



Australian Capital Territory

Crimes (Sentence Administration) Act 2005

A2005-59

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Australian Capital Territory

Crimes (Sentence Administration) Act 2005

A2005-59

An Act to consolidate and reform the law about the administration of sentences,
and for other purposes

Preamble

- 1 The inherent dignity of all human beings, whatever their personal or social status, is one of the fundamental values of a just and democratic society.
- 2 The criminal justice system should respect and protect all human rights in accordance with the *Human Rights Act 2004* and international law.
- 3 Sentences are imposed on offenders as punishment, not for punishment.
- 4 The management of sentenced offenders, and people remanded or otherwise detained in lawful custody, should contribute to the maintenance of a just and democratic society, particularly as follows:
 - (a) by ensuring justice, security and good order in the correctional system;
 - (b) by ensuring that the harm suffered by victims, and their need for protection, are considered appropriately in making decisions about the management of offenders;
 - (c) by promoting the rehabilitation of offenders and their reintegration into society;
 - (d) by ensuring that offenders, remandees and other people detained in lawful custody are treated in a decent, humane and just way.

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

Chapter 1 Preliminary

1 Name of Act

This Act is the *Crimes (Sentence Administration) Act 2005*.

2 Commencement

This Act commences on the commencement of the *Crimes (Sentencing) Act 2005*, chapter 10 (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 in this Act.

For example, the signpost definition ‘*community service work*—see section 316.’ means that the term ‘*community service work*’ is defined in that section.

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 the 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 Object and principles

6 Main object of Act

The main object of this Act is to ensure, as far as practicable, that sentences are given effect in accordance with this Act and the *Corrections Management Act 2005*.

7 Treatment of sentenced offenders

- (1) Functions under this Act in relation to a sentenced offender must be exercised, as far as practicable, as follows:
 - (a) to respect and protect the offender's human rights;
 - (b) to ensure the offender's decent, humane and just treatment;
 - (c) to preclude torture or cruel, inhuman or degrading treatment;
 - (d) to promote the offender's rehabilitation and reintegration into society.
- (2) Also, functions under this Act in relation to an offender serving a sentence of imprisonment (whether by full-time or periodic detention) must be exercised, as far as practicable, to ensure—
 - (a) the offender is not subject to further punishment (in addition to deprivation of liberty) only because of the conditions of detention; and
 - (b) the offender's conditions in detention comply with the requirements under the *Corrections Management Act 2005*.

8 Treatment of remandees

- (1) Functions under this Act in relation to a remandee must be exercised, as far as practicable, as follows:
 - (a) to recognise and respect that the remandee must be presumed innocent of the offence for which the remandee is remanded;
 - (b) to respect and protect the remandee's human rights;
 - (c) to ensure the remandee's decent, humane and just treatment;
 - (d) to preclude torture or cruel, inhuman or degrading treatment.
- (2) Also, functions under this Act in relation to a remandee's detention must be exercised, as far as practicable, as follows:
 - (a) to recognise and respect that the detention is not imposed as punishment of the remandee;
 - (b) to ensure the remandee is not subject to punishment only because of the conditions of detention;
 - (c) to ensure the remandee's conditions in detention comply with the requirements under the *Corrections Management Act 2005*.
- (3) Subsections (1) (a) and (2) (a) do not apply if the remandee has been convicted or found guilty of the offence for which the remandee is remanded.

Examples

- 1 a convicted person remanded in custody for sentencing
- 2 a paroled offender remanded in custody under s 210 (Custody of offender during board hearing 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).

- (4) This section does not apply to the remandee if the remandee is an offender under a sentence of imprisonment in relation to another offence.

9 Treatment of other people in custody

- (1) This section applies to a person (other than a sentenced offender or remandee) detained in lawful custody under a territory law or a law of the Commonwealth, a State or another Territory.

Examples

- 1 a person held on a warrant issued under the *Royal Commissions Act 1991*, s 35 (Apprehension of witnesses failing to appear)
- 2 an interstate prisoner on leave in the ACT held in custody overnight

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) Functions under this Act in relation to the person must be exercised, as far as practicable, as follows:
- (a) to recognise and facilitate the purpose for which the person is detained;
 - (b) to respect and protect the person's human rights;
 - (c) to ensure the person's decent, humane and just treatment;
 - (d) to preclude torture or cruel, inhuman or degrading treatment.
- (3) Also, functions under this Act in relation to the person must be exercised, as far as practicable, as follows:
- (a) to ensure the person is not subject to punishment only because of the conditions of detention;
 - (b) to ensure the person's conditions in detention comply with the requirements under the *Corrections Management Act 2005*.
- (4) A regulation may make provision in relation to the application of this Act (other than this section) to the person, including modifications of the Act in its application to the person.

Chapter 3 Imprisonment and remand— committal

Part 3.1 Imprisonment

10 Application—pt 3.1

- (1) This part applies if—
 - (a) a court (a *committing authority*) makes an order (a *committal order*) sentencing an offender to imprisonment that, under a territory law, must be served by full-time detention; or
 - (b) the board (also a *committing authority*) makes an order (also a *committal order*) in relation to an offender under any of the following provisions:
 - (i) section 82 (Suspension or cancellation of periodic detention—recommittal to full-time detention);
 - (ii) section 161 (Cancellation of parole—recommittal to full-time detention);
 - (iii) section 312 (Cancellation of licence—recommittal to full-time detention).
- (2) A reference in this section to a court sentencing an offender to imprisonment includes—
 - (a) the registrar of the Magistrates Court, in relation to a committal under the *Magistrates Court Act 1930*, section 154D (Committal to prison—fine defaulters); and

- (b) an entity prescribed by regulation.

Note ACT courts have federal jurisdiction in criminal matters (including sentencing) under the *Judiciary Act 1903* (Cwlth). See particularly that Act, s 68 (Jurisdiction of State and Territory courts in criminal cases).

11 Effect of committal order

The committal order—

- (a) authorises the chief executive to have custody of the offender under the order; and
- (b) requires the chief executive to—
- (i) take the offender into custody; and
 - (ii) keep the offender imprisoned under full-time detention until released under this Act or another territory law.

12 Warrant for imprisonment

- (1) The committing authority must issue a warrant for the imprisonment of the offender in the chief executive's custody.
- (2) The warrant—
 - (a) must be addressed to the chief executive; and
 - (b) may be signed by a person authorised by the committing authority.

Note 1 If a form is approved under the *Court Procedures Act 2004* for a warrant by a court, the form must be used (see that Act, s 8 (2)).

Note 2 If a form is approved under s 324 for a warrant by the board, the form must be used (see s 324 (2)).

13 Custody of sentenced offender

The chief executive must keep the offender imprisoned under full-time detention under this Act and the *Corrections Management Act 2005* until released under this Act or another territory law.

14 Imprisonment not affected by want of proper warrant

The validity of the offender's imprisonment under this Act or the *Corrections Management Act 2005* is not affected by any failure to issue a proper warrant of imprisonment, if the imprisonment is in accordance with the committing authority's committal order.

Part 3.2 Remand

15 Application—pt 3.2

- (1) This part applies if any of the following (a *remanding authority*) orders the remand of a person (the *remandee*) in custody under a territory law:
 - (a) a court;
 - (b) a magistrate;
 - (c) the board;
 - (d) an entity prescribed by regulation.
- (2) To remove any doubt, this part also applies to the remand of a person (also the *remandee*) during an adjournment in a proceeding before a remanding authority, whether the remand is for less than a day or for 1 day or more.

16 Effect of remand order

The remanding authority's order for remand—

- (a) authorises the chief executive to have custody of the remandee under the order; and
- (b) requires the chief executive to—
 - (i) take the remandee into custody; and
 - (ii) keep the remandee in custody under full-time detention under the order; and
 - (iii) return the remandee to the remanding authority as required by the order.

17 Warrant for remand

- (1) The remanding authority must issue a warrant for the remand of the remandee in the chief executive's custody.
- (2) The warrant—
 - (a) must be addressed to the chief executive; and
 - (b) may be signed by a person authorised by the remanding authority.

Note 1 If a form is approved under the *Court Procedures Act 2004* for a warrant by a court, the form must be used (see that Act, s 8 (2)).

Note 2 If a form is approved under s 324 for a warrant by a remanding authority that is not a court, the form must be used (see s 324 (2)).

- (3) The warrant—
 - (a) may state any considerations about the remand to which the chief executive must have regard; and
 - (b) must state when and where the remanding authority orders the return of the remandee to the remanding authority.

Examples of considerations under par (a)

- 1 the remandee's need for access to legal representatives or other people in relation to the proceeding before the remanding authority
- 2 the likelihood of the remandee having to be brought before a court or magistrate, or the board, in some other proceeding

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).

18 Custody of remandee

- (1) The chief executive must—
 - (a) keep the remandee in custody under full-time detention under this Act and the *Corrections Management Act 2005* under the order for remand; and

- (b) return the remandee to the remanding authority as ordered by the remanding authority.
- (2) The chief executive must ensure that the remandee is held in custody in the place that the chief executive decides is the most appropriate.
- (3) For subsection (2)—
 - (a) the chief executive must have regard to the following:
 - (i) the remanding authority's order for remand;
 - (ii) any considerations about the remand stated in the warrant by the remanding authority;
 - (iii) whether the remandee is also a sentenced offender;
 - (iv) the availability of suitable places of custody;
 - (v) the practicality of moving the remandee to and from the place of custody to satisfy the remanding authority's order for the return of the remandee; and
 - (b) the chief executive may have regard to anything else the chief executive considers relevant.

