

**2006**

**THE LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY**

**SENTENCING LEGISLATION AMENDMENT BILL 2006**

**EXPLANATORY STATEMENT**

**Circulated by the authority of  
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## Sentencing Legislation Amendment Bill 2006

### Outline

The Sentencing Legislation Amendment Bill 2006 provides the consequential amendments for the *Crimes (Sentencing) Act 2005* the *Crimes (Sentence Administration) Act 2005*, and the foreshadowed Corrections Management Act. The Bill would repeal old sentencing and sentence administration laws and updates any references in the ACT's statute book to be consistent with the new laws.

The Bill also provides transitional arrangements to enable the existing custodial laws to apply until the Corrections Management Act has commenced.

The *Crimes (Sentencing) Act 2005* consolidates existing sentencing laws set out in a number of different statutes. The Act also introduces a number of new options for sentencing courts and modernises the law. The *Crimes (Sentence Administration) Act 2005* consolidates existing sentence administration laws and creates the supervisory framework for the sentencing options provided by the *Crimes (Sentencing) Act 2005*.

The Corrections Management Act would provide the law that will govern the treatment and management of prisoners and other detainees in the Australian Capital Territory.

The Sentencing Legislation Amendment Bill 2006 also extinguishes the archaic common law disabilities of conviction at clause 1.129. The old common law of imposing civil death upon people convicted of felonies has been gradually retired in Commonwealth countries since 1870 following the United Kingdom's *Forfeiture Act 1870*. Because the ACT's *Crimes Act 1900* was replicated from NSW at the time the Capital Territory was formed in the early years of 1900, the ACT inherited only a partial abolishment of the common law disabilities. The error was corrected in NSW during the 1980s, following the case of *Dugan v Mirror Newspapers Ltd* (1978) 142 CLR 583. Because the ACT did not imprison convicted people within its jurisdiction, there was no impetus to exhaust these archaic provisions when other State jurisdictions did so. Clause 1.129 corrects this historical anomaly.

## **Sentencing Legislation Amendment Bill 2006**

### **Clauses**

For the sake of brevity, the *Crimes (Sentencing) Act 2005* and the *Crimes (Sentence Administration) Act 2005* will be referred to as the Sentencing Acts throughout the explanatory statement.

#### **Clause 1 — Name of Act**

This is a technical clause which names the short title of the Act. The name of the Act would be the *Sentencing Legislation Amendment Act 2006*.

#### **Clause 2— Commencement**

This clause enables the Act to commence on the same day as the *Crimes (Sentence Administration) Act 2005*. The Sentencing Acts commence on 2 June 2006.

#### **Clause 3 — Legislation amended schedule 1**

Schedule 1, discussed below amends a range of Acts to ensure consistency with the Sentencing Acts and the Corrections Management Bill 2006. Schedule 2 contains technical drafting amendments to the *Crimes Act 1900*. The amendments in schedule 2 do not change the meaning or penalties associated with the offences.

#### **Clause 4 — Crimes sentencing regulation schedule 3**

Clause 4 enables the provisions in schedule 3 to be regarded as regulations made by the Executive. Rather than make the regulations separately, the Government has opted to include them as part of this Bill.

Schedule 3 makes regulations listing the items that inform the meaning of rehabilitation program for the *Crimes (Sentencing) Act 2005*. Making the regulation by way of a Bill aims to ensure continuity of service and operations following the commencement of the Sentencing Acts.

#### **Clause 5 — Crimes sentence administration regulations schedule 4**

Clause 5 enables the provisions in schedule three to be regarded as regulations made by the Executive. Rather than make the regulations separately the Government has opted to include them as part of this Bill.

Schedule 4 makes regulations listing further core conditions for parole under the *Crimes (Sentence Administration) Act 2005*. The regulation is consistent with current conditions administered by the Sentence Administration Board. Making the regulation by way of a Bill aims to ensure continuity of service and operations following the commencement of the Sentencing Acts.

#### **Clause 6 — Legislation repealed**

Clause 6(1) lists the Acts that will be repealed by this Bill. The substance of these Acts now being provided by the Sentencing Acts and the Corrections Management Bill 2006.

It should be noted that part 1.12 of the Bill introduces transitional provisions that keep existing custodial laws active until the commencement of the Corrections Management Act. Part 1.12 lists the relevant custody Acts that remain active.

Clause 6(2) lists the regulations that will be repealed by this Bill.

Clause 6(3) lists the registrable instruments that will be repealed by this Bill.

Any regulations or instruments made under relevant custody Acts remain active until the Corrections Management Act commences.

## **Schedule 1**

Schedule 1 lists each Act that is to be amended and the specific amendments.

### **Part 1.1 — *Administrative Decisions (Judicial Review) Act 1989***

The *Crimes (Sentence Administration) Act 2005* contains a range of administrative decisions under enactment, and therefore would be open to review under the *Administrative Decisions (Judicial Review) Act 1989*. While the Government supports judicial review of its actions, there are a range of decisions that the government considers inappropriate for review, or to provide reasons for the decision.

#### **Clause 1.1**

Clause 1.1 is a technical direction to renumber relevant items in schedule 1 of the *Administrative Decisions (Judicial Review) Act 1989* following amendment.

#### **Clause 1.2**

Clause 1.2 inserts a list of administrative decisions from the *Crimes (Sentence Administration) Act 2005* into schedule 1 of the *Administrative Decisions (Judicial Review) Act 1989*. Schedule 1 lists the relevant Territory decisions that are excluded from review under the *Administrative Decisions (Judicial Review) Act 1989*.

The government is of the view that these decisions warrant exclusion on the basis that:

- (a) they are relevant to the execution of a sentencing order imposed by a court — sections 20 and 37; or
- (b) they are necessary incidents of the management of sentenced offenders where the consequences are transient or there are other remedies, review or inspection procedures to address grievances or maltreatment — sections 31, 45, 46, 95 and 96.

It is worth revisiting the explanatory statement informing section 31 of the *Crimes (Sentence Administration) Act 2005* to clarify that the section is not intended to serve as an administrative form of remissions or early release scheme. The section provides the chief executive with some flexibility to manage operational and logistical pressures by enabling, for example, the early release of some offenders to allow space for new admissions. Early release is not intended to be an entitlement of a person serving a sentence of imprisonment.

**Clause 1.3**

Clause 1.3 inserts a list of administrative decisions from the *Crimes (Sentence Administration) Act 2005* into schedule 2 of the *Administrative Decisions (Judicial Review) Act 1989*. Schedule 2 lists the relevant Territory decisions that exclude the Executive from having to provide reasons for a decision, as required by section 13 of the *Administrative Decisions (Judicial Review) Act 1989*.

The government is of the view that these decisions warrant exclusion on the basis that:

- (a) they are relevant to the execution of a sentencing order imposed by a court — sections 87, 91, 92 and 100;
- (b) they are necessary incidents of the management of sentenced offenders where the consequences may be transient and there are procedures in the Act to investigate or review decisions — sections 25, 28, 44, 53, 55, 58, 59, 60, 138, 31, 45, 46, 95, 96 302 and 321; or
- (c) they relate to a person or entity not part of the Executive — sections 54(3) and 54(4).

**Part 1.2 — *Bail Act 1992*****Clause 1.4**

Clause 1.4 is a technical amendment describing a signpost definition in accord with the *Legislation Act 2001*.

**Clause 1.5**

Clause 1.5 amends section 8A of the *Bail Act 1992* to ensure that the Act contemplates breaches of any relevant sentencing dispositions or obligations arising from the new Sentencing Acts. The original offence determines the presumption that must be applied by the court.

The examples are also re-written to account for the change in terminology and names.

The amendment also accounts for any outstanding home detention orders. Home detention orders are not available under the new Sentencing Acts.

Clause 1.5 also amends section 8B to clarify that the *Bail Act 1992* applies to anyone arrested or remanded under the authority of the Sentence Administration Board. If a person is remanded or arrested by the Board's authority, the person may apply to a court for bail.

**Clause 1.6**

Clause 1.6 amends section 9D to ensure references and terminology are consistent with the Sentencing Acts.

**Clause 1.7**

Clause 1.7 amends section 25 to ensure consistency with the Sentencing Acts.

