed to enter into a good behaviour bond in accordance with a good behaviour order under the *Crimes (Sentencing) Act 2004*.

(7) To remove any doubt, this Act (including part 7.6 (Good behaviour—supervision of offenders) applies in relation to a good behaviour bond mentioned in subsection (2) or (5) as if the good behaviour bond had been entered into under a good behaviour order that was made under the *Crimes (Sentencing) Act 2004*, subject to subsection (2) (e) (if applicable).

411 Community service orders—Crimes Act 1900, s 408

(1) This section applies if, in a proceeding in relation to an offence committed before the commencement day (whether the proceeding starts or ends before, on or after the commencement day)—

(a) a court makes an order under the *Crimes Act 1900*, section 408 (the ***old community service order***) directing the offender to perform unpaid work for a number of hours stated in the order; and

(b) if the old community service order was made before the commencement day—the order is still in force.

Note A court may make a community service order under the *Crimes Act 1900*, s 408 for the offender in a proceeding that starts or ends before, on or after the commencement day if the offence for which the order is made was committed before the commencement day (see *Crimes (Sentencing) Act 2004*, s 151 (Application of Act—offences on or after commencement day)).

(2) If the old community service order was made before the commencement day, on and after the commencement day—

(a) the old community service order (as in force immediately before the commencement day) is taken to be a good behaviour order under the *Crimes (Sentencing) Act 2004*; and

(b) the offender is taken to have entered into a good behaviour bond under the good behaviour order; and

(c) the good behaviour bond is taken to include—

(i) a community service condition under the *Crimes (Sentencing) Act 2004* requiring the performance of the same number of hours of work, on the same terms, as the old community service order (as in force immediately before the commencement day); and

(ii) any other conditions included in the old community service order (as in force immediately before the commencement day); and

(d) the number of hours of community service work required to be performed by the offender under the good behaviour bond is the number of hours remaining to be performed under the old community service order, as worked out immediately before the commencement day; and

(e) the term of the good behaviour bond ends at the same time as the term of the old community service order (as in force immediately before the commencement day), unless the term is amended under this Act; and

(f) the core conditions under this Act, section 180 (Good behaviour orders—core conditions) do not apply to the bond.

(3) However, if the old community service order was made before the commencement day, and, on the commencement day, a sentence administration proceeding had started (but not ended) in relation to the order, on and after the commencement day—

(a) the proceeding may be continued under the old sentence administration law; and

(b) the old sentence administration law applies to the proceeding as if this Act and the consequential amendments Act had not been enacted; and

(c) the order continues in force under the old sentence administration law until the proceeding ends, subject to that law; and

(d) subsection (2) (a) to (f) applies to the order (as amended, if at all) from immediately after the time the proceeding ends, unless the order ceases to be in force because of the proceeding.

(4) If the old community service order is made on or after the commencement day—

(a) the old community service order is, from immediately after the time it is made, taken to be a good behaviour order under the *Crimes (Sentencing) Act 2004*; and

(b) the offender is taken, from immediately after the time the old community service order is made, to have entered into a good behaviour bond under the good behaviour order; and

(c) the good behaviour bond is taken to include—

(i) a community service condition under the *Crimes (Sentencing) Act 2004* requiring the performance of the same number of hours of work, on the same terms, as the old community service order; and

(ii) any other conditions included in the old community service order; and

(d) the term of the good behaviour bond ends at the same time as the term of the old community service order, unless the term is amended under this Act; and

(e) the core conditions under this Act, section 180 (Good behaviour orders—core conditions) apply to the bond.

(5) To remove any doubt, this Act (including part 7.6 (Good behaviour—supervision of offenders) applies in relation to a new home detention order mentioned in subsection (2) or (4) as if the order had been made under the *Crimes (Sentencing) Act 2004*, subject to subsection (2) (f) (if applicable).