19 Remand not affected by want of proper warrant

The validity of the remandee's remand in custody under full-time detention under this Act or the *Corrections Management Act 2005* is not affected by any failure to issue a proper warrant of remand, if the remand is in accordance with the remanding authority's order for remand.

Part 3.3 Committal—miscellaneous

20 Directions to escort officers

- (1) For this chapter, the chief executive may give directions to an escort officer in relation to an offender or remandee, including directions to take the offender or remandee into custody or to a place stated in the direction.
- (2) Without limiting the authority that may be given by a direction under subsection (1), the direction authorises the escort officer to have custody of, and deal with, the offender or remandee in accordance with the direction.

21 Orders to bring offender or remandee before court etc

- (1) This chapter is additional to, and does not limit, any other power of a court or other entity to require an offender, remandee or other person to be brought before the court or entity.
- (2) Without limiting subsection (1), the chief executive must arrange for an offender, remandee or other person in the chief executive's custody to be brought before a court or other entity in accordance with any order or direction (however described) of the court or entity.

Chapter 4 Full-time detention

Part 4.1 General

22 Application—ch 4

- (1) This chapter applies to a person (a *full-time detainee*) if the person is—
 - (a) an offender in the chief executive's custody because of section 11 (Effect of committal order); or
 - (b) a remandee in the chief executive's custody because of section 16 (Effect of remand order).
- (2) A reference in this chapter to an *offender* is a reference to the full-time detainee if—
 - (a) subsection (1) (a) applies to the detainee; or
 - (b) subsection (1) (b) applies to the full-time detainee but the offender is not a remandee under subsection (3).
- (3) A reference in this chapter to a *remandee* is a reference to the full-time detainee if—
 - (a) subsection (1) (b) applies to the full-time detainee; and
 - (b) the full-time detainee—
 - (i) has not been convicted or found guilty of the offence for which the detainee is remanded; or
 - (ii) is not serving a sentence of imprisonment by full-time detention for another offence.

23 Definitions—ch 4

(1) In this Act:

recommitted, for an offender, means placed in the chief executive's custody because of an order under any of the following provisions:

- (a) section 82 (Suspension or cancellation of periodic detention—recommittal to full-time detention);
- (b) section 161 (Cancellation of parole—recommittal to full-time detention);
- (c) section 312 (Cancellation of licence—recommittal to full-time detention).

release date, for an offender 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 dict).

(2) In this chapter:

full-time detainee—see section 22 (1).

offender—see section 22 (2).

remandee—see section 22 (3).

Part 4.2 Serving full-time detention

24 Full-time detention obligations

- (1) An offender must serve the period of imprisonment set by the sentencing court by full-time detention in accordance with this Act and the *Corrections Management Act 2005*.
- (2) If an offender is recommitted to the chief executive's custody, the offender must serve the period of imprisonment for which the offender has been recommitted by full-time detention in accordance with this Act and the *Corrections Management Act 2005*.
- (3) An offender must also comply with any requirement or direction under this Act, or the *Corrections Management Act 2005*, that applies to the offender as a full-time detainee.
- (4) A remandee must spend the period of remand in full-time detention in accordance with this Act and the *Corrections Management Act 2005*.
- (5) A remandee must also comply with any requirement or direction under this Act, or the *Corrections Management Act 2005*, that applies to the remandee as a full-time detainee.

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

25 Full-time detention—chief executive directions

- (1) For this chapter, the chief executive may give directions, orally or in writing, to a full-time detainee.
- (2) To remove any doubt, this section does not limit section 321 (Chief executive directions—general).

26 Full-time detention in ACT or NSW

- (1) The chief executive must arrange for a full-time detainee to be kept in full-time detention in—
 - (a) an ACT correctional centre; or
 - (b) a NSW correctional centre.
- (2) For this section, the chief executive may, in writing, direct that a full-time detainee—
 - (a) be detained in the ACT correctional centre stated in the direction; or
 - (b) be removed to a NSW correctional centre stated in the direction.

27 Guidelines—allocation of detainees to correctional centres

- (1) The chief executive may make guidelines in relation to the allocation of full-time detainees to correctional centres.
- (2) Without limiting subsection (1), guidelines may include provision about—
 - (a) which correctional centres are to be used for accommodating full-time detainees; and
 - (b) the transfer of full-time detainees between correctional centres.
- (3) A guideline is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.
- (4) In this section:

correctional centre includes a NSW correctional centre.

28 Work and activities by full-time detainee

- (1) The chief executive may direct an offender, orally or in writing—
 - (a) to participate in an activity that the chief executive considers desirable for the offender’s welfare or training; or
 - (b) to do work at a correctional centre, or community service work outside a correctional centre, that the chief executive considers suitable for the offender.
- (2) However, an offender is not required to do work (including community service work) or an activity the offender is not capable of doing.
- (3) The chief executive may allow a remandee to do work at a correctional centre, or community service work outside a correctional centre, that the chief executive considers suitable for the remandee.

Note A regulation may prescribe work to be community service work (see s 316).

29 Custody of full-time detainee—lawful absence from correctional centre

While lawfully absent from a correctional centre, a full-time detainee—

- (a) remains in the chief executive’s custody; and
- (b) if under escort by an escort officer—is also taken to be in the escort’s custody.

Examples of lawful absence from correctional centre

- 1 while doing community service work
- 2 while being moved to a correctional centre, court, hospital or other place under direction by the chief executive

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).

30 Unlawful absence by offender—extension of sentence

If an offender is unlawfully absent from a correctional centre or other place during the term of the offender's sentence of imprisonment, the absence is not to be counted in working out the period of the sentence served by the offender.

Examples of unlawful absence

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

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).

31 Early release of offender

- (1) This section applies if the term of an offender's sentence of imprisonment is longer than 6 months.
- (2) The chief executive may, in writing, direct that the offender be released from imprisonment—
 - (a) if the term of the sentence is less than 1 year—on any day within the 7-day period before the offender's release date; or
 - (b) if the term of the sentence is 1 year or longer—on any day within the 14-day period before the offender's release date.
- (3) For subsection (2), the chief executive may have regard to any of the following:
 - (a) the offender's conduct while serving the sentence;
 - (b) any compassionate, health or employment-related circumstances applying to the offender;

- (c) the management of the correctional centre where the offender is detained;
 - (d) anything else that the chief executive considers appropriate.
- (4) If the chief executive gives a direction under subsection (2)—
- (a) the offender may be released from imprisonment at any time on the day stated in the direction; and
 - (b) the offender's sentence is taken to have ended when the offender is released under the direction.

32 Release at end of sentence

- (1) An offender must be released from imprisonment on the offender's release date for the sentence.
- (2) The offender may be released from imprisonment at any time on the release date.
- (3) However, if the release date is not a working day at the place of imprisonment, the offender may be released from imprisonment at any time during the last working day at that place before the release date if the offender asks to be released on that day.

Note **Working day** is defined in the Legislation Act, dict, pt 1.

- (4) If the offender is released under subsection (3), the offender's sentence is taken to have ended when the offender is released under that subsection.

33 Offender not to be released if serving another sentence etc

- (1) An offender must not be released under section 31 or section 32 if—
 - (a) on the release date for the offender's sentence (the **current sentence**), the offender is subject to another sentence of imprisonment to be served by full-time detention; and

- (b) under the other sentence, the offender must be kept in full-time detention on or immediately after the release date for the current sentence.
- (2) Also, the offender must not be released under section 31 or section 32 if, on the release date for the current sentence, the offender is otherwise required to be kept in custody in relation to an offence against a law of the Commonwealth, a State or another Territory.

Part 4.3 Full-time detention in NSW

34 Application—pt 4.3

This part applies if the chief executive directs under section 26 (Full-time detention in ACT or NSW) that a full-time detainee be removed to a NSW correctional centre.

35 Removal of full-time detainee to NSW

The direction is authority for an escort officer to transport the full-time detainee in custody to the NSW correctional centre stated in the direction.

36 Full-time detention in NSW

- (1) A full-time detainee may be kept in full-time detention at the NSW correctional centre stated in the direction, or at any other NSW correctional centre, until the detainee is released from imprisonment under this Act or another territory law.
- (2) If the full-time detainee is serving a sentence of imprisonment, the detainee—
 - (a) is taken, while in full-time detention in a NSW correctional centre, to be serving the sentence of imprisonment in a correctional centre as required by the *Crimes (Sentencing) Act 2005*, section 10 (3) (Imprisonment); but
 - (b) until released from imprisonment under this Act or another territory law, may be dealt with as if the detainee's sentence were a sentence imposed under New South Wales law.