**Clause 1.8**

Clause 1.8 amends section 31 to use the term correctional centre, consistent with the Corrections Management Bill 2006.

**Clause 1.9**

Clause 1.9 amends section 48 to use the term correctional centre, consistent with the Corrections Management Bill 2006.

**Clauses 1.10, 1.11, 1.12, 1.13, 1.14**

Clauses 1.10 to 1.14 amend the dictionary to ensure consistency with the Sentencing Acts and Corrections Management Bill 2006.

**Clause 1.15**

Clause 1.15 amends the dictionary to update the reference to the *Children and Young People Act 1999*.

**Part 1.3 — *Children and Young People Act 1999*****Clause 1.16**

This clause updates the terminology in the *Children and Young People Act 1999* by replacing the outdated term ‘custodial escort’ with the new term ‘corrections officer’ in the definition of police officer in section 76.

**Clause 1.17**

This clause updates the terminology in the *Children and Young People Act 1999* by replacing the outdated term ‘remand centre’ with the new term ‘correctional centre’ in sections 85(2) and (4)(a).

**Clause 1.18**

This clause updates the terminology in the *Children and Young People Act 1999* by replacing the outdated term ‘custodial escort’ with the new term ‘corrections officer’ in section 87(1).

**Clause 1.19**

This clause updates the references to adult sentencing options in section 95(4) of the *Children and Young People Act 1999*. As the options previously referred to have been significantly changed in the new adult scheme, the updated references direct the Children’s Court to the new sentencing options akin to the old scheme.

**Clause 1.20**

This clause updates references to adult sentencing options in section 99(2) of the *Children and Young People Act 1999*. As the options previously referred to have been significantly changed, the updated references direct the Children’s Court to the adult sentencing options that most closely mirror those previously available.

**Clause 1.21**

This clause updates the terminology in the *Children and Young People Act 1999* by replacing the outdated term ‘prison’ with the new term ‘correctional centre’ in section 102(3), consistent with the Corrections Management Bill 2006.

**Clause 1.22**

This clause updates the reference to the *Magistrates Court Act 1930*, section 159 (Remission) which is consolidated in the *Crimes (Sentence Administration) Act 2005*, section 313 (Remission of penalties).

**Clause 1.23**

This clause updates the terminology in the *Children and Young People Act 1999* by replacing the outdated term ‘custodial escort’ with the new term ‘corrections officer’ in section 120(6).

**Clause 1.24**

This clause replaces section 122 of the *Children and Young People Act 1999*. It brings the section into line with current drafting practices and updates references to ‘remand centre’ to ‘correctional centre’, and references to the ‘director of corrective services’ to the ‘chief executive of the administration unit responsible for the *Crimes (Sentence Administration) Act 2005*’.

**Clause 1.25**

This clause updates the terminology in the *Children and Young People Act 1999* by replacing the outdated term ‘remand centre’ with the new term ‘correctional centre’ in section 124(2)(b) and (3).

**Clause 1.26**

This clause replaces section 125 of the *Children and Young People Act 1999*. It brings the section into line with current drafting practices and updates references to ‘remand centre’ to ‘correctional centre’, and reference to custodial escort to ‘corrections officer’.

The clause also replaces section 126 of the *Children and Young People Act 1999*. It updates the reference to the *Remand Centres Act 1976* with a reference to the foreshadowed Corrections Management Act.

**Clause 1.27**

This clause inserts a note directing the reader to relevant provisions in 13.2 of the *Crimes (Sentence Administration) Act 2005*.

**Clause 1.28**

This clause updates the terminology in the *Children and Young People Act 1999* by replacing the reference to ‘a custodial escort’ with ‘a corrections officer’ in section 139(2)(b).

**Clause 1.29**

This clause replaces section 140 of the *Children and Young People Act 1999*. It brings the section into line with current drafting practices and updates references to ‘remand centre’ to ‘correctional centre’, and reference to the ‘director of corrective services’ to the ‘chief executive of the administration unit responsible for the *Crimes (Sentence Administration) Act 2005*’.

**Clause 1.30**

This clause replaces section 399(3) of the *Children and Young People Act 1999*. It updates the reference to the *Remand Centres Act 1976* with a reference to the foreshadowed Corrections Management Act.

**Clause 1.31**

This clause updates the terminology in the *Children and Young People Act 1999* by replacing the outdated term ‘remand centre’ with the new term ‘correctional centre’ in the definition of ‘place of detention’ in section 401A.

**Clause 1.32**

This clause updates the terminology in the *Children and Young People Act 1999* by replacing the outdated term ‘remand centre’ with the new term ‘correctional centre’ in the definition of ‘place of detention’ in section 417(4).

**Clause 1.33**

This clause inserts a new term into note 2 of the dictionary of the *Children and Young People Act 1999*. It includes ‘correctional centre’ as a term that is defined in the *Legislation Act 2001*, which in turn relies upon the foreshadowed Corrections Management Act.

**Clause 1.34**

This clause inserts the definition of ‘corrections officer’ into the dictionary of the *Children and Young People Act 1999*.

**Clause 1.35**

This clause removes the definition of ‘custodial escort’ from the dictionary of the *Children and Young People Act 1999*, as this term has now been superseded.

**Clause 1.36**

This clause removes the definition of ‘remand centre’ from the dictionary of the *Children and Young People Act 1999*, as this term has now been superseded.

**Part 1.4 — *Clinical Waste Act 1990*****Clause 1.37**

Clause 1.37 updates the provision by referring to convicted or found guilty, consistent with the provisions of the *Crimes (Sentencing) Act 2005*.

**Part 1.5 — *Confiscation of Criminal Assets Act 2003*****Clause 1.38**

Clause 1.38 updates the provision by referring to relevant provisions in the *Crimes (Sentencing) Act 2005*.

**Clause 1.39**

Clause 1.39 is a technical amendment to ensure the provision contemplates orders under the *Confiscation of Criminal Assets Act 2003* and other court orders.

**Clause 1.40**

Clause 1.40 is a technical amendment to ensure the provision accounts for additional restraining orders under the *Confiscation of Criminal Assets Act 2003* and the provisions of the Act.

**Clause 1.41**

Clause 1.41 is a technical amendment to ensure the provision contemplates orders under the *Confiscation of Criminal Assets Act 2003* and other court orders.

**Clause 1.42**

Clause 1.42 is a technical amendment to omit an outdated reference.

**Clause 1.43**

Clause 1.43 amends the heading of section 51 to refer to penalty orders in relation to restrained property.

**Clause 1.44**

Clause 1.44 updates the reference to reparation orders.

**Part 1.6 — *Coroners Act 1997*****Clause 1.45**

Clause 1.45 is a technical amendment to make reference to the signpost definition of ‘death in custody’.

**Clause 1.46**

This clause omits old section 3 to make way for a new section 3C.

**Clause 1.47**

Clause 1.47 updates the references in the meaning of a ‘death in custody’ by referring to the Sentencing Acts. A new section 3C is created to ensure that the sections continue to flow sequentially.

Clause 1.47 also introduces a new section 3D which provides an updated definition of ‘custodial officer’. The definition is re-written using the existing definition of ‘custodial officer’ in the Act’s dictionary. Section 3D is also inserted to ensure that the sections flow sequentially.

**Clause 1.48**

Clause 1.48 is a technical amendment to update the dictionary to account for the range of terms used in the Sentencing Acts and the Corrections Management Bill 2006.

**Clauses 1.49 to 1.53**

Clauses 1.49 to 1.53 amend the dictionary to ensure consistency with the Sentencing Acts, Corrections Management Bill 2006 and the *Mental Health (Treatment and Care) Act 1994*. The definitions contemplate the existing intention of the Act.

## **Part 1.7 — *Crimes Act 1900***

Clauses 1.54 to 1.59 update the escape provisions in the *Crimes Act 1900*.

### **Clause 1.54**

Clause 1.54 clarifies that only when a person is serving a weekend, or other block, of periodic detention, is the in lawful custody.

### **Clauses 1.55 to 1.58**

Clauses 1.55 to 1.58 update the terminology of the sections by referring to a correctional centre.

### **Clause 1.59**

Clause 1.59 omits section 165, as this is addressed by section 64 of the *Crimes (Sentencing) Act 2005*.