Part 16.4 Transitional—parole orders

412 Parole orders before commencement day—Rehabilitation of Offenders (Interim) Act 2001, pt 3.3

(1) This section applies if—

(a) before the commencement day, an order was made under the *Rehabilitation of Offenders (Interim) Act 2001*, part 3.3 (Parole) (the ***old parole order***) releasing an offender on parole; and

(b) the old parole order was still in force immediately before the commencement day.

(2) On and after the commencement day—

(a) the old parole order (as in force immediately before the commencement day) is taken to be a parole order under chapter 8 (the ***new parole order***); and

(b) the old standard conditions, and any additional conditions included in the old parole order by the sentence administration board (as in force immediately before the commencement day) apply to the new parole order; and

(c) the new core conditions do not apply to the new parole order.

(3) However, if the old parole order was made before the commencement day, and, on the commencement day, a sentence administration proceeding had started (but not ended) in relation to the order, on and after the commencement day—

(a) the proceeding may be continued under the old sentence administration law; and

(b) the old sentence administration law applies to the proceeding as if this Act and the consequential amendments Act had not been enacted; and

(c) the order continues in force under the old sentence administration law until the proceeding ends, subject to that law; and

(d) subsection (2) (a) to (c) applies to the order (as amended, if at all) from immediately after the time the proceeding ends, unless the order ceases to be in force because of the proceeding.

(4) To remove any doubt, this Act (including part 8.4 (Parole—supervision of offenders) applies in relation to the new parole order as if the new parole order had been made under chapter 8, subject to subsection (2) (c) (if applicable).

(5) In this section:

new core conditions, in relation to the new parole order, mean the core conditions for the order under section 228.

old standard conditions, in relation to the old parole order, mean the standard conditions for the order prescribed by regulations made for the *Rehabilitation of Offenders (Interim) Act 2001*, section 38 (1) (a).

Note A nonparole period set under the old sentence administration law for an offender sentenced to imprisonment continues in force on and after the commencement day (see *Crimes (Sentencing) Act 2004*, pt 13 (Transitional)).

413 Parole orders after commencement day

(1) This section applies if—

(a) before the commencement day, a sentence administration proceeding for an offender serving a sentence of imprisonment by full-time detention had started in the sentence administration board in relation to the making of an order under the *Rehabilitation of Offenders (Interim) Act 2001*, part 3.3 (an ***old parole order***) for the release of the offender on parole; and

(b) immediately before commencement day, the proceeding had not ended.

(2) On and after the commencement day, the sentence administration proceeding may be continued, and the sentence administration board may make an old parole order for the offender, under the old sentence administration law as if this Act and the consequential amendments Act had not been enacted.

(3) If the sentence administration board makes an old parole order for the offender—

(a) the old parole order is taken to be a parole order under chapter 8 (the ***new parole order***) immediately after the time the old parole order is made; and

(b) any conditions included in the old parole order apply to the new parole order; and

(c) the new core conditions apply to the new parole order; and

(d) the old standard conditions do not apply to the new parole order.

(4) To remove any doubt, this Act (including part 8.4 (Parole—supervision of offenders) applies in relation to the new parole order as if the new parole order had been made under chapter 8.

(5) In this section:

new core conditions, in relation to the new parole order, mean the core conditions for the order under section 228.

old standard conditions, in relation to the old parole order, mean the standard conditions for the order prescribed by regulations made for the *Rehabilitation of Offenders (Interim) Act 2001*, section 38 (1) (a).

Note A nonparole period set under the old sentence administration law for an offender sentenced to imprisonment continues in force on and after the commencement day (see *Crimes (Sentencing) Act 2004*, pt 13 (Transitional)).

Part 16.5 Transitional—general

414 Sentence administration proceedings—started before commencement day

If a sentence administration proceeding under the old sentence administration law had started, but not ended, immediately before the commencement day—

(a) the proceeding may be continued under the old sentence administration law; and

(b) the old sentence administration law applies to the proceeding as if this Act and the consequential amendments Act had not been enacted.