- (3) Despite subsection (2) (b)—
- (a) the following provisions of this Act apply in relation to the full-time detainee:
 - (i) section 30 (Unlawful absence by offender—extension of sentence);
 - (ii) section 31 (Early release of offender);
 - (iii) section 32 (Release at end of sentence);
 - (iv) section 33 (Offender not to be released if serving another sentence etc);
 - (v) chapter 7 (Parole);
 - (vi) section 198 (Board may require official reports);
 - (vii) chapter 13 (Release on licence, remission and pardon);
 - (viii) a provision prescribed by regulation; and
 - (b) a provision of the *Corrections Management Act 2005* prescribed by regulation applies in relation to the detainee.

Note The *Crimes (Administration of Sentences) Act 1999* (NSW), s 44 makes provision for ACT law to apply in relation to the full-time detainee.

37 Full-time detention—return from NSW

- (1) The chief executive may, in writing, direct that the full-time detainee be returned to the ACT.
- (2) Without limiting subsection (1), if the full-time detainee asks the chief executive to be released in the ACT from imprisonment under this Act or another territory law, the chief executive may direct that the detainee be returned to the ACT for the release.
- (3) A direction is authority for an escort officer to transport the full-time detainee in custody for return to the ACT.

- (4) The full-time detainee must be held in custody by an escort officer, or in detention in a correctional centre, until released from imprisonment under this Act or another territory law or returned to a NSW correctional centre.
- (5) If the full-time detainee is not released, the chief executive's direction is also authority for an escort officer to return the detainee to a NSW correctional centre.
- (6) If the full-time detainee is returned to a NSW correctional centre under subsection (5), the detainee must be dealt with as if the detainee had not been returned to the ACT.
- (7) To remove any doubt, this section does not apply if the full-time detainee is transferred to New South Wales under part 11.1 (Interstate transfer of prisoners).
- (8) In this section:
release includes—
 - (a) release under part 7.3 (Release under parole order); and
 - (b) release under chapter 13 (Release on licence, remission and pardon), whether by release on licence or because of a remission or pardon.

38 Full-time detention—release in NSW

- (1) If the full-time detainee is released from imprisonment in New South Wales under this Act or another territory law, the detainee is entitled to be returned to the ACT at the cost of the Territory.
- (2) In this section:
release—see section 37 (8).

Chapter 5 Periodic detention

Part 5.1 Preliminary

39 Application—ch 5

This chapter applies to an offender sentenced to imprisonment if the court sentencing the offender sets a periodic detention period for all or part of the sentence.

40 Definitions—ch 5

In this Act:

additional condition, of an offender's periodic detention, means—

- (a) a condition recommended by the sentencing court for the detention; or
- (b) a condition of the detention imposed under part 5.4 (Supervising periodic detention); or
- (c) if a condition (including a condition recommended by the sentencing court) is amended under part 5.4—the condition as amended.

core condition, of an offender's periodic detention, means a core condition under section 43.

detention period, for an offender's periodic detention—see section 41.

finishing time, for an offender's detention period—see section 52.

periodic detention, for an offender, means periodic detention to be served by the offender during the periodic detention period of the offender's sentence of imprisonment.

periodic detention obligations, of an offender, means the offender's obligations under section 42.

periodic detention period, of an offender's sentence of imprisonment—

- (a) see the *Crimes (Sentencing) Act 2005*, section 11 (2) (Periodic detention); or
- (b) if the period is extended under this chapter—the period as extended.

reporting day, for an offender's detention period—see section 51.

reporting place, for an offender's detention period—see section 50.

reporting time, for an offender's detention period—see section 52.

41 Periodic detention—meaning of *detention period*

- (1) For this Act, a ***detention period***, for an offender, is each period during the periodic detention period of the offender's sentence of imprisonment that—
 - (a) starts at the reporting time on the reporting day; and
 - (b) ends at the finishing time on the 2nd day after the reporting day.
- (2) However, a period mentioned in subsection (1) is not a detention period if it includes any part of—
 - (a) Christmas Day, Good Friday or Easter Sunday; or
 - (b) another day prescribed by regulation.

Part 5.2 Serving periodic detention

42 Periodic detention obligations

- (1) An offender must serve periodic detention in the offender's periodic detention period in accordance with this part.
- (2) To serve periodic detention, the offender must, during the periodic detention period—
 - (a) perform periodic detention under part 5.3 (Performing periodic detention); and
 - (b) comply with the core conditions of the offender's periodic detention; and
 - (c) comply with any additional condition of the offender's periodic detention; and
 - (d) comply with any non-association order or place restriction order made by the sentencing court for the offender; and
 - (e) comply with any other requirement under this Act or the *Corrections Management Act 2005* that applies to the offender.

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

- (3) To remove any doubt, the offender's periodic detention obligations are not limited to detention periods for the offender's periodic detention.

43 Periodic detention—core conditions

- (1) The core conditions of an offender's periodic detention are as follows:

- (a) the offender must not commit—
 - (i) an offence against a territory law, or a law of the Commonwealth, a State or another Territory, that is punishable by imprisonment; or
 - (ii) an offence outside Australia against a law of a place outside Australia that, if it had been committed in Australia, would be punishable by imprisonment;
 - (b) if the offender is charged with an offence against a law in force in Australia or elsewhere—the offender must tell the chief executive about the charge as soon as possible, but within 2 days after the day the offender becomes aware of the charge;
 - (c) any change in the offender’s contact details is approved by the chief executive under subsection (2);
 - (d) the offender must comply with any direction given to the offender by the chief executive under this Act or the *Corrections Management Act 2005* in relation to the periodic detention;
 - (e) any test sample given by the offender under a direction under section 45 (Periodic detention—alcohol and drug tests) must not be positive;
 - (f) the offender must appear before the board as required, or agreed by the offender, under section 205 (Appearance by offender at board hearing);
 - (g) any condition prescribed by regulation that applies to the offender.
- (2) If an offender applies to the chief executive for approval for a change in the offender’s contact details, the chief executive must—
- (a) approve, or refuse to approve, the change to which the application relates; and

- (b) give the offender notice of the decision, orally or in writing.
- (3) An application for approval under subsection (2)—
 - (a) may be made orally or in writing; and
 - (b) must be made—
 - (i) before the change to which it applies; or
 - (ii) if it is not possible to apply before the change—as soon as possible after, but no later than 1 day after, the day of the change.
- (4) In this section:
contact details means any of the following:
 - (a) home address or phone number;
 - (b) work address or phone number;
 - (c) mobile phone number.

44 Periodic detention—chief executive directions

- (1) For this chapter, the chief executive may give directions, orally or in writing, to an offender.
- (2) To remove any doubt, this section does not limit section 321 (Chief executive directions—general).

45 Periodic detention—alcohol and drug tests

- (1) The chief executive may direct an offender, orally or in writing, to give a test sample when reporting to perform periodic detention.
- (2) The provisions of the *Corrections Management Act 2005* relating to alcohol and drug tests apply in relation to a direction under this section and any sample given under the direction.

46 Periodic detention—personal searches

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

47 Periodic detention—custody of offender etc

- (1) While performing periodic detention, an offender is—
 - (a) taken to be in the chief executive’s custody; and
 - (b) if under escort by an escort officer—also taken to be in the escort’s custody.
- (2) An offender is taken to perform periodic detention in a detention period if—
 - (a) the offender is, otherwise than under subsection (1), in lawful custody for the period; and
 - (b) the custody is only in relation to the offender’s periodic detention obligations.
- (3) To remove any doubt, the offender is not taken to perform periodic detention for a detention period if the reason for the custody mentioned in subsection (2) is, or includes, anything other than the offender’s periodic detention obligations.

Example of custody in relation to periodic detention obligations

suspension of the offender’s periodic detention (see s 79)

Example of other reason for custody

nonpayment of a fine or other amount (including restitution) under a court 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).

48 Periodic detention—end of

Periodic detention for an offender ends—

- (a) at the end of the periodic detention period of the offender's sentence of imprisonment; or
- (b) if the periodic detention is cancelled earlier under part 5.4 (Supervising periodic detention)—when the cancellation takes effect.

Part 5.3 Performing periodic detention

49 Periodic detention—reporting for etc

To perform periodic detention, an offender must, for each detention period in the periodic detention period of the offender's sentence of imprisonment—

- (a) report to the offender's reporting place—
 - (i) by the reporting time on the reporting day; and
 - (ii) in accordance with any reporting requirement under a direction given to the offender by the chief executive; and
- (b) perform activities or work under this part.

Examples of reporting requirements directed by chief executive

- 1 the kinds of clothing, personal possessions and other things that the offender must or must not have when reporting for detention
- 2 cleanliness when reporting for detention

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).

50 Periodic detention—reporting places

- (1) For this Act, an offender's *reporting place* for a detention period is—
 - (a) the place stated by the sentencing court for the offender to first report for periodic detention; or
 - (b) if another place is fixed under subsection (2)—that place.

- (2) The chief executive may, by written notice given to the offender, fix either of the following for the offender for a detention period:
 - (a) the correctional centre where the offender must report to perform periodic detention (a *reporting place*);
 - (b) the place outside a correctional centre where the offender must report to perform activities or work under section 54 (Periodic detention—activities or work outside correctional centres) (also a *reporting place*).
- (3) A notice under subsection (2) takes effect—
 - (a) when it is given to the offender; or
 - (b) if a later date of effect is stated in the notice—on the date stated.