### **Clause 1.60**

Clause 1.60 updates the reference from escort officer to corrections officer, consistent with the Corrections Management Bill 2006.

### **Clause 1.61**

Clause 1.61 updates the section by referring to convicted or found guilty, consistent with the *Crimes (Sentencing) Act 2005*.

### **Clause 1.62**

Clause 1.62 fixes a typographical error.

### **Clause 1.63**

Clause 1.63 re-writes section 288(2) in modern terms and removes the outdated reference to section 405 of the *Crimes Act 1900*, now covered by the Sentencing Acts.

### **Clause 1.64**

Clause 1.64 updates the terminology of the section by referring to a correctional centre.

### **Clause 1.65**

Clause 1.65 updates the reference from escort to corrections officer, consistent with the Corrections Management Bill 2006.

### **Clause 1.66**

Clause 1.66 updates the terminology of the section by referring to a correctional centre.

### **Clause 1.67**

Clause 1.67 amends the section to use the new terms for the relevant sentencing dispositions in the Sentencing Acts.

**Clause 1.68**

Clause 1.68 omits part fifteen of the *Crimes Act 1900* dealing with sentencing. This is now covered by the Sentencing Acts.

**Clause 1.69**

Clause 169 omits the partial abolishment of common law disabilities. A new section 137A to the *Crimes (Sentencing) Act 2005* stipulates that common law disabilities as a consequence of conviction are extinguished and only legal disabilities imposed by statute apply.

**Clause 1.70**

This clause updates the provision in section 397 to accord with the concepts in the Sentencing Acts.

**Clause 1.71**

Omits the old reference to reparations, now covered by the Sentencing Acts.

**Clause 1.72**

Omits provisions now covered by the Sentencing Acts. See chapter 3, chapter 4 and chapter 6 of the *Crimes (Sentencing) Act 2005*.

**Clause 1.73**

This clause updates the references to pardons and remissions, which are now in the *Crimes (Sentence Administration) Act 2005*.

**Clause 1.74**

This clause omits a part now in part 13.2 of the *Crimes (Sentence Administration) Act 2005*.

**Clause 1.75**

This clause omits a redundant section.

**Clause 1.76**

Clause 1.76 updates the terminology of the section by referring to a correctional centre.

**Clause 1.77**

Clause 1.77 updates the terminology of the section by referring to a good behaviour order.

**Clauses 1.78, 1.79**

These clauses update the dictionary to use correctional centre and define corrections officer.

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

The *Crimes (Child Sex Offenders) Act 2005* requires offenders who are sentenced for a sexual offence against a child to register on the ACT Child Sex Offenders Register.

The definition of ‘sentence’ which is the essence of registration includes a reference to a ‘finding of guilt’.

**Clause 1.80**

Section 7(1)(c) provides that a reference to a ‘finding of guilt’ includes additional offences that are listed on a document filed by the prosecutor at the time of sentencing. These provisions are now located in the *Crimes (Sentencing) Act 2005* and the reference in the section is amended accordingly.

**Clauses 1.81 to 1.84**

These clauses update the references to the *Crimes (Sentencing) Act 2005*.

**Clause 1.85**

This clause inserts a new transitional section to account for the transition from the existing sentencing orders mentioned in section 9(1)(a)(i) to the new sentencing orders..

**Clauses 1.86**

Clause 1.86 omits the definition of good behaviour bond, as the relevant sections would refer to good behaviour orders under the *Crimes (Sentencing) Act 2005*.

**Clauses 1.87**

Clause 1.87 expires transitional notes that account for existing sentencing orders under the new Sentencing Acts.

**Clause 1.88**

This clause updates the meaning of a community service order.

**Clauses 1.89**

This clause deletes the old definition of detainee.

**Clauses 1.90**

This clause updates the definition of government custody by referring to the foreshadowed Corrections Management Act.

**Clauses 1.91**

Clause 1.88 replaces the reference to the repealed Act with the *Crimes (Sentence Administration) Act 2005*.

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

**Clauses 1.92 to 1.98**

These clauses update the sections to refer to the new term — correctional centre.

**Clause 1.99**

This clause deletes old definitions.

## **Part 1.10 *Crimes (Restorative Justice) Act 2004***

### **Clauses 1.100 to 1.103**

These clauses update the references in relevant sections and examples to the *Crimes (Sentencing) Act 2005*.

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

Part 1.11 makes a number of technical amendments, corrections and necessary transitional amendments to enable the commencement of the *Crimes (Sentencing) Act 2005* on 2 June 2006.

### **Clause 1.104**

Clause 1.104 replaces the existing note in section 11(5). The new note clarifies that an additional condition recommended by the Court for periodic detention automatically becomes a condition of the offender's periodic detention obligations under the *Crimes (Sentence Administration) Act 2005*.

### **Clause 1.105**

Clause 1.105 corrects a typographical mistake by re-writing (8) to simply state that section 13 is subject to chapter 6.

### **Clause 1.106**

This clause removes a redundant example.

### **Clause 1.107**

Clause 1.107 omits section 42(4)(f), which was not intended to be carried over from the old provisions of the *Crimes Act 1900*. The old provision was ambiguous in its intention and can be interpreted in a manner that would undermine the trial process by introducing assertions that have not been tested to a degree appropriate for a criminal trial.

### **Clause 1.108**

This clause is a technical amendment to renumber following an omission.

### **Clause 1.109**

Clause 1.109 substitutes the note with a more precise reference.

### **Clause 1.110**

Clause 1.110 substitutes the note with a more precise reference.

### **Clause 1.111**

This clause introduces a further element to section 68 to clarify that cancellation of periodic detention does not entitle an offender to have a parole period set if the court has not already done so.

### **Clause 1.112**

This clause amends section 71 to replace the outdated term "at large" with "absent".

**Clause 1.113**

Clause 1.113 corrects a typographical error in the heading. The heading was missing the word ‘while’.

**Clause 1.114**

Clause 1.114 re-writes 72(1) to make the three sets of circumstances clearer. The section applies to offenders who commit an offence in lawful custody; offenders who commit an offence while unlawfully absent from a correctional centre; and offenders who commit an offence of escape from lawful custody.

**Clause 1.115**

Clause 1.115 corrects a typographical error.

**Clause 1.116**

Clause 1.116 substitutes the note with a more precise reference.

**Clause 1.117**

This clause re-makes a provision that was mistakenly not carried over from the Exposure Draft of the Crimes (Sentence Administration) Bill 2004. The clause inserts a new section that enables a reparation order that contemplates goods or other tangibles to be given a monetary value if an offender breaches the order.

**Clause 1.118**

This clause re-writes section 112(2) to clarify that the section contemplates both cases of reparation order. The amendment is a more precise treatment of the government’s intention.

**Clause 1.119**

This clause ensures that if the Supreme Court makes reparation orders or other ancillary orders involving payments before an appeal process is complete, and the conviction is overturned, there is a remedy to return the money.

**Clause 1.120**

Clause 1.120 corrects a grammatical error to section 136.

**Clause 1.121**

Clause 1.121 adds the Victims of Crime Coordinator to the list of criminal justice entities that are authorised to share information. The Coordinator was intended to be included on this list but was inadvertently left off.

**Clause 1.122**

Clause 1.122 provides a clearer heading for section 140.

**Clause 1.123**

Clause 1.123 corrects the reference in the note to the name of the Act foreshadowed by this Bill.

**Clause 1.124**

This clause omits section 140(6) because there is a new expiry provision that applies to the whole chapter.

**Clause 1.125**

This clause clarifies the precise relationship between an existing non-parole period that was envisaged to continue past the date that the new Sentencing Acts commence. The transitional section 141 deems these non-parole periods to be made under the new Sentencing Acts.

**Clause 1.126**

This clause clarifies the remaining non-parole period that is to apply to an offender if an existing non-parole period was made before the Sentencing Acts commenced that was envisaged to continue past the commencement date. In essence, the non-parole period that was applied by the court continues as intended by the court, but under the supervision of the new Sentencing Acts.

**Clause 1.127**

This clause omits the sections mentioned because there is a new expiry provision that applies to the whole chapter.

**Clause 1.128**

Clause 1.128 corrects the reference in the note to the name of the Act foreshadowed by this Bill and includes the *Crimes (Sentence Administration) Act 2005*.