Example

3 months before the commencement day, Jan was convicted of an offence and sentenced to imprisonment for 6 months, with the sentence ordered to be served under a periodic detention order by 24 detention periods.

1 month before the commencement day, under the *Periodic Detention Act 1975*, s 24 (1) (part of the ***old sentence administration law***), Jan applied to the director of corrective services for leave of absence for 2 detention periods for health reasons. The director refused leave 1 week later.

After another week (2 weeks before the commencement day) Jan applied to the Magistrates Court for leave of absence under that Act, s 24 (3). This application ***started*** (see this Act, s 365, def) the proceeding in the Magistrates Court (a ***sentence related proceeding***—see this Act, s 365, def).

Immediately before the commencement day, the Magistrates Court had still not heard the application. So, for this section, the proceeding had not ***ended*** before the commencement day.

Under this section, on and after the commencement day the proceeding may continue, and the Magistrates Court may hear and decide the application, under the *Periodic Detention Act 1975*. That Act applies to the proceeding as if this Act and the consequential amendments Act had not been made.

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

415 Sentence administration proceedings—started after commencement day

(1) This section applies if a sentence administration proceeding is started on or after the commencement day in relation to an offender who is subject to a sentence or order (including an order for remand) for an offence committed (or allegedly committed) before the commencement day.

(2) This Act applies in relation to the sentence administration proceeding.

Note 1 A court may impose or make a sentence or order for an offender under the old sentence administration law in a proceeding that starts or ends before, on or after the commencement day if the offence for which the sentence is imposed was committed before the commencement day (see *Crimes (Sentencing) Act 2004*, s 151 (Application of Act—offences on or after commencement day)).

Note 2 Because of this Act, pt 16.2, 16.3 and 16.4, a sentence or order made under the old sentence administration law is converted into the corresponding sentence or order under the *Crimes (Sentencing) Act 2004* (or this Act, in the case of a parole order). If a recognisance is entered into under an order under the old sentence administration law, that is converted into a good behaviour bond.

The conversion takes place either on the commencement day (if the sentence or order was imposed or made before then), immediately after the sentence or order is made (if the sentence or order was imposed or made after then) or immediately after any sentence administration

proceeding in relation to the sentence or order ends (if the proceeding had started, but not ended, on the commencement day).

416 Existing arrangements with NSW—Rehabilitation of Offenders (Interim) Act 2001, s 94

An arrangement under the *Rehabilitation of Offenders (Interim) Act 2001*, section 94 that was in force immediately before the commencement day is taken, on and after the commencement day, to be an arrangement under this Act, section 385 (Correctional centres—arrangements by Chief Minister with other jurisdictions).

Part 16.6 Transitional regulations

417 Transitional regulations

(1) The regulations may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.

(2) Without limiting the scope of subsection (1), the regulations may prescribe matters necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

(3) Regulations made for this section must not be taken to be inconsistent with this Act as far as they can operate concurrently with this Act.

(4) This section is additional to, and does not limit, section 418.

418 Modification of ch 16's operation

The regulations may modify the operation of this chapter to make provision in relation to any matter that, in the Executive's opinion, is not, or is not adequately, dealt with in this chapter.

419 Expiry—ch 16

This chapter expires 3 years after the day it commences.

Dictionary

(see s 3)

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

Note 2 In particular, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- Australia
- chief executive (see s 163)
- Commonwealth
- entity
- fail
- found guilty
- function
- may (see s 146)
- Minister (see s 162)
- must (see s 146)
- NSW correctional centre
- penalty unit (see s 133)
- police officer
- public servant
- State
- the Territory
- under.

Aboriginal person means a person who is a descendant of, identifies as, and is accepted by an Aboriginal community as, an Aboriginal person.

ACT prisoner, for part 11.1 (Interstate transfer of prisoners)—see section 291.