51 Periodic detention—reporting day

- (1) For this Act, an offender's *reporting day* for a detention period is—
 - (a) the day of the week stated by the sentencing court for the offender's first detention period to start; or
 - (b) if another day is fixed under subsection (2)—that day.
- (2) The chief executive may, by written notice given to the offender, fix a reporting day for the offender that is different to the day of the week stated by the sentencing court for the offender's first detention period to start.
- (3) If the chief executive fixes a different reporting day under subsection (2), the offender's periodic detention period is automatically amended so that the number of detention periods for the offender for the periodic detention period of the offender's sentence of imprisonment remains unchanged.

- (4) A notice under subsection (2) takes effect—
 - (a) when it is given to the offender; or
 - (b) if a later date of effect is stated in the notice—on the date stated.
- (5) The notice must tell the offender when the periodic detention period ends because of the changed reporting day.

52 Periodic detention—reporting and finishing times

- (1) For this Act, an offender’s *reporting time* for a detention period is—
 - (a) 7 pm; or
 - (b) if a different time is fixed under subsection (3)—that time.
- (2) For this Act, the offender’s *finishing time* for a detention period is—
 - (a) 4.30 pm; or
 - (b) if a different time is fixed under subsection (3)—that time.
- (3) The chief executive may, by written notice given to the offender, fix both of the following for the offender for a detention period:
 - (a) the reporting time;
 - (b) the finishing time.
- (4) However, a notice under subsection (3) must not change the length of the detention period.
- (5) A notice under subsection (3) takes effect—
 - (a) when it is given to the offender; or
 - (b) if a later date of effect is stated in the notice—on the date stated.

53 Periodic detention—activities and work

- (1) The chief executive may direct an offender, orally or in writing, to do 1 or more of the following during a detention period:
 - (a) participate in an activity that the chief executive considers desirable for the offender's welfare or training;
 - (b) do work that the chief executive considers suitable for the offender;
 - (c) do community service work that the chief executive considers suitable for the offender.
- (2) However, the offender is not required to do work (including community service work), or participate in an activity, that the offender is not capable of doing.
- (3) A direction under this section takes effect—
 - (a) when it is given to the offender; or
 - (b) if a later date of effect is stated in the direction—on the date stated.

54 Periodic detention—activities or work outside correctional centres

- (1) This section applies to a direction under section 53 to participate in an activity, or do community service work, at a place that is not a correctional centre.
- (2) The direction must include details of the following:
 - (a) the activity the offender must participate in or the community service work the offender must do;
 - (b) the place to which the offender must report for the activity or community service work;
 - (c) the time when the offender must report;

- (d) the person (if any) to whom the offender must report (the *work supervisor*);
 - (e) the person the offender must tell if subsection (4) applies (the *corrections supervisor*).
- (3) The offender must comply with any reasonable direction given to the offender, orally or in writing, by the work supervisor in relation to the activity or community service work.
- (4) If the offender cannot comply with the direction under section 53, the offender must—
- (a) tell the corrections supervisor as soon as possible; and
 - (b) comply with the corrections supervisor's directions.

Examples for s (4)

- 1 the activity or community service work to which the direction applies is not available at the place
- 2 it is impracticable for the offender to participate in the activity or to do the work

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).

55 Periodic detention—approval not to perform etc

- (1) The chief executive may, on application by an offender under section 56, give the offender approval, orally or in writing—
- (a) not to perform periodic detention for a detention period; or
 - (b) to report up to 4 hours late for a detention period.
- (2) The chief executive may give an approval only if the chief executive considers that giving the approval is appropriate.

Examples where approval may be appropriate

giving an approval may be appropriate because of the offender's state of health, for compassionate reasons or because the offender is in custody otherwise than in relation to the offender's periodic detention obligations

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 must not give an approval for the offender in relation to more than 2 detention periods in any 6-month period.
- (4) The chief executive may give an approval before or after the start of the detention period to which it applies.
- (5) An approval is subject to the following conditions:
 - (a) any standard condition for approval prescribed by regulation;
 - (b) any additional condition stated in the approval that the chief executive considers necessary.

Example of additional condition

a condition prohibiting association with a particular person or being near a particular place

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) An additional condition must not be inconsistent with a standard condition.

56 Periodic detention—application for approval not to perform etc

- (1) An application by an offender for approval under section 55 in relation to a detention period must—
 - (a) be made to the chief executive, orally or in writing; and

- (b) state the grounds on which it is made.
- (2) If the application is made on health grounds, it must be accompanied by a doctor's certificate—
 - (a) indicating the nature or extent of the illness or injury; and
 - (b) confirming that the offender is unfit to perform periodic detention in the detention period because of the illness or injury.

57 Periodic detention—making up approved nonperformance etc

- (1) This section applies if an offender has approval under section 55 not to perform periodic detention for a detention period.
- (2) The periodic detention period of the offender's sentence of imprisonment, and the term of the sentence, are automatically extended by 1 week for each detention period to which this section applies.

58 Failing to perform periodic detention—extension of periodic detention period

- (1) This section applies to an offender for a detention period if—
 - (a) the offender fails to report to perform periodic detention for the detention period and has not been given approval under section 55 not to perform detention for the detention period; or
 - (b) the offender reports to perform periodic detention for the detention period and is given a direction under subsection (2) or (3).
- (2) If the offender reports to perform periodic detention for the detention period more than 4 hours late, the chief executive must direct the offender, orally or in writing, not to perform periodic detention for the detention period and to leave the reporting place.

- (3) If the offender reports to perform periodic detention for the detention period (but not more than 4 hours late), the chief executive may direct the offender, orally or in writing, not to perform detention for the detention period and to leave the reporting place if any of the following happen:
- (a) the offender reports to perform periodic detention up to 4 hours late without approval under section 55;
Note The chief executive may not give an offender approval in relation to more than 2 detention periods in any 6-month period (see s 55 (3)).
 - (b) when reporting to perform periodic detention, the offender fails to comply with any reporting requirement mentioned in section 49 (Periodic detention—reporting for etc);
 - (c) when reporting to perform periodic detention, the offender gives a positive test sample in response to a direction under section 45 (Periodic detention—alcohol and drug tests).
- (4) For each detention period of the offender to which this section applies—
- (a) the offender is taken not to perform periodic detention; and
 - (b) the periodic detention period of the offender’s sentence of imprisonment, and the term of the sentence, are automatically extended by 1 week.

59 Failing to perform periodic detention—referral to board

The chief executive must apply to the board for an inquiry under section 66 (Board inquiry—breach of periodic detention obligations) if section 58 applies to an offender for a second or subsequent detention period of the offender’s periodic detention period.

60 Offender not fit for periodic detention—extension of periodic detention period

- (1) This section applies to an offender for a detention period if the chief executive believes, on reasonable grounds, that the offender's condition, when reporting to perform periodic detention at the reporting place, makes the offender unfit for performing periodic detention for the detention period.
- (2) The chief executive may, orally or in writing, direct the offender not to perform periodic detention for the detention period and to leave the reporting place.

Example

the offender is suffering from a contagious disease

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) For each detention period of the offender to which this section applies—
 - (a) the offender is taken not to perform periodic detention; and
 - (b) the periodic detention period of the offender's sentence of imprisonment, and the term of the sentence, are automatically extended by 1 week.

61 Change to periodic detention period—effect on combination sentence

- (1) This section applies if—
 - (a) a periodic detention period of an offender's sentence of imprisonment is part of a combination sentence; and
 - (b) the combination sentence includes an order (the *other sentencing order*) taking effect after the end of the periodic detention period.

- (2) If the periodic detention period is changed under any of the following provisions, a corresponding change is automatically made to the term of the other sentencing order and the combination sentence of which it forms part:
- (a) section 51 (Periodic detention—reporting day);
 - (b) section 58 (Failing to perform periodic detention—extension of periodic detention period);
 - (c) section 60 (Offender not fit for periodic detention—extension of periodic detention period);
 - (d) section 71 (Review of chief executive decisions under part 5.3).

Example of effect on combination sentence

Dieter is subject to a combination sentence, with an overall term of 3 years, consisting of a 2-year periodic detention period and a good behaviour order. The good behaviour order is expressed to have effect for the remainder of the sentence after the end of the periodic detention period.

Dieter's periodic detention period is extended under s 58 (Failing to perform periodic detention—extension of periodic detention period) by 1 week. As a result, the term of the good behaviour order is also extended by 1 week (beyond the end of the original overall term of the sentence).

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).

62 Periodic detention activities and work—reports by entities

- (1) This section applies if the Territory makes an agreement, for this Act or the *Corrections Management Act 2005*, with an entity under which an offender may 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 requires the entity, on the chief executive's request, to give the chief executive written reports about the offender's participation in the activity or work.

Part 5.4 Supervising periodic detention

Division 5.4.1 Breach of periodic detention obligations

63 Corrections officers to report breach of periodic detention obligations

- (1) This section applies if a corrections officer believes, on reasonable grounds, that an offender has breached any of the offender's periodic detention obligations.
- (2) The corrections officer must report the belief to the board in writing.
- (3) The report must be accompanied by a copy of a written record in support of the corrections officer's belief.