**Clause 1.129**

The rights of people convicted of felony offences and misdemeanours differed at common law. Historically, people convicted of felony offences were denied their private rights during sentence. People convicted of capital felony offences were treated as if they had died and lost all their private rights for their remaining life span, these people were civilly dead — *civiliter mortuus*. Those who had their sentence of death commuted lived out their lives with no private rights.

At the time of Australian colonisation, England had a plethora of crimes that held a capital penalty, hence many Australian emancipists who had their death sentence commuted had no civil rights. In the mid to late 1700s there were approximately 160 capital offences, at the beginning of the 1800s there were more than 200 offences.

Civil disablement of attainted felons was abolished in the UK by the *Forfeiture Act 1870*, but did not end in NSW until 1955 when the death sentence was abolished. Although some provisions of the *Forfeiture Act 1870* (UK) were incorporated into the *Criminal Law Amendment Act 1883* (NSW) attainer was not abolished and hence the disability to sue remained.

The *Forfeiture Act 1870* (UK) was not uniformly adopted by all English colonies at the time, but instead was gradually incorporated through different forms of statutes. For example the Queensland addressed the issue via the *Public Curator Act 1915*. The Public Curator Act was adopted from the *Convicts Forfeitures Act 1871* of New Zealand, which in turn was drawn from the *Forfeiture Act 1870* (UK).

In *Dugan v Mirror Newspapers Ltd* (1978) 142 CLR 583 the High Court noted that the difference between the antecedents of Queensland law and NSW law occurred because a series of NSW acts did not fully incorporate the terms of the *Forfeiture Act 1870* (UK).

This clause creates a new section 137A to stipulates that common law disabilities as a consequence of conviction are extinguished and only legal disabilities imposed by statute apply. The ACT inherited its *Crimes Act 1900* from NSW, which included a partial abolishment of common law disabilities, as discussed in the *Dugan* case. In the 1980s NSW completed the abolishment, however the matter has never been fully addressed in the ACT.

Given the common law disabilities are unlikely to be revived following a positive law by the Assembly to exhaust them, the provision is to be automatically expired on 1 June 2009.

Clause 1.129 clarifies that commonsense is to prevail when dealing with any relevant instruments, documents, forms etc that refer to the repealed Acts, or repealed parts of Acts, and are to be treated as instruments, documents, forms etc under the new Sentencing Acts.

For example, if a court uses a form that refers to section 402 of the *Crimes Act 1900*, this transitional provision enables the form to be used for Non-Conviction Orders under the Sentencing Acts, as they are relevant to the subject matter.

This clause also clarifies that section 88 of the *Legislation Act 2001* applies. Section 88 ensures that any transitional laws that have been made and are later repealed, can still be used in circumstances relevant to the transitional laws. For example, if in ten years time there is doubt about whether an order was regarded to be a Good Behaviour Order, or not, at the time the Sentencing Acts commenced, the relevant transitional provisions can be used to work out the problem.

The clause also adds an expiry provision for the whole chapter, rather than section by section. The new provision expires the notes and provisions etc that relate to transitional matters.

### **Clauses 1.130 to 1.136**

These clauses update the dictionary with the new terms.

### **Part 1.12 *Crimes (Sentence Administration) Act 2005***

Part 1.12 makes a number of technical amendments, corrections and necessary transitional amendments to enable the commencement of the *Crimes (Sentence Administration) Act 2005* on 2 June 2006.

### **Clauses 1.137**

Clause 1.137 corrects the reference to the heading of section 154D of the *Magistrates Court Act 1930*.

**Clauses 1.138**

These clauses insert notes to draw attention to the transitional sections of the Act.

**Clauses 1.139**

This clause provides a more precise reference to provisions.

**Clauses 1.140**

This clause corrects a grammatical error.

**Clauses 1.141**

This clause corrects a grammatical error.

**Clauses 1.142**

Clause 1.142 re-writes section 46 because section 46 referred to the tag definition of 'personal searches', which was used as a drafting device for the Exposure Draft of the Crimes (Sentence Administration) Bill 2004. That device was not used in the new versions of the Bills, but the old reference was inadvertently left in section 46. The change simply refers to searches under the Corrections Management Bill.

**Clauses 1.143**

This clause corrects a typographical error.

**Clauses 1.144**

This re-casts section 96(2) to clarify that the checks and balances provided for search provisions in the Corrections Management Bill apply as a whole when conducting a frisk search.

**Clauses 1.145**

The current way this definitional section is drafted may create confusion in relation to the definition of victim. A possible interpretation would be to place the definition used in this section in conflict with the definition in section 214. To clarify the meaning, the definition in this section is omitted and a new section created below that better expresses how 'victim' is intended to be used in relation to the parole provisions.

**Clauses 1.146**

This clause separates the definition of victim from section 117, and creates a new 118A. The re-write intends to clarify that a victim — for the purposes of parole — is a victim who is connected with the offence that resulted in the sentence of imprisonment that the Sentence Administration Board must decide upon.

**Clauses 1.147**

This clause introduces a new section 138A to enable parolees to be tested for drug and alcohol abuse. This provision was originally intended for regulations.

**Clauses 1.148**

This clause corrects a grammatical error.

**Clauses 1.149**

This clause corrects a drafting error.

**Clauses 1.150**

This clause introduces a new section 302A to enable offenders on release on licence to be tested for drug and alcohol abuse. This provision was originally intended for regulations.

**Clause 1.151**

As indicated by the Government in relation to the Sentencing Acts, the Government's intention when proposing legislation relying upon the prerogative of mercy is to condition the exercise of the prerogative, not abrogate it. The statutory schemes exercising the prerogative, such as parole, achieves a rational means of seeking a recommendation without exhausting the Government's authority to exercise the prerogative.

The power was provided to the ACT following an amendment to the Commonwealth *Australian Capital Territory Self Government Act 1988*, by way of Schedule 1 of the *Arts, Environment And Territories Legislation Amendment Act 1993*, No. 6, 1994. At the time the ACT Legislative Assembly had not reconciled the further power with the statutory provisions inherited in the *Crimes Act 1900*. This amendment intends to correct that lapse.

Clause 1.151 clarifies that the prerogative of mercy is not abrogated by statutory exercises in the Sentencing Acts or the Corrections Management Bill.

**Clause 1.152**

Clause 1.152 introduces a means to certify relevant facts arising from the administration of sentences. Rather than leave an *ad hoc* means of identifying facts in the first instance for legal proceedings arising from the administration of sentences, this clause introduces a new section to enable the chief executive to prepare a certificate.

The document is evidence of a matter, and proof if no contrary evidence arises.

**Clause 1.153**

This clause provides a more precise heading for the chapter.

**Clause 1.154**

This clause updates the reference in the *Crimes (Sentence Administration) Act 2005* to this Bill.

**Clause 1.155**

Clause 1.155 re-writes parts of section 330 to give a more precise treatment of the transitional arrangements. The amendments ensure that anyone sentenced to imprisonment before or on commencement of the Sentencing Acts, continues to be sentenced. The provisions deem existing sentences to be sentences under the Sentencing Acts.

Section 330(4) is introduced to clarify that any person serving a sentence of imprisonment in NSW by warrant under the existing laws, is deemed to be serving their sentence in NSW by direction of the chief executive under the Sentencing Acts. The practical consequence of this provision is that the chief executive does not have to make new directions for existing sentences.

#### **Clause 1.156**

Clause 1.156 re-writes parts of section 331 to give a more precise treatment of the transitional arrangements. The amendments ensure that anyone remanded before or on commencement of the Sentencing Acts, continues to be on remand. The provisions deem existing remand decisions to be decisions under the Sentencing Acts.

Section 330(4) is introduced to clarify that any person on remand is deemed to be held in the remand centre by direction of the chief executive under the Sentencing Acts. The practical consequence of this provision is that the chief executive does not have to make new directions for existing remandees.

#### **Clause 1.157**

Clause 1.157 introduces a new section to ensure that any people lawfully detained, who are not prisoners or remandees before commencement, are deemed to be detainees under the Sentencing Acts following commencement.

The provision works akin to clauses 1.155 and 1.156 discussed above.

New section 331B is also introduced to provide a transitional rule that deems warrants under the *Removal of Prisoners Act 1968* to be a direction to detain a person in NSW under the Sentencing Acts.