ACT sentence of imprisonment, for part 11.1 (Interstate transfer of prisoners)—see section 291.

additional condition means—

(a) of a home detention order—see section 100; or

(b) of a periodic detention order—see section 136; or

(c) of a good behaviour bond or good behaviour order—see section 177; or

(d) of a parole order—see section 210.

approved place, in relation to a periodic detainee—see section 148 (1).

arrest warrant, for a person, for part 11.1 (Interstate transfer of prisoners)—see section 291.

board means the sentence administration board.

charge, for a disciplinary breach—see section 33.

Commonwealth International Transfer Act, for part 11.2 (International transfer of prisoners)—see section 327.

Commonwealth sentence of imprisonment, for part 11.1 (Interstate transfer of prisoners)—see section 291.

community-based sentence, for chapter 12 (Transfer of community-based sentences)—see section 338.

community service condition—see the *Crimes (Sentencing) Act 2004*, section 14 (2).

community service work—see section 386 (1).

conduct means an act or an omission to do an act.

contagious disease means—

(a) a transmissible notifiable condition under the *Public Health Act 1997*; or

(b) a disease or medical condition prescribed under the regulations for this definition.

core condition means—

(a) of a home detention order for a home detainee—see section 100; or

(b) of a periodic detention order for a periodic detainee—see section 136; or

(c) of a good behaviour bond for an offender—see section 177; or

(d) of a parole order for a sentenced offender—see section 210.

correctional centre means a place declared to be a correctional centre under section 371.

corrections officer means a corrections officer appointed under section 373.

corrections rules means the corrections rules approved under section 381.

corresponding ACT court, in relation to a court of a participating State, for part 11.1 (Interstate transfer of prisoners)—see section 291.

corresponding chief executive, of a participating leave jurisdiction, for part 4.4 (Full-time detainees—interstate leave permits)—see section 82 (2).

corresponding community-based sentence law, for chapter 12 (Transfer of community-based sentences)—see section 341.

corresponding leave law, for part 4.4 (Full-time detainees—interstate leave permits)—see section 82 (2).

corresponding leave permit, for part 4.4 (Full-time detainees—interstate leave permits)—see section 82 (2).

corresponding Minister, of a participating State, for part 11.1 (Interstate transfer of prisoners)—see section 291.

corresponding parole law, for chapter 13 (Transfer of parole orders)—see section 362.

custody association direction—see section 16.

default imprisonment, for part 11.1 (Interstate transfer of prisoners)—see section 291.

deputy chairperson means a deputy chairperson of the board.

designated authority, for a State or Territory, for chapter 13 (Transfer of parole orders)—see section 362.

detainee—see section 8.

detention includes imprisonment and custody.

detention period, for a periodic detainee—see section 137.

disciplinary breach, for a detainee, see section 33.

drug means—

(a) a controlled drug under the Criminal Code, section 600; or

(b) a substance prescribed under the regulations for this definition.

engage in, for conduct that is an omission to do an act, means omit to do that act.

escape, in relation to an interstate detainee, for part 4.4 (Full-time detainees—interstate leave permits)—see section 82 (2).

escort—see the *Custodial Escorts Act 1998*, dictionary.

exempt provision, of the corrections rules, means a provision of the rules to which a certificate under section 382 (Corrections rules—provisions about security etc) applies.

extend, a separate custody direction or protective custody direction—see section 16.

frisk search, of a detainee—see section 49.

full-time detainee—see section 9.

full-time detention means detention required to be served in a correctional centre, other than a periodic correctional centre.

good behaviour bond, in relation to an offender—see section 177.

good behaviour obligations, of an offender while serving a sentence, or part of a sentence, under a good behaviour bond—see section 177.

good behaviour order—see section 177.