Examples of breach of periodic detention obligations

- 1 breaching any core condition of the periodic detention
- 2 failing to report, or reporting late, for a second or subsequent detention period without the chief executive's approval
- 3 giving a positive test sample for alcohol or drugs when reporting to perform periodic detention
- 4 not complying with a direction by the chief executive

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).

64 Arrest without warrant—breach of periodic detention obligations

- (1) This section applies if a police officer believes, on reasonable grounds, that an offender has breached any of the offender's periodic detention obligations.
- (2) The police officer may arrest the offender without a warrant.

- (3) If the police officer arrests the offender, the police officer must, as soon as practicable, bring the offender before—
- (a) the board; or
 - (b) if the board is not sitting—a magistrate.

Note For remanding or granting bail to the offender, see the *Bail Act 1992*.

65 Arrest warrant—breach of periodic detention obligations

- (1) A judge or magistrate may issue a warrant for an offender's arrest if satisfied by information on oath that there are reasonable grounds for suspecting that the offender has breached, or will breach, any of the offender's periodic detention obligations.
- (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 offender's arrest and bringing the offender before the board.
- (3) A police officer who arrests the offender under the warrant must, as soon as practicable, bring the offender before—
- (a) the board; or
 - (b) if the board is not sitting—a magistrate.

Note For remanding or granting bail to the offender, see the *Bail Act 1992*.

66 Board inquiry—breach of periodic detention obligations

- (1) The board may, at any time, conduct an inquiry to decide whether an offender has breached any of the offender's periodic detention obligations.
- (2) To remove any doubt, the board may conduct the inquiry—
 - (a) before the start of the periodic detention period of the offender's sentence of imprisonment; and
 - (b) in conjunction with any other inquiry under this Act in relation to the offender.
- (3) The board may conduct the inquiry—
 - (a) on its own initiative; or
 - (b) on application by the chief executive.
- (4) If the chief executive applies under section 59 (Failing to perform periodic detention—referral to board) for an inquiry, the board must conduct the inquiry as soon as practicable.
- (5) If an offender is arrested under section 64 (Arrest without warrant—breach of periodic detention obligations) or section 65 (Arrest warrant—breach of periodic detention obligations), the board must conduct the inquiry as soon as practicable.

67 Notice of inquiry—breach of periodic detention obligations

- (1) Before starting an inquiry under section 66 in relation to an offender, the board must give written notice of the inquiry to each of the following:
 - (a) the offender;
 - (b) the chief executive;
 - (c) the director of public prosecutions.

- (2) The notice must include—
 - (a) the reasons for the inquiry; and
 - (b) invitations for the offender and the chief executive to make submissions to the board by a stated date for the inquiry.

68 Board powers—breach of periodic detention obligations

- (1) This section applies, if after conducting an inquiry under section 66 (Board inquiry—breach of periodic detention obligations) in relation to an offender, the board decides the offender has breached any of the offender’s periodic detention obligations.
- (2) The board may do 1 or more of the following:
 - (a) take no further action;
 - (b) give the offender a warning about the need to comply with the offender’s periodic detention obligations;
 - (c) give the chief executive directions about the offender’s supervision;
 - (d) change the offender’s periodic detention obligations by imposing or amending an additional condition of the offender’s periodic detention;
 - (e) suspend the offender’s periodic detention for a stated period, but not past the end of the offender’s periodic detention period;
 - (f) cancel the offender’s periodic detention.

Note Section 70 requires the board to cancel the offender’s periodic detention in certain circumstances.

- (3) An additional condition of a periodic detention must not be inconsistent with a core condition of the periodic detention.

- (4) To remove any doubt, if an inquiry under section 66 in relation to an offender is conducted in conjunction with another inquiry under this Act in relation to the offender, the board may exercise its powers under this division with any other powers of the board in relation to the other inquiry.

69 Cancellation of periodic detention—repeated failures to perform

- (1) This section applies if—
- (a) the chief executive applies to the board under section 59 (Failing to perform periodic detention—referral to board) for an inquiry in relation to an offender; and
- (b) at the inquiry, the board decides that section 58 (Failing to perform periodic detention—extension of periodic detention period) applies to the offender in relation to 2 or more detention periods of the offender’s periodic detention period.

Examples of s 58 applying to offender

1 or more of the following apply to the offender:

- without approval under section 55 (Periodic detention—approval not to perform etc), the offender fails to report to perform periodic detention for a detention period
- without approval under section 55 (Periodic detention—approval not to perform etc), the offender reports late to perform detention for a detention period and is directed under section 58 not to perform periodic detention and to leave the reporting place
- when reporting to perform periodic detention for a detention period, the offender gives a positive test sample in response to a direction under section 45 (Periodic detention—alcohol and drug tests) and is directed under section 58 not to perform periodic detention and to leave the reporting place

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 section 68, the board must cancel the offender's periodic detention as soon as practicable under that section.

70 Cancellation of periodic detention on further conviction etc

- (1) This section applies if the board decides that, since an offender was sentenced to serve periodic detention, the offender has been convicted or found guilty of—
- (a) an offence against a territory law, or a law of the Commonwealth, a State or another Territory, that is punishable by imprisonment; or
 - (b) an offence outside Australia against a law of a place outside Australia that, if it had been committed in Australia, would be punishable by imprisonment.
- (2) Without limiting section 68, the board must cancel the offender's periodic detention as soon as practicable under that section.

Division 5.4.2 Review of decisions about performing periodic detention

71 Review of chief executive decisions under pt 5.3

- (1) The board may, by an inquiry, review any of the following decisions of the chief executive (each of which is a *reviewable decision*):
- (a) not to give an approval under section 55 (Periodic detention—approval not to perform etc);
 - (b) to give a direction under section 58 (Failing to perform periodic detention—extension of periodic detention period);
 - (c) to give a direction under section 60 (Offender not fit for periodic detention—extension of periodic detention period).

- (2) The board may review the decision only on application by the offender under section 72.
- (3) Before starting an inquiry under this section, the board must give the chief executive—
 - (a) written notice of the inquiry, including an invitation for the chief executive to make a submission to the board for the inquiry by a stated date; and
 - (b) a copy of the offender’s application.
- (4) To remove any doubt, the board may conduct the inquiry in conjunction with any other inquiry under this Act in relation to the offender.
- (5) After reviewing the chief executive’s decision, the board may do any of the following:
 - (a) confirm the chief executive’s decision;
 - (b) amend the chief executive’s decision;
 - (c) set the chief executive’s decision aside and make any decision the chief executive could have made in relation to the offender.
- (6) The board must give written notice of its decision, including its reasons for the decision, to the offender and the chief executive.

Note For the content of a statement of reasons, see the Legislation Act, s 179.
- (7) To remove any doubt, if the inquiry under this section in relation to an offender is conducted in conjunction with another inquiry under this Act in relation to the offender, the board may exercise its powers under this section with any other powers of the board in relation to the other inquiry.

72 Application for review of chief executive decisions under pt 5.3

- (1) An offender may apply to the board for a review under section 71 of a reviewable decision under that section.
- (2) The application must—
 - (a) be made in writing, within—
 - (i) 10 working days after the day the offender is given notice of the decision; or
 - (ii) any extended period the board allows under subsection (3); and
 - (b) state the grounds on which it is made.
- (3) For subsection (2) (a) (ii), the board may, in writing, extend the period within which the application may be made by up to 14 working days if the board considers that giving the extension is appropriate.
- (4) The making of the application does not set aside the offender's obligation to perform periodic detention in a detention period to which the application relates.
- (5) The board may reject an application without holding an inquiry if it considers the application is frivolous or vexatious.
- (6) The board must give the offender notice, orally or in writing, of—
 - (a) an extension under subsection (3); and
 - (b) a rejection under subsection (5).

Division 5.4.3 Periodic detention management

73 Board inquiry—management of periodic detention

- (1) The board may, at any time, conduct an inquiry to review an offender's periodic detention.
- (2) Without limiting subsection (1), the board may conduct an inquiry to consider whether periodic detention is, or would be, suitable for the offender.

Examples

- 1 the indicators of unsuitability for periodic detention set out in the *Crimes (Sentencing) Act 2005*, table 79
- 2 the history of managing the offender under periodic detention

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) To remove any doubt, the board may conduct the inquiry—
 - (a) before the start of the periodic detention period of the offender's sentence of imprisonment; and
 - (b) in conjunction with any other inquiry under this Act in relation to the offender.
- (4) The board may conduct the inquiry—
 - (a) on its own initiative; or
 - (b) on application by the offender or the chief executive.

74 Notice of inquiry—management of periodic detention

- (1) Before starting an inquiry under section 73 in relation to an offender, the board must give written notice of the inquiry to each of the following:
 - (a) the offender;

- (b) the chief executive;
 - (c) the director of public prosecutions.
- (2) The notice must include—
- (a) the reasons for the inquiry; and
 - (b) invitations for the offender and chief executive to make submissions to the board for the inquiry by a stated date.