#### **Clause 1.158**

This clause introduces a new heading to break up the chapter into a new part.

#### **Clause 1.159**

Clause 1.159 introduces a transitional provision that ensures that any existing appointments to the Sentence Administration Board are deemed to be appointments under the Sentencing Acts. The practical consequence is that any instruments of appointment that are active under the existing law, remain active under the new law. No new instruments would need to be made merely because of the new laws commencing.

Clause 1.159 also introduces a transitional provision that ensures that any existing appointments of Official Visitor are deemed to be appointments under the Sentencing Acts. The practical consequence is that any instruments of appointment that are active under the existing law, remain active under the new law. No new instruments would need to be made merely because of the new laws commencing.

#### **Clause 1.160**

This clause amends the heading, to clarify it is about chapter 16.

**Clause 1.161**

This clause updates the reference in the section to the correct name of this Bill.

**Clause 1.162**

Clause 1.162 also clarifies that commonsense is to prevail when dealing with any relevant instruments, documents, forms etc that refer to the repealed Acts, or repealed parts of Acts, and are to be treated as instruments, documents, forms etc under the new Sentencing Acts.

For example, if the Sentence Administration Board uses a form that refers to parole under the *Rehabilitation of Offenders (Interim) Act 2001*, this transitional provision enables the form to be used for parole matters under the Sentencing Acts, as they are relevant to the subject matter.

This clause clarifies that section 88 of the *Legislation Act 2001* applies. Section 88 ensures that any transitional laws that have been made and are later repealed, can still be used in circumstances relevant to the transitional laws. For example, if in ten years time there is doubt about whether an order was regarded to be a parole order, or not, at the time the Sentencing Acts commenced, the relevant transitional provisions can be used to work out the problem.

This clause also amends the expiry section to expire the relevant notes on transitional matters after five years.

**Clause 1.163**

Clause 1.163 introduces a new transitional chapter 17 to the *Crimes (Sentence Administration) Act 2005*.

This chapter provides transitional arrangements to enable the existing custodial laws to apply until the Corrections Management Act has commenced. The Sentencing Acts and the Corrections Management Bill 2006 have been drafted using common terms, methods and connections. The three are designed to work together and make sense of a sentence from sentencing to the completion of a prison term.

To ensure the ACT's custodial laws continue to operate in harmony with the new Sentencing Acts until the Corrections Management Bill 2006 is enacted, chapter 17 provides transitional methods and powers to resolve any legal conflicts should they arise.

Section 600 explains the purpose of the chapter. Consistent with the interpretation principles in the *Legislation Act 2001*, chapter 17 is intended to be interpreted in a manner that achieves the purpose set out in section 600.

Section 601 clarifies that it is an extension of the existing transitional provisions.

Section 602 clarifies that the chapter does not apply to home detention. Home detention is addressed in section 332 of the *Crimes (Sentence Administration) Act 2005*.

Section 603 foreshadows the Corrections Management Act, which is referred to throughout the Sentencing Acts.

This section also defines the interim custody period for the purposes of the chapter. In essence, it is custody contemplated by the Sentencing Acts. The interim custody period is the time between the commencement of the Sentencing Acts and the commencement of the foreshadowed Corrections Management Act.

The new sentencing laws are the *Crimes (Sentencing) Act 2005* and the *Crimes (Sentence Administration) Act 2005*.

The old custody law is any Territory law related to custody in force before the Sentencing Acts commence, and in particular the provisions mentioned in (a) to (c). A list of old custody law is in section 605.

Section 604 sets out how the old custody law interacts with the new Sentencing Acts.

The section enables the Executive and the Judiciary to connect the substance of the Sentencing Acts to existing custodial law where there is a reference to the Corrections Management Act. The table under 604(3) gives examples.

Section 604 provides a discretion to account for necessary changes where there is a conflict with the Sentencing Acts and the existing custodial law. Any changes can be prescribed by regulation if necessary.

Section 605 lists the old custody laws and keeps any relevant subordinate law and instruments active. If any inconsistencies arise between the old custody laws and the Sentencing Acts, the Sentencing Acts apply. Section 605(3) clarifies that if the two laws are able to operate concurrently, then they are consistent.

Section 606 identifies the relevant provisions from the *Periodic Detention Act 1995* that remain active during the interim period.

Section 607 identifies and clarifies the relevant provisions from the *Remand Centres Act 1976* that apply during the interim period.

Section 608 provides the courts with the power to make an order necessary to facilitate the application of the Sentencing Acts or the old custody law.

Section 609 provides the Sentence Administration Board with the power to make decisions necessary to facilitate the application of the Sentencing Acts or the old custody law. These decisions are subject to court orders.

Section 610 provides the chief executive to make decisions necessary to facilitate the application of the Sentencing Acts or the old custody law. These decisions are subject to court orders and decisions of the Sentence Administration Board.

Should any contradictions arise, section 611 provides a regulation making power to reconcile the issue in the short term.

Section 612 expires the chapter in a year after the Sentencing Acts commence. The effect of the chapter will also become redundant once the Corrections Management Act commences.

**Clause 1.164 to 1.167**

These clauses update the dictionary by making the precise references to combination sentences, correcting typographical errors and qualifying grammatical references.

**Clause 1.168**

Clause 1.168 re-makes the definitions of ‘registered victim’ and ‘victim’ to distinguish between the general use in the Act and the specific use in the chapter dealing with parole.

**Clause 1.169**

This clause updates the reference to the Corrections Management Act in the Sentencing Acts.

**Clause 1.170**

This clause corrects grammar in a number of provisions.

**Clause 1.171**

This clause amends relevant notes about transitional matters.

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

**Clause 1.172**

This clause ensures that the Director of Public Prosecutions can act on behalf of the Territory in relation to proceedings under the *Crimes (Sentence Administration) Act 2005*.

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

**Clause 1.173**

Section 34(2) provides that a person commits an offence by engaging in conduct that contravenes a protection order. The Note for this section is amended to highlight the fact that the Magistrates Court in deciding the sentence to be imposed on a person under the section must consider matters such as the nature and circumstance of the offence, the age of the offender, other sentencing practices etc, as outlined in the *Crimes (Sentencing) Act 2005*, section 33.

**Clause 1.174**

This clause updates the reference allowing for exchange of information in relation to an offence between the Supreme Court, Magistrates Court, chief executive, sentence administration board, director of public prosecutions, chief police officer, or any other entity prescribed by regulation under the *Crimes (Sentencing) Act 2005*.

**Clause 1.175**

This is a technical amendment to renumber sections.

**Part 1.15 *Drugs of Dependence Act 1989*****Clause 1.176**

This clause updates the references to the new Sentencing Acts.

**Clause 1.177**

This clause omits a provision referring to the *Crimes Act 1900* that will be repealed by this Bill.

**Clause 1.178**

This is a technical amendment to renumber sections.

**Clause 1.179**

This clause inserts the new reference to good behaviour order.

**Clause 1.180**

This clause removes the redundant reference to recognisance.

**Clause 1.181**

This clause is omitted as the *Bail Act 1992* now provides for bail.

**Part 1.16 *Electoral Act 1992*****Clause 1.182**

This is a technical amendment to number a subsection.

**Clause 1.183**

This clause updates the meaning of a sentence of imprisonment consistent with the Sentencing Acts.

**Clause 1.184**

This clause rationalises the references.

**Clause 1.185**

This new section is a modern version of section 369 of the *Crimes Act 1900*. Rather than leave the old provision in the *Crimes Act 1900*, this amendment groups all of the legal disabilities affecting standing for office or holding office in the *Electoral Act 1992*. The provision means that during a sentence for an indictable offence an MLA cannot hold office, nor stand for office.

**Clause 1.186**

This clause removes a redundant reference to the *Crimes Act 1900*.

**Clause 1.187**

This is a technical amendment for renumbering.

**Clause 1.188**

This clause updates the reference to correctional centre.

**Clause 1.189**

This clause clarifies that anyone in detention does not have a right to leave a correctional centre because they have a right to vote.

**Clause 1.190**

This clause deletes a redundant definition.

**Clause 1.191**

This clause updates the references to correctional centres, thus enabling the Electoral Commissioner to visit any correctional centre declared under the Corrections Management Act.