Governor, of a participating State, for part 11.1 (Interstate transfer of prisoners)—see section 291.

health separation direction—see section 20.

home detainee—see section 10.

home detention—see section 100.

home detention obligations, of a home detainee—see section 100.

home detention order—see section 100.

indeterminate sentence, for part 11.1 (Interstate transfer of prisoners)—see section 291.

inquiry, in relation to the sentence administration board, means an inquiry under part 10.3.

interested person, in relation to a good behaviour bond—see section 177.

interstate authority, for chapter 12 (Transfer of community-based sentences)—see section 342 (2).

interstate custody association direction—see section 16.

interstate detainee, for part 4.4 (Full-time detainees—interstate leave permits)—see section 82 (2).

interstate escort, for a corresponding leave permit issued to an interstate detainee, for part 4.4 (Full-time detainees—interstate leave permits)—see section 82 (2).

interstate jurisdiction, for chapter 12 (Transfer of community-based sentences)—see section 339 (4).

interstate law, for part 11.1 (Interstate transfer of prisoners)—see section 291.

interstate leave permit—see section 82 (1).

interstate sentence, for chapter 12 (Transfer of community-based sentences)—see section 340 (2).

interstate sentence of imprisonment, for part 11.1 (Interstate transfer of prisoners)—see section 291.

joint prisoner, for part 11.1 (Interstate transfer of prisoners)—see section 291.

judicial member, of the board, means the chairperson or a deputy chairperson of the board.

jurisdiction, for chapter 12 (Transfer of community-based sentences)—see section 339 (1).

law enforcement agency—see the *Spent Convictions Act 2000*, dictionary, and includes an entity prescribed under the regulations for this definition.

local authority, for chapter 12 (Transfer of community-based sentences)—see section 342 (1).

local leave order—see section 79 (1).

local leave permit—see section 80 (1).

local register, for chapter 12 (Transfer of community-based sentences)—see section 345.

local sentence, for chapter 12 (Transfer of community-based sentences)—see section 340 (1).

major breach—see section 33.

medical officer means a medical officer appointed under section 375.

member means a member of the board, and includes the chairperson and a deputy chairperson.

minor breach—see section 33.

non-association condition, of a relevant authority—see section 247.

non-judicial member, of the board, means a member of the board other than the chairperson or a deputy chairperson.

nonparole period—see the *Crimes (Sentencing) Act 2004*, dictionary and includes—

(a) a nonparole period set under section 172 (3) (b) (Periodic detention—cancellation of order on conviction for ACT offence); and

(b) for a full-time detainee whose nonparole period is subject to reduction or remission under a NSW law—the nonparole period less the period of reduction or remission.

Note Par (b) relates to full-time detainees serving sentences in a NSW correctional centre (see s 75 (4)).

non-participating Territory, for part 11.1 (Interstate transfer of prisoners)—see section 291.

notice of a parole hearing—see section 215 (Parole—initial consideration by board).

obligations means—

(a) of a full-time detainee—the detainee's obligations under section 93; or

(b) of a home detainee—the detainee's home detention obligations under section 101; or

(c) of a periodic detainee while serving a sentence, or part of a sentence, by periodic detention under a periodic detention order—the detainee's periodic detention obligations under section 139; or

(d) of an offender while serving a sentence, or part of a sentence, under a good behaviour bond—the offender's good behaviour obligations under section 179; or

(e) of a sentenced offender while on release on parole under a parole order—the offender's parole obligations under section 227.

offender—see section 12.

official visitor means an official visitor appointed under section 378.

order of transfer, for part 11.1 (Interstate transfer of prisoners)—see section 291.

ordinary search, of a detainee—see section 49.

originating jurisdiction, for chapter 12 (Transfer of community-based sentences)—see section 335.

parental responsibility—see the *Children and Young People Act 1999*, section 17.

parole date, for a sentenced offender for whom a parole order has been made, means the date stated in the order for the offender's release from detention.

parolee—see section 11.

parole eligibility date, for a sentenced offender, means the day the offender's nonparole period ends.

parole obligations, of a sentenced offender while on release on parole under a parole order—see section 227.

parole order means—

(a) for this Act—see section 210; but

(b) for chapter 13 (Transfer of parole orders)—see section 362.