75 Board powers—management of periodic detention

- (1) After conducting an inquiry under section 73 (Board inquiry—management of periodic detention) in relation to an offender, the board may do 1 or more of the following:
- (a) take no further action;
 - (b) give the chief executive directions about the offender's supervision;
 - (c) change the offender's periodic detention obligations by imposing or amending an additional condition of the offender's periodic detention;
 - (d) if subsection (3) applies—cancel the offender's periodic detention.

Example of additional condition for par (c)

a condition prohibiting association with a particular person or being near a particular place

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) An additional condition of a periodic detention must not be inconsistent with a core condition of the periodic detention.

- (3) This subsection applies if the board decides any of the following:
- (a) that the periodic detention should be cancelled on the offender's application;
 - (b) that periodic detention is, or would be, no longer suitable for the offender.

Note For indicators of unsuitability, see s 73 (2), example 1.

- (4) To remove any doubt, if an inquiry under section 73 in relation to an offender is conducted in conjunction with another inquiry under this Act in relation to the offender, the board may exercise its powers under this division with any other powers of the board in relation to the other inquiry.

Division 5.4.4 Change, suspension and cancellation of periodic detention

76 Application—div 5.4.4

This division applies to a decision made by the board in relation to an offender under—

- (a) section 68 (Board powers—breach of periodic detention obligations); or
- (b) section 75 (Board powers—management of periodic detention).

77 Notice of board decisions about periodic detention

- (1) The board must give written notice of its decision, including its reasons for the decision, to each of the following:
 - (a) the offender;
 - (b) the chief executive;
 - (c) the director of public prosecutions.

Note For the content of statements of reasons, see the Legislation Act, s 179.

- (2) If the decision is to suspend or cancel the offender's periodic detention, the notice of the decision must state where and when the offender must report for full-time detention because of the suspension or cancellation.

Note For the offender's recommittal to full-time detention, see s 82.

78 When changes to periodic detention obligations take effect

- (1) This section applies to a decision of the board to change an offender's periodic detention obligations, by imposing or amending an additional condition of the periodic detention.

- (2) The decision takes effect—
 - (a) when written notice of the decision is given to the offender under section 77; or
 - (b) if a later date of effect is stated in the notice—on the date stated.

79 Periodic detention—effect of suspension or cancellation etc

- (1) This section applies to a decision of the board to suspend or cancel an offender's periodic detention.
- (2) The decision takes effect—
 - (a) when written notice of the decision is given to the offender under section 77; or
 - (b) if a later date of effect is stated in the notice—on the date stated.
- (3) If the decision is to suspend the offender's periodic detention—
 - (a) during the suspension, the offender must be imprisoned under full-time detention; and
 - (b) while serving the full-time detention, is taken to comply with the offender's periodic detention obligations.
- (4) If the decision is to cancel the offender's periodic detention, the cancellation ends the periodic detention period of the offender's sentence of imprisonment and the offender must serve the remainder of the sentence—
 - (a) by full-time detention until when the periodic detention period would have ended apart from the cancellation; and
 - (b) otherwise in accordance with the sentence.

80 Periodic detention—effect of suspension or cancellation on other periodic detention

- (1) This section applies if—
 - (a) the board decides to suspend or cancel an offender’s periodic detention; and
 - (b) when the suspension or cancellation takes effect, the offender is also subject to periodic detention under another sentence of imprisonment—
 - (i) whether concurrent or consecutive with the period suspended or cancelled; and
 - (ii) whether for the same or another offence.
- (2) To remove any doubt, at the inquiry for the suspension or cancellation under this part, the board may also exercise its powers under this part in relation to the other periodic detention.

81 Periodic detention—effect of suspension or cancellation on parole

- (1) This section applies if—
 - (a) the board decides to suspend or cancel an offender’s periodic detention; and
 - (b) when the suspension or cancellation takes effect, a parole order applies to the offender, whether for the same or another offence.
- (2) To remove any doubt, at the inquiry for the suspension or cancellation under this part, the board may also exercise its powers under part 7.4 (Supervising parole) in relation to the offender’s parole.

**82 Suspension or cancellation of periodic detention—
 recommittal to full-time detention**

- (1) This section applies if the board decides to suspend or cancel an offender's periodic detention.
- (2) The board must order that the offender be placed in the chief executive's custody to serve the relevant part of the offender's sentence by imprisonment under full-time detention.

Note See s 79 (Periodic detention—effect of suspension or cancellation etc).

- (3) If the offender is not in custody, the board may also issue a warrant for the offender to be arrested and placed in the chief executive's custody.
- (4) The warrant must—
 - (a) be in writing signed by the chair of the board; and
 - (b) be directed to all escort officers or a named escort officer.
- (5) An escort officer who arrests the offender under this section must place the offender in the chief executive's custody as soon as practicable.

Chapter 6 Good behaviour orders

Part 6.1 Undertaking good behaviour

83 Application—ch 6

This chapter applies to an offender under a good behaviour order.

84 Definitions—ch 6

(1) In this Act:

additional condition, of an offender's good behaviour order, means—

- (a) a condition of the order under the *Crimes (Sentencing) Act 2005*, section 13 (Good behaviour orders); or
- (b) a condition of the order imposed under—
 - (i) part 6.5 (Good behaviour orders—breach); or
 - (ii) part 6.6 (Good behaviour orders—amendment and discharge); or
- (c) if a condition of the order is amended under part 6.5 or part 6.6—the condition as amended.

community service condition, of a good behaviour order for an offender—see the *Crimes (Sentencing) Act 2005*, section 86.

core condition, of an offender's good behaviour order, means a core condition under section 86.

good behaviour obligations, of an offender, means the offender's obligations under section 85.

good behaviour order—see the *Crimes (Sentencing) Act 2005*, section 13.

interested person, for an offender's good behaviour order, means any of the following:

- (a) the offender;
- (b) a surety under the order;
- (c) the chief executive;
- (d) the director of public prosecutions.

rehabilitation program condition, of a good behaviour order for an offender—see the *Crimes (Sentencing) Act 2005*, section 93.

85 Good behaviour obligations

An offender must—

- (a) comply with the offender's good behaviour order, including—
 - (i) the core conditions of the order; and
 - (ii) any additional condition of the order; and
- (b) comply with any non-association order or place restriction order made by the sentencing court for the offender; and
- (c) comply with any other requirement under this Act or the *Corrections Management Act 2005* that applies to the offender.

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

86 Good behaviour—core conditions

- (1) The core conditions of an offender's good behaviour order are as follows:
 - (a) the offender must not commit—

- (i) an offence against a territory law, or a law of the Commonwealth, a State or another Territory, that is punishable by imprisonment; or
- (ii) an offence outside Australia against a law of a place outside Australia that, if it had been committed in Australia, would be punishable by imprisonment;
- (b) if the offender is charged with an offence against a law in force in Australia or elsewhere—the offender must tell the chief executive about the charge as soon as possible, but within 2 days after the day the offender becomes aware of the charge;
- (c) if the offender’s contact details change—the offender must tell the chief executive about the change as soon as possible, but within 2 days after the day the offender knows the changed details;
- (d) the offender must comply with any direction given to the offender by the chief executive under this Act or the *Corrections Management Act 2005* in relation to the good behaviour order;
- (e) any test sample given by the offender under a direction under section 95 (Community service work—alcohol and drug tests) must not be positive;
- (f) if the good behaviour order is subject to a probation condition or supervision condition—the offender must not leave the ACT for more than the defined period without the chief executive’s approval;
- (g) the offender must comply with any agreement made by the offender under section 105 (Good behaviour—agreement to attend court);
- (h) any condition prescribed by regulation that applies to the offender.

(2) In this section:

contact details means any of the following:

- (a) home address or phone number;
- (b) work address or phone number;
- (c) mobile phone number.

defined period means 24 hours or, if another period is prescribed by regulation, the prescribed period.

probation condition, of a good behaviour order for an offender—see the *Crimes (Sentencing) Act 2005*, dictionary.

supervision condition means an additional condition (other than a probation condition) of a good behaviour order that requires the offender to be subject to the chief executive's supervision.

87 Good behaviour—chief executive directions

- (1) For this chapter, the chief executive may give directions, orally or in writing, to an offender.
- (2) To remove any doubt, this section does not limit section 321 (Chief executive directions—general).

88 Good behaviour order—end

A good behaviour order for an offender ends—

- (a) at the end of the term of the order; or
- (b) if the order is cancelled or discharged earlier under part 6.5 or part 6.6—when the cancellation or discharge takes effect.

Part 6.2 Good behaviour—community service work

89 Application—pt 6.2

This part applies if an offender's good behaviour order is subject to a community service condition.

90 Compliance with community service condition

To comply with a community service condition of an offender's good behaviour order, the offender must comply with the requirements of this part.

91 Community service work—chief executive directions

- (1) The chief executive may direct an offender, orally or in writing, to do community service work that the chief executive considers suitable for the offender.
- (2) The direction must include details of the following:
 - (a) the community service work the offender must do;
 - (b) the place to which the offender must report for the work (the *reporting place*);
 - (c) the time when the offender must report;
 - (d) the person (if any) to whom the offender must report (the *work supervisor*);
 - (e) the person the offender must tell if subsection (6) applies (the *corrections supervisor*).
- (3) The direction may also include a requirement to be satisfied when reporting to do the community service work.