**Clause 1.192**

This clause updates the reference to correctional centres.

**Clause 1.193**

This clause updates the reference to correctional centres.

**Clause 1.194 and 1.195**

These clauses update the dictionary.

**Part 1.17 *Evidence (Miscellaneous Provisions) Act 1991*****Clauses 1.196 and 1.197**

These clauses update the references to the Sentencing Acts.

**Part 1.18 *Firearms Act 1996***

The amendments to the *Firearms Act 1996* and Firearms Regulation 1997 deal with the current requirement for corrections officers to be licensed to hold a firearm, and extends the restriction upon issuing firearms permits to applicants who are subject to a court order to keep the peace in the ACT or elsewhere.

Section 6 of the *Firearms Act 1996* (the Act) currently exempts prison officers of a State or another Territory from the application of the Act in respect of a firearm in his or her possession for use in the exercise of his or her functions and duties as such an officer. This exemption does not currently extend to ACT corrections officers. Therefore ACT corrections officers are currently required to hold a firearms licence.

The amendments to section 6 of the Act will exempt ACT and other State and Territory corrections officers from the application of the Act when they are in possession of a firearm for use in the exercise of the officer's functions. There will, therefore, no longer be any requirement for these officers to be licensed. This amendment is consistent with the intention of the Act and national firearms regulation.

Section 46(3) of the Act outlines the categories of person to which a firearms permit will not be issued. Section 46(3)(c) currently states that a firearms permit shall not be issued to a person who is subject to a recognisance, granted in the ACT or elsewhere, to keep the peace.

The amendment to section 46(3)(c) extends this restriction to people who are subject to a court order (however described), in the ACT or elsewhere, to keep the peace. The amendment effectively makes the wording more general so that the firearms registrar is not restricted by the technical wording of the section and is able to refuse permits to people who are subject to a court order as a result of breaching the peace.

#### **Clause 1.198**

Section 6 of the Act only currently contains one part and therefore has not required subsections. However, with the introduction of the definition of correction officer, the section will require two subsections. This clause denotes subsection one.

#### **Clause 1.199**

Section 6(b) of the Act only currently exempts prison officers from States or other Territories from holding firearms licences for firearms in their possession for use in the exercise of their functions and duties as such an officer.

This clause extends this exemption to corrections officers when they have a firearm in their possession for use in the exercise of their officer functions. This clause means that corrections officers, both in the ACT and elsewhere, will not require firearms licenses for firearms used in the course of their duties.

#### **Clause 1.200**

This new clause inserts a definition of corrections officer. This definition mirrors the definition of corrections officer contained in the Legislation Act dictionary, and includes any person engaged by the government to provide correctional services for offenders.

#### **Clause 1.201**

This clause deals with the registrar's power to refuse a firearms permit to a person who is subject to a court order to keep the peace. The current wording of the section restricts its application to people subject to recognisances to keep the peace. This amendment allows the registrar to refuse to grant a firearms permit to a person who is subject to any court order (however described), in the ACT or elsewhere, to keep the peace.

### **Part 1.19 Firearms Regulation 1997**

#### **Clause 1.202**

This clause mirrors the amendment to section 46(3)(c) into the Regulation provisions. Section 29(2)(b) outlines the information an application for a firearms permit must contain. Subsection 29(2)(b)(xi)(C) currently states that a firearms permit application must state whether or not the applicant is subject to a recognisance to keep the peace or to a requirement having the same or substantially the same effect. This amendment changes the word, recognisance, to court order (however described), which is

consistent with the amendment to section 46(3)(c) of the Act. This amendment requires any applicant for a firearms permit in the ACT to declare if they are subject to a court order to keep the peace.

### **Part 1.20 *Food Act 2001***

#### **Clause 1.203**

This clause updates terminology in the *Food Act 2001* by replacing the outdated term 'prison' with the new term 'correctional centre' in section 9, consistent with the Corrections Management Bill 2006.

### **Part 1.21 *Hawkers Act 2003***

#### **Clause 1.204**

This clause re-writes section 18(3)(c) in accordance with current drafting practice and updates references to offences to reflect the enactment of the offence of receiving under section 313 of the Criminal Code.

### **Part 1.22 *Health Professionals Regulation 2004***

#### **Clause 1.205**

This clause deletes a redundant reference to the *Periodic Detention Act 1995*.

### **Part 1.23 *Judicial Commissions Act 1994***

#### **Clause 1.206**

This clause omits a redundant reference to custodial escorts.

### **Part 1.24 *Juries Act 1967***

#### **Clause 1.207**

This amendment updates the reference to pardon.

#### **Clause 1.208**

This clause updates the references in the schedule of people exempt from serving on a jury.

#### **Clause 1.209**

This clause updates the dictionary.

### **Part 1.25 *Land (Planning and Environment) Act 1991***

#### **Clause 1.210**

Clause 1.210 updates the provision by referring to convicted or found guilty, consistent with the provisions of the *Crimes (Sentencing) Act 2005*.

## **Part 1.26 Legislation Act 2001**

### **Clause 1.211**

This clause updates terminology.

### **Clause 1.212**

This clause modernises the definition of ‘commit’.

### **Clause 1.213**

This clause provides new definitions by referring to the foreshadowed Corrections Management Act.

### **Clause 1.214**

This clause omits the redundant reference to custodial escort. Corrections officers will have the power to escort detainees.

### **Clause 1.215**

This clause omits the redundant reference to director of corrective services. All powers related to corrective services will be derived via delegation from the Minister or the chief executive in accordance with the *Legislation Act 2001*.

### **Clause 1.216**

This clause re-writes the definition of found guilty to accord with the provisions of the *Crimes (Sentencing) Act 2005*.

### **Clause 1.217**

This clause defines a NSW correctional centre.

### **Clause 1.218**

This clause omits the redundant reference to remand centre and remand centre administrator.

### **Clause 1.219**

This clause updates the definition of sentence administration board.

## **Part 1.27 Magistrates Court Act 1930**

### **Clause 1.220**

This clause clarifies that after a case has been heard and decided, any magistrate or the registrar may issue a writ of execution for the purposes of the case.

### **Clause 1.221**

This clause updates terminology to properly reflect the processes that apply, in that warrants of commitment and writs of execution are issued rather than granted, and modernises the language used to describe the committal process from “warrants of commitment” to “committal orders”. It substitutes the phrase “warrant of commitment or writ of execution is granted on it” with the phrase “committal order or writ of execution is issued for the conviction or order”. A definition for committal orders is

inserted into the Dictionary at Clause 1.267 and refers to section 10 of the *Crimes (Sentence Administration) Act 2005*.

### **Clauses 1.222 and 1.223**

This clause modernises the language used to describe the committal process from “warrants of commitment” to “committal orders”. A definition for committal orders is inserted into the Dictionary at Clause 1.250 and refers to section 10 of the *Crimes (Sentence Administration) Act 2005*.

### **Clause 1.224**

This clause omits the definitions of administrator, escort and superintendent. References to these definitions have been deleted in accordance with current drafting practices placing reliance on delegations of the chief executive. Terminology is also being updated and the term “corrections officers” is being substituted for current references to “escorts”. All definitions are being re-located to the Dictionary for compliance with current drafting practice.

### **Clause 1.225**

This clause omits section 23B as section 61 of the *Crimes (Sentencing) Act 2005* provides a overarching power to reopen proceedings to correct penalty errors.

### **Clause 1.226**

This clause substitutes part of section 43(2)(a) to modernise language used to ensure consistency with the Sentencing Acts and the Corrections Management Bill 2006.

### **Clauses 1.227 – 1.228**

These clauses re-write Division 3.4.3 relating to Remand to modernise drafting and terms used and to remove all references to administrator. It also clarifies that a warrant for the remand of a remandee is to the chief executive’s custody and that the chief executive has custody of a defendant during the remand in accordance with the *Crimes (Sentence Administration) Act 2005*.

### **Clause 1.229**

This clause updates the reference from prison or remand centre to correctional centre.

### **Clause 1.230**

This clause is omitted. Matters relating to the conveying of people in custody are provided for in the *Crimes (Sentence Administration) Act 2005*.

### **Clause 1.231**

This clause substitutes the wording in section 84 to modernise the language used and provides that during the hearing, or further hearing, of an information the magistrates may adjourn the hearing or further hearing and may, by order, release the defendant (whether or not on bail) or remand the defendant in custody.