participating jurisdiction, for chapter 12 (Transfer of community-based sentences)—see section 339 (3).

participating leave jurisdiction, for part 4.4 (Full-time detainees—interstate leave permits)—see section 82 (2).

participating State, for part 11.1 (Interstate transfer of prisoners)—see section 291.

periodic detainee—see section 10.

periodic detention, for a periodic detainee—see section 136.

periodic detention centre means a correctional centre, or part of a correctional centre, declared to be a periodic detention centre under section 371.

periodic detention obligations, of a periodic detainee—see section 136.

periodic detention order—see section 136.

person involved, in community service work, for part 15.1 (Community service work)—see section 386 (2).

place restriction condition, of a relevant authority for a remandee or offender—see section 247 (1).

police officer includes a member of a police force or service of a State.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1)

positive test sample, for alcohol or drugs in relation to a detainee—see section 59 (2).

prison, for part 11.1 (Interstate transfer of prisoners)—see section 291.

prisoner, for part 11.1 (Interstate transfer of prisoners)—see section 291.

prison officer, for part 11.1 (Interstate transfer of prisoners)—see section 291.

prohibited item means a thing that is prescribed under the regulations or corrections rules to be a prohibited item.

prohibited item breach—see section 33.

protective custody direction—see section 19.

registration criteria, for chapter 12 (Transfer of community-based sentences)—see section 350.

release on parole, for part 11.1 (Interstate transfer of prisoners)—see section 291.

relevant authority, for a remandee or offender, for chapter 9 (Non-association and place restriction conditions)—see section 247 (2).

relevant court means—

(a) for a remandee for part 5.3 (Home detention—supervision generally)—see section 112; or

(b) in relation to a good behaviour bond for an offender—see section 177.

relevant security, for part 11.1 (Interstate transfer of prisoners)—see section 291.

remand centre means a correctional centre, or part of a correctional centre, declared to be a remand centre under section 371.

remandee—see section 12.

remission instrument, for part 11.1 (Interstate transfer of prisoners)—see section 291.

scanning search, of a detainee—see section 49.

secretary, of the sentence administration board, includes an assistant secretary of the board.

sentence means—

(a) for the Act—

(i) when used as a noun—the penalty imposed for an offence; or

(ii) when used as a verb—to impose a penalty for an offence; but

(b) for chapter 12 (Transfer of community-based sentences)—see section 335.

sentence administration board means the Sentence Administration Board established under section 251.

sentenced offender—see section 12.

sentence of imprisonment means—

(a) for part 11.1 (Interstate transfer of prisoners)—see section 292; or

(b) for chapter 13 (Transfer of parole orders)—see section 362.

sentencing court, for an offender sentenced by a court, means the court by which the sentence was imposed, and includes that court differently constituted.

separate custody direction—see section 18.

serve a sentence, for chapter 12 (Transfer of community-based sentences)—see section 335.

served—a term of imprisonment is ***served*** when—

(a) the person is discharged from imprisonment; or

(b) apart from the person serving another term of imprisonment, the person would have been discharged from imprisonment.

strip search, of a detainee—see section 49.

subject to a sentence of imprisonment, for part 11.1 (Interstate transfer of prisoners)—see section 293 (1).

surety, for a good behaviour bond, means a person other than the offender who gives security for complying with the bond.

temporary remand centre means a place declared to be a temporary remand centre under section 372.

term, of a sentence—see section 13.

test sample—see section 59 (1).

this jurisdiction, for chapter 12 (Transfer of community-based sentences)—see section 339 (2).

Torres Strait Islander means a person who is a descendant of an indigenous inhabitant of the Torres Strait Islands.

translated sentence, for part 11.1 (Interstate transfer of prisoners)—see section 291.

victim, of an offence—see section 14.

victims register—see section 243.

withdrawable, for a right, privilege or amenity—see section 33.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2004.

2 Notification

Notified under the Legislation Act on 2004.

3 Republications of amended laws

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