Examples of reporting requirements directed by chief executive

- 1 the kinds of clothing, personal possessions and other things that the offender must or must not have when reporting for the work
- 2 cleanliness when reporting for the work

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) A direction under this section takes effect—
 - (a) when it is given to the offender; or
 - (b) if a later date of effect is stated in the direction—on the date stated.
- (5) The offender must comply with the direction.
- (6) However—
 - (a) the offender is not required to do work the offender is not capable of doing; and
 - (b) the direction must, as far as practicable, avoid any interference with the offender's normal attendance at another place for work or at a school or other educational institution.
- (7) The offender must also comply with any reasonable direction given to the offender, orally or in writing, by the work supervisor in relation to the community service work.
- (8) If the offender cannot comply with the chief executive's direction under this section, the offender must—
 - (a) tell the corrections supervisor as soon as possible; and
 - (b) comply with the corrections supervisor's directions.

Examples where offender cannot comply

- 1 the community service work to which the direction applies is not available at the place
- 2 it is impracticable for the offender to do the community service work

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).

92 Community service work—failure to report etc

- (1) This section applies if an offender—
 - (a) fails to report to do community service work in accordance with a direction under section 91; or
 - (b) fails to do community service work in accordance with a direction under section 91; or
 - (c) fails to comply with a reasonable direction given to the offender by the work supervisor under section 91 in relation to the community service work.
- (2) The chief executive may direct the offender, orally or in writing, not to do the community service work and to leave the place where it was to be done.

93 Community service work—maximum daily hours

- (1) An offender must not do, or be credited with, more than 8 hours of community service work on any day.
- (2) To work out the time spent by the offender doing community service work—
 - (a) only actual work time, and any breaks from work approved by the work supervisor or corrections supervisor under section 91, is counted; and
 - (b) if the total work time on any day includes part of an hour—that part is counted as 1 hour.

Examples of maximum daily hours

- 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).

94 Community service work—health disclosures

An offender must tell the chief executive as soon as possible about any change of which the offender is aware in the offender's physical or mental condition that affects the offender's ability to do community service work safely.

Examples

The indicators of unsuitability for community service set out in the *Crimes (Sentencing) Act 2005*, table 90.

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).

95 Community service work—alcohol and drug tests

- (1) The chief executive may direct an offender, orally or in writing, to give a test sample when reporting to do community service work.
- (2) The provisions of the *Corrections Management Act 2005* relating to alcohol and drug tests apply in relation to a direction under this section and any sample given under the direction.

96 Community service work—frisk searches

- (1) The chief executive may direct an offender, orally or in writing, to submit to a frisk search when reporting to do community service work.
- (2) The provisions of the *Corrections Management Act 2005* relating to frisk searches apply in relation to a direction under this section and any frisk search conducted under the direction.

97 Community service work—reports by entities

- (1) This section applies if the Territory makes an agreement with an entity under which the offender may participate in community service work for the entity.
- (2) The chief executive must ensure that the agreement requires the entity, on the chief executive's request, to give the chief executive written reports about the offender's participation in the community service work.

Part 6.3 Good behaviour—rehabilitation programs

98 Application—pt 6.3

This part applies if an offender's good behaviour order is subject to a rehabilitation program condition.

99 Compliance with rehabilitation program condition

To comply with a rehabilitation program condition of an offender's good behaviour order, the offender must comply with the requirements of this part.

100 Rehabilitation programs—chief executive directions

- (1) The chief executive may give an offender directions, orally or in writing, in relation to a rehabilitation program condition to which the offender's good behaviour order is subject.
- (2) Without limiting subsection (1), a direction may include details of the following:
 - (a) the program the offender must attend;
 - (b) the place to which the offender must report for the program;
 - (c) the time when the offender must report;
 - (d) the person (if any) to whom the offender must report.

101 Rehabilitation program providers—reports by providers

- (1) This section applies if the Territory makes an agreement with an entity under which an offender may participate in a rehabilitation program provided by the entity.

- (2) The chief executive must ensure that the agreement requires the entity, on the chief executive's request, to give the chief executive written reports about the offender's participation in the rehabilitation program.

Part 6.4 Good behaviour—supervision

102 Corrections officers to report breach of good behaviour obligations

- (1) This section applies if a corrections officer believes, on reasonable grounds, that an offender has breached any of the offender's good behaviour obligations.
- (2) The corrections officer must report the belief to the sentencing court.
- (3) A report under this section must be made in writing and set out the grounds for the corrections officer's belief.

103 Arrest without warrant—breach of good behaviour obligations

- (1) This section applies if a police officer believes, on reasonable grounds, that an offender has breached any of the offender's good behaviour obligations.
- (2) The police officer may arrest the offender without a warrant.
- (3) If the police officer arrests the offender, the police officer must, as soon as practicable, bring the offender before—
 - (a) the sentencing court; or
 - (b) if the sentencing court is not sitting—a magistrate.

Note For remanding or granting bail to the offender, see the *Bail Act 1992*.

104 Arrest warrant—breach of good behaviour obligations etc

- (1) A judge or magistrate may issue a warrant for an offender's arrest if satisfied, by information on oath that—

- (a) there are reasonable grounds for suspecting that the offender has breached, or will breach, any of the offender's good behaviour obligations; or
 - (b) the offender has failed to comply with—
 - (i) an agreement under section 105 (Good behaviour—agreement to attend court); or
 - (ii) a summons under section 106 (Good behaviour—summons to attend court).
- (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 offender's arrest and bringing the offender before the sentencing court.
- (3) A police officer who arrests the offender under the warrant must, as soon as practicable, bring the offender before—
- (a) the sentencing court; or
 - (b) if the sentencing court is not sitting—a magistrate.

Note For remanding or granting bail to the offender, see the *Bail Act 1992*.

105 Good behaviour—agreement to attend court

A police officer or corrections officer may ask an offender to sign a voluntary agreement to appear before the sentencing court.

106 Good behaviour—summons to attend court

- (1) This section applies if information alleging that an offender has breached any of the offender's good behaviour obligations is before the offender's sentencing court.
- (2) The sentencing court may issue a summons directing the offender to appear before the court to be dealt with under this part.
- (3) The registrar of the sentencing court must ensure that a copy of the summons is given to each interested person for the good behaviour order.

Part 6.5 Good behaviour orders—breach

107 Offence committed while under good behaviour order

- (1) If the Supreme Court finds an offender guilty of an offence committed during the term of the offender's good behaviour order, the court may deal with the offender under this part for breach of the offender's good behaviour obligations.
- (2) If the Magistrates Court finds an offender guilty of an offence committed during the term of the offender's good behaviour order, and the order was made or changed by the Supreme Court, the Magistrates Court must, in addition to dealing with the offender for the offence, commit the offender to the Supreme Court to be dealt with under this part for breach of the offender's good behaviour obligations.
- (3) For subsection (2), a magistrate may remand the offender in custody until the offender can be brought before the Supreme Court.

Note For remanding or granting bail to the offender, see the *Bail Act 1992*.

108 Court powers—breach of good behaviour obligations

- (1) This section applies if—
 - (a) a court is satisfied an offender has breached any of the offender's good behaviour obligations; and
 - (b) section 110 (Cancellation of good behaviour order with suspended sentence order) does not apply to the offender's good behaviour order.
- (2) The court may do 1 or more of the following:
 - (a) take no further action;

- (b) give the offender a warning about the need to comply with the offender's good behaviour obligations;
- (c) give the chief executive directions about the offender's supervision;
- (d) amend the good behaviour order;
- (e) if the offender has given security under the order—
 - (i) order payment of the security to be enforced; and
 - (ii) order the good behaviour order to be cancelled on payment of the security (if the term of the order has not already ended);
- (f) cancel the order.

Examples for par (d)

impose or amend an additional condition of the order, or amend the term of the 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).

- (3) If the court cancels the good behaviour order, the court must—
 - (a) if section 109 applies to the offender's good behaviour order—deal with the offender under that section; or
 - (b) in any other case—re-sentence the offender for the offence for which the good behaviour order was made (the *relevant offence*).
- (4) The *Crimes (Sentencing) Act 2005* applies to the re-sentencing in the same way that it applies to the sentencing of an offender on a conviction for the relevant offence.
- (5) The court's powers under this section are subject to section 113 (Good behaviour orders—limitations on amendment or discharge).

- (6) To remove any doubt, an offender re-sentenced by a court under this section has the same right of appeal as the offender would have had if sentenced by the court on being convicted of the relevant offence.

109 Cancellation of good behaviour order made as non-conviction order

- (1) This section applies if—
- (a) an offender's good behaviour order was made under the *Crimes (Sentencing) Act 2005*, section 17 (2) (b) (Non-conviction orders—general); and
 - (b) a court cancels the order under section 108.
- (2) The court must—
- (a) convict the offender of the offence for which the good behaviour order was made; and
 - (b) sentence the offender for the offence.
- (3) The *Crimes (Sentencing) Act 2005* applies to the sentencing in the same way that it applies to the sentencing of an offender on conviction for the offence.