### **Clause 1.232**

This clause modernises the language used in section 94(b). The definition of “commit” in the dictionary, part 1 to the *Legislation Act 2001* contemplates that when

a person is committed for trial they may be remanded or admitted to bail on an undertaking to be tried before a judge and jury.

**Clause 1.233**

This clause modernises the language used in section 105 and updates terminology for consistency with the Sentencing Acts terminology.

**Clause 1.234**

This clause substitutes use of the word “safe custody” with that of “custody” to ensure consistency with the Sentencing Acts and Corrections Management Bill 2006.

**Clause 1.235**

This clause inserts a new note into section 141 to note that the court must issue a warrant for the imprisonment of the person in the chief executive’s custody pursuant to section 12 of the *Crimes (Sentence Administration) Act 2005*.

**Clause 1.236**

This clause updates references to terminology to ensure consistency with the Sentencing Acts.

**Clause 1.237**

This clause amends section 144(1) to include a committal order, consistent with the new methods in the Sentencing Acts.

**Clause 1.238**

This clause omits section 145 as it is redundant.

**Clause 1.239**

This clause remakes the current section 146 subsection (1) of section 146 as clause 1.240 and 1.241 inserts two new subsections into the section.

**Clause 1.240**

This clause updates terminology used for consistency with the Sentencing Acts.

**Clause 1.241**

This clause updates terminology used for consistency with the Sentencing Acts.

**Clause 1.242**

This clause amends subsection (5) to remove the reference to prison.

**Clause 1.243**

This clause modernises the language used and updates references to insert relevant provisions in the *Crimes (Sentence Administration) Act 2005*.

**Clause 1.244**

This clause modernises the language used and updates references to insert relevant provisions from, and achieve consistency with the Sentencing Acts.

**Clause 1.245**

This clause is omitted as provisions relating to remission of fines are now contained in the Sentencing Acts.

**Clause 1.246**

These sections are omitted as the relevant provisions are now contained in the Sentencing Acts.

**Clause 1.247**

This clause modernises the terms consistent with the Sentencing Acts and the Corrections Management Bill.

**Clause 1.248**

This clause removes references to warrants of commitment and modernises the language used.

**Clause 1.249**

This clause updates the references to adult sentencing options in section 208(1)(e) and (f) to those available in the new sentencing scheme under the Sentencing Acts.

**Clause 1.250**

This clause modernises the language used for consistency with the Sentencing Acts.

**Clause 1.251**

This clause inserts a new note at section 216(2) to note that the court must issue a warrant for the imprisonment of the person in the chief executive's custody under section 12 of the *Crimes (Sentence Administration) Act 2005*.

**Clause 1.252**

This clause updates the references to adult sentencing options in section 219B(2) to those available in the new sentencing scheme under the Sentencing Acts.

**Clause 1.253**

This clause updates terminology for consistency with the Sentencing Acts.

**Clause 1.254**

This clause updates terminology for consistency with the Sentencing Acts.

**Clause 1.255**

This clause updates terminology for consistency with the Sentencing Acts.

**Clause 1.256**

This clause updates terminology for consistency with the Sentencing Acts.

**Clause 1.257**

This clause updates terminology for consistency with the Sentencing Acts.

**Clause 1.258**

This clause removes references to the *Bail Act 1992* in sections 250 to 253. These provisions are addressed by section 37 of the *Bail Act 1992*.

**Clause 1.259**

This clause removes a redundant reference to the *Bail Act 1992*.

**Clause 1.260**

This clause updates terminology for consistency with the Sentencing Acts.

**Clause 1.261**

This clause updates terminology for consistency with the Sentencing Acts.

**Clause 1.262**

This clause updates terminology for consistency with the Sentencing Acts.

**Clause 1.263**

This clause omits section 313 as provisions relating to committal warrants are now dealt with under the Sentencing Acts.

**Clauses 1.264 to 1.266**

These clauses amend the dictionary to be consistent with the Sentencing Acts.

**Clause 1.267**

This clause inserts the definition of committal order as provided in section 10 of the *Crimes (Sentence Administration) Act 2005*.

**Clause 1.268**

This clause omits redundant definitions.

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

The *Mental Health (Treatment and Care) Act 1994* (the Act) provides for the treatment, care, control, rehabilitation and protection of mentally dysfunctional or mentally ill persons. The amendments to this Act are primarily concerned with making the definitions used in the Act consistent with the terms used in the new sentencing legislation.

**Clause 1.269**

Section 38A of the Act deals with the provision of a copy of the court order to the person in charge of a health facility when an accused person is taken there for a medical examination pursuant to that order. The section currently refers to a police officer, or an escort under the *Custodial Escorts Act 1998*.

This clause replaces the reference to an escort under the *Custodial Escorts Act 1998* with the term corrections officer. The definition of corrections officer will be the definition contained in the Legislation Act dictionary.

**Clause 1.270**

The Act currently uses many definitions contained in the Legislation Act. This clause inserts two new terms of correctional centre and corrections officer into the dictionary. According to this clause, the Act will use the definitions of correctional centre and corrections officer contained in the Legislation Act.

**Clause 1.271**

The dictionary of the Act currently contains a definition of a community care facility. In order to make the terminology throughout the Act consistent, this clause inserts the term correctional centre in place of a facility, the principal purpose of which is for the detention of persons sentenced to imprisonment.

**Part 1.29 Prohibited Weapons Act 1996**

The *Prohibited Weapons Act 1996* (the Act) prohibits the possession of certain dangerous weapons and other articles for the protection of the community. The amendments to this Act primarily deal with the people who are exempted from the application of the Act due to their occupation.

**Clause 1.272**

Section 4 of the Act only currently contains one part and therefore has not required subsections. However, with the introduction of a second part, the section will require two subsections. This clause denotes subsection one.

**Clause 1.273**

This clause changes the wording of the section to apply the exemption of the Act where a person is exercising their functions as a member of their specific council or occupation.

**Clause 1.274**

This clause omits the repetition of the words, ‘a member of’, in subsections (e) and (f). The use of these words in the subsection is repetitious and superfluous.

**Clause 1.275**

Section 4 of the Act is amended to be consistent with the foreshadowed Corrections Management Bill to exempt corrections officers from the operation of the Act in relation to holding prohibited weapons permits for weapons in their possession for use in the exercise of their functions as such an officer.

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

The *Road Transport (Alcohol and Drugs) Act 1977* provides for the detection of people who drive motor vehicles after consuming alcohol or drugs, for offences by those people, and to provide measures for the treatment and rehabilitation of those people.

**Clause 1.276**

Section 29 of the Act deals with a sentencing option of a good behaviour bond for people found guilty of an offence pursuant to the Act. This clause makes the terminology used in this Act consistent with the terminology used in the new

sentencing legislation, and allows the court to make a rehabilitation program order within the meaning of section 13(7) of the *Crimes (Sentencing) Act 2005*.

**Clause 1.277**

Section 41A of the Act deals with inadmissible evidence in insurance contract proceedings. The section lists a number of pieces of evidence that are not admissible as evidence that the person was, at any time, under the influence of or in any way affected by alcohol, or was under the influence of or affected by alcohol or a drug to such an extent as to be incapable of, or of exercising effective control over, a motor vehicle.

This clause amends the terminology of the section to make it consistent with the terminology used in the *Crimes (Sentencing) Act 2005*. Therefore the section now refers to a non-conviction order made under the *Crimes (Sentencing) Act 2005*, rather than an order made pursuant to section 402 of the *Crimes Act 1900*.

This clause also adds a further piece of inadmissible evidence to the list of an offence that was taken into account by a court under the *Crimes (Sentencing) Act 2005*, part 4.4 (Taking additional offences into account). The inclusion of this item is consistent with the other items listed in section 41A(1) of the Act.

**Clause 1.278**

This clause omits a reference to section 352(2) of the *Crimes Act 1900* from section 45 of the Act. Section 352(2) of the *Crimes Act 1900* is not currently enacted.

**Part 1.31 Royal Commissions Act 1991**

**Clause 1.279**

This clause makes a technical amendment to recognise different nomenclature used by States and Territories.

**Clause 1.280**

Section 35(6) of the *Royal Commissions Act 1991* (the Act) allows a police officer to cause a witness to be brought before a commission by an escort acting on behalf of the officer under the *Custodial Escorts Act 1998*.

This clause omits that section from the Act as correctional officers will now have the powers and there is no need for further legislative power.

**Part 1.32 Security Industry Regulation 2003**

**Clause 1.281**

Regulation 6(3) of the Security Industry Regulation 2003 (the Regulation) states the definition of custodial officer for the purpose of designating who is exempt from the application of the *Security Industry Act 2003*.

This clause amends this section to incorporate amendments made to the *Prisoners (International Transfer) Act 1999* by the *Crimes (Sentence Administration) Act 2005*. The *Crimes (Sentence Administration) Act 2005* now deals with the issues of transfers

in custody of escort and the functions of prison officers and police officers in international transfers of prisoners. Also, due to the expanded definition of corrections officer under the Corrections Management Act, a number of the subsections have been consolidated into subsection (a).

### **Part 1.33 Spent Convictions Act 2000**

#### **Clause 1.282**

Section 6 is a definitional provision that explains what is meant by the term 'convicted'. Section 6(b) provides that for the purpose of the *Spent Convictions Act 2000*, a person is convicted of an offence if the person is charged with the offence and the court finds the person guilty of the offence.

#### **Clause 1.283**

This section provides four examples to further explain what is meant by the term 'convicted'.

#### **Clause 1.284**

Section 7 is a definitional provision that explains what is meant by the term 'spent'. Section 7(2) provides that for the purpose of the *Spent Convictions Act 2000*, a reference to a conviction that is spent includes a reference to the charge to which the spent conviction related.

#### **Clause 1.285**

Section 11(2)(a) rewords the current section in line with drafting practices. The section provides that a conviction for which a sentence of imprisonment of longer than 6 months has been imposed cannot become spent.

#### **Clause 1.286**

Section 11(3) replaces the term "prison sentence" with " sentence of imprisonment" and includes a period of a sentence of imprisonment to be served by periodic detention under the *Crimes (Sentence Administration) Act 2005*

#### **Clause 1.287**

Section 12(1) rewords the current section in line with drafting practices.

#### **Clause 1.288**

Section 12(2), (3) and (4) rewords the current sections in line with drafting practices. The section explains that if a charge for an offence is dismissed under the *Crimes (Sentencing) Act 2005*, section 17 (Non-conviction orders) or the *Children and Young People Act 1999*, section 98 (Disposition without proceeding to conviction), the finding of guilt for the offence is spent on the dismissal of the charge.

#### **Clause 1.289**

This is a technical clause to renumber the Act.

## **Part 1.34 Supreme Court Act 1933**

### **Clause 1.290**

This clause omits the word prison from the heading of section 37Q of the *Supreme Court Act 1933*. Given the wording of the section, the inclusion of the word prison in the heading is superfluous.

### **Clause 1.291**

Section 70A of the *Supreme Court Act 1933* deals specifically with the sentencing of witnesses who fail to attend court in answer to a subpoena. This amendment rewords the penalty options to the court without changing the actual penalties available to be imposed. The rewording of the section is more consistent with modern sentencing legislation and in plain English.

## **Part 1.35 Supreme Court Rules 1937**

### **Clause 1.292**

Order 68 of the Supreme Court Rules 1937 deals specifically with Sheriff's Rules. Rule 10 of Order 68 currently requires that any person arrested by the Sheriff on any civil process of the court to be sent to the nearest gaol and detained until the court discharges them. This amendment no longer requires the Sheriff to lodge the person at the nearest correctional centre and amends the wording of the section to be consistent with plain English.

### **Clause 1.293**

Order 80, rule 1 of the Supreme Court Rules 1937 currently includes a definition of sentence. This definition contains two examples which refer to reparation orders and good behaviour orders under the *Crimes Act 1900*. This amendment refers to the relevant sections of the *Crimes (Sentencing) Act 2005* which deal with reparation orders and good behaviour orders.

### **Clause 1.294**

Order 80, rule 32 of the Supreme Court Rules 1937 deals with the execution of documents by the registrar or a justice of the peace. This amendment merely changes the terminology from recognisance to undertaking.

### **Clause 1.295**

Similarly to clause 1.276, order 86, rules 9 and 48, include a definition of sentence which refers to reparation orders and good behaviour orders under the *Crimes Act 1900*. This amendment refers to the relevant sections of the *Crimes (Sentencing) Act 2005* which deal with reparation orders and good behaviour orders.

### **Clause 1.296**

Order 86, rule 63, deals with fines to be kept pending appeal. An example provided in the definition of fine refers to reparation orders made pursuant to the *Crimes Act 1900*. This amendment refers to the relevant section now dealing with reparation orders pursuant to the *Crimes (Sentencing) Act 2005*.

## **Part 1.36 Taxation Administration Act 1999**

### **Clause 1.297**

This clause inserts a new section into the *Taxation Administration Act 1999* which allows for the Criminal Code to apply to the offences contained within this Act. This is a standard harmonisation procedure.

### **Clause 1.298**

Section 70(1) of the *Taxation Administration Act 1999* denotes penalties for second or subsequent offences against certain provisions. This clause provides a simpler explanation of the operation of this section by including people who have not only been convicted of a related offence in the past ten years, but also people who have been found guilty of a related offence in the past ten years. This was clearly the intention of the legislation as section 70(4) includes non-conviction orders in a reference to a conviction.

### **Clause 1.299**

Following on from clause 1.298, this clause amends the reference to non-conviction orders in subsection 70(4) as it is now superfluous. This clause also corrects a typographical error and more specifically refers to the section 19B(1) of the Commonwealth *Crimes Act 1914*.

### **Clause 1.300**

This clause harmonises the offence of failing to comply with orders to comply with requirements with the Criminal Code principles.

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

### **Clauses 1.301 and 1.302**

These clauses update the references to reparation from the provisions in the *Crimes Act 1900*, which are being repealed, to the provisions in the Sentencing Acts. Clauses 1.286 and 1.289 ensure any reparation orders active prior to commencement of the Sentencing Acts are contemplated under the new laws.

### **Clause 1.303**

This clause re-writes the clause in simpler terms.

### **Clause 1.304**

This is a technical renumbering provision.

### **Clause 1.305**

This clause clarifies that property restrained under the *Confiscation of Criminal Assets Act 2003* cannot be the subject of a provisional order.

### **Clause 1.306**

This clause introduces a section that clarifies that property restrained under the *Confiscation of Criminal Assets Act 2003* cannot be the subject of a restitution order.

**Clause 1.307**

This clause updates the references to reparation from the provisions in the *Crimes Act 1900*, which are being repealed, to the provision in the Sentencing Acts.

**Clause 1.308**

This clause amends section 67 to align the definition of found guilty with the provisions of the Sentencing Acts.

**Clause 1.309**

This clause updates the reference to the *Crimes (Sentencing) Act 2005*.

**Part 1.38 Victims of Crime (Financial Assistance) Regulation 1998****Clause 1.310**

This clause updates the reference to the chief executive, consistent with the Corrections Management Act.

**Part 1.39 Workers Compensation Act 1951****Clause 1.311**

Section 205(1) of the *Workers Compensation Act 1951* specifically refers to section 342 of the Crimes Act when sentencing an accused for any offence. This amendment deletes this reference to the Crimes Act section.

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

Schedule 2 contains technical drafting amendments to the offences mentioned. The amendments do not change the meaning or penalties associated with the offences. The amendments are to bring the written structure of the sections in line with contemporary drafting practice.

**Schedule 3 Crimes (Sentencing) Regulation 2006**

Schedule 3 makes regulations listing the items that inform the meaning of rehabilitation program for the *Crimes (Sentencing) Act 2005*. Making the regulation by way of a Bill aims to ensure continuity of service and operations following the commencement of the Sentencing Acts.

**Schedule 4 Crimes (Sentence Administration) Regulation 2006**

Schedule 4 makes regulations listing further core conditions for parole under the *Crimes (Sentence Administration) Act 2005*. The regulation is consistent with current conditions administered by the Sentence Administration Board. Making the regulation by way of a Bill aims to ensure continuity of service and operations following the commencement of the Sentencing Acts.