110 Cancellation of good behaviour order with suspended sentence order

- (1) This section applies if—
- (a) an offender's good behaviour order was made under the *Crimes (Sentencing) Act 2005*, section 12 (3) (Suspended sentences) on the offender's conviction for an offence; and
 - (b) a court is satisfied the offender has breached any of the offender's good behaviour obligations.
- (2) The court must cancel the good behaviour order and either—
- (a) impose the suspended sentence imposed for the offence; or

- (b) re-sentence the offender for the offence.
- (3) If the offender has given security under the good behaviour order, the court may also—
 - (a) order payment of the security to be enforced; and
 - (b) order the good behaviour order to be cancelled on payment of the security (if the term of the order has not already ended).
- (4) The *Crimes (Sentencing) Act 2005* applies to the re-sentencing in the same way that it applies to the sentencing of an offender on conviction for the offence.

Example

The Magistrates Court convicted Desmond of an offence. The court sentenced Desmond to imprisonment for 6 months for the offence and made a suspended sentence order for the entire sentence of imprisonment. The court also made a good behaviour order for the 6-month period. Desmond breaches the order. In re-sentencing Desmond, the court may impose a sentence of imprisonment to be served by periodic detention.

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) To remove any doubt, an offender re-sentenced by a court under this section has the same right of appeal as the offender would have had if sentenced by the court on being convicted of the offence.

111 Enforcing security under good behaviour order

- (1) This section applies if a court cancels the offender's good behaviour order under section 108, or section 110, and orders enforcement of payment of the security under the order.
- (2) When filed by the registrar of the court, the cancelled good behaviour order 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 order.

- (3) To remove any doubt, the security under the cancelled good behaviour order may be enforced—
- (a) as if it were a judgment mentioned in subsection (2); and
 - (b) whether or not the order remains in force; and
 - (c) even though the court sentences or re-sentences the offender for the offence.

Part 6.6 Good behaviour orders— amendment and discharge

112 Court powers—amendment or discharge of good behaviour order

- (1) A court may, by order—
 - (a) amend an offender’s good behaviour order; or
 - (b) discharge an offender’s good behaviour order.

Example for par (a)

The court may impose or amend an additional condition of the order, or amend the term of the order.

Example for par (b)

The court is satisfied that the conduct of the offender makes it unnecessary that the offender continue to be bound by the order.

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) The court may act under this part—
 - (a) on its own initiative; or
 - (b) on application by an interested person for the good behaviour order.
- (3) The amendment of the good behaviour order takes effect as stated in the court order.
- (4) This section is subject to section 113.

113 Good behaviour orders—limitations on amendment or discharge

- (1) A court must not amend an offender's good behaviour order—
 - (a) to increase the number of hours of community service work to be done under the order; or
 - (b) for an order mentioned in the *Crimes (Sentencing) Act 2005*, section 17 (7) (Non-conviction orders—general)—to extend the term of the order beyond 3 years.
- (2) A court may not amend an offender's good behaviour order in a way that would be inconsistent with a core condition of the order.
- (3) If the Supreme Court made, or amended, an offender's good behaviour order, the Magistrates Court must not amend the order in a way that would be inconsistent with the order as made, or amended, by the Supreme Court.
- (4) However, subsection (3) does not apply to a requirement, incidental to a proceeding before the Magistrates Court, that is not inconsistent with the substance of the good behaviour as made, or amended, by the Supreme Court.
- (5) If the Supreme Court made or amended an offender's good behaviour order, the Magistrates Court must not discharge the order.

114 Good behaviour orders—effect of amendment on sureties

- (1) This section applies if a court amends an offender's good behaviour order by—
 - (a) extending the term of the order; or
 - (b) amending or including an additional condition in the order.
- (2) Any surety under the good behaviour order is not bound by the amendment without the surety's agreement.

- (3) If the surety does not agree to be bound by the amendment, the court must direct the extent (if any) to which the surety's unchanged obligations are to operate under the amended order.
- (4) If the court gives a direction under subsection (3), the surety is bound under the good behaviour order only as stated in the direction.

Part 6.7 Good behaviour—miscellaneous

115 Good behaviour proceedings—rights of interested person

- (1) An interested person for a good behaviour order may appear before a court in a proceeding under this chapter.
- (2) A court must give each interested person for a good behaviour order (whether or not the person appeared before the court)—
 - (a) written notice of the court’s decision; and
 - (b) a copy of any order or direction by the court.

116 Good behaviour—court powers after end of order

A court may act under this chapter in relation to anything arising during the term of a good behaviour order, even if the term of the order has ended.

Chapter 7 Parole

Part 7.1 Parole—general

117 Definitions—ch 7

In this Act:

additional condition, of an offender's parole order, means—

- (a) a condition of the order imposed under—
 - (i) part 7.2 (Making of parole orders); or
 - (ii) part 7.4 (Supervising parole); or
- (b) if the condition is amended under part 7.4 (Supervising parole)—the condition as amended.

application, for parole, means an ordinary parole application or a special parole application.

core condition, of an offender's parole order, means a core condition under section 137.

ordinary parole application—see section 121 (3).

parole eligibility date, for an offender—see section 118.

parole obligations, of an offender, means the offender's obligations under section 136.

parole order, other than in part 7.6 (Interstate transfer of parole orders), means a parole order under—

- (a) section 126 (Parole applications—decision after inquiry without hearing); or
- (b) section 129 (Parole applications—decision after hearing).

parole release date, for an offender—see section 132 (3) (a).

special parole application—see section 121 (3).

victim—a person is a *victim* of an offender if—

- (a) this chapter applies to a sentence of imprisonment for an offence by the offender; and
- (b) the person is a victim of the offender because of the offence.

118 Meaning of *parole eligibility date*

- (1) For this Act, an offender's *parole eligibility date* is—
 - (a) the date the offender's nonparole period ends; or
 - (b) if the offender is subject to more than 1 sentence for which a nonparole period has been set—the day the last of the nonparole periods ends.

Note *Nonparole period* is defined in the dict.

- (2) However, if the offender is also serving a sentence of imprisonment for which a nonparole period has not been set (the *excluded sentence*) and the nonparole period for the other sentence has ended, the offender's *parole eligibility date* is the day the excluded sentence ends.

Part 7.2 Making of parole orders

119 Application—pt 7.2

This part applies to an offender under a sentence of imprisonment for which a nonparole period has been set.

120 Criteria for making parole orders

- (1) The board may make a parole order for an offender only if it considers that parole is appropriate for the offender, having regard to the principle that the public interest is of primary importance.

Note Subsection (1) does not apply in relation to special parole applications (see s 126 and s 129).

- (2) In deciding whether to make a parole order for an offender, the board must consider the following matters:
 - (a) any relevant recommendation, observation and comment made by the sentencing court;
 - (b) the offender's antecedents;
 - (c) any submission made, and concern expressed, to the board by a victim of the offender;
 - (d) the likely effect of the offender being paroled on any victim of the offender, and on the victim's family, and, in particular, any concern, of which the board is aware, expressed by or for the victim, or the victim's family, about the need for protection from violence or harassment by the offender;
 - (e) any report required by regulation in relation to the granting of parole to the offender;
 - (f) any other report prepared by or for the Territory in relation to the granting of parole to the offender;

- (g) the offender's conduct while serving the offender's sentence of imprisonment;
 - (h) the offender's participation in activities while serving the sentence of imprisonment;
 - (i) the likelihood that, if released on parole, the offender will commit further offences;
 - (j) the likelihood that, if released on parole, the offender will comply with any condition to which the parole order would be subject;
 - (k) whether parole is likely to assist the offender to adjust to lawful community life;
 - (l) any special circumstances in relation to the application;
 - (m) anything else prescribed by regulation.
- (3) Subsection (2) does not limit the matters the board may consider.

121 Applications for parole

- (1) An offender may apply to the board for parole no earlier than 6 months before the offender's parole eligibility date.
- (2) However, if the offender believes there are exceptional circumstances, the offender may apply to the board for parole any time before the offender's parole eligibility date.
- (3) An application under subsection (1) is an *ordinary parole application* and an application under subsection (2) is a *special parole application*.
- (4) A special parole application must include a written submission from the offender about the exceptional circumstances in support of the application.

- (5) An application for parole must be in writing.

Note If a form is approved under s 324 for a parole application, the form must be used.

- (6) An application for parole may be made even though—

- (a) another parole application by the offender has previously been refused; or
- (b) another parole order for the offender has previously been cancelled.

- (7) Despite subsections (2) and (6), a regulation may limit the making of special parole applications.

Note The power to make regulations includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48).

122 Board may reject parole application without inquiry

- (1) The board must, without holding an inquiry, reject a special parole application that does not include the written submission mentioned in section 121 (4).
- (2) The board may, without holding an inquiry, reject an application for parole by an offender if—
 - (a) satisfied the application is frivolous, vexatious or misconceived; or
 - (b) the board refused to make a parole order for the offender within the 12-month period before the application was made.

Examples of when board might not reject application within 12-month period

- 1 an exceptional circumstances application was refused less than 12 months before the offender's parole eligibility date
- 2 the offender's later application includes new information or new reasons for the application

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) The board must give written notice of the rejection of an application under this section to—
 - (a) the offender; and
 - (b) the chief executive.

- (4) The notice must include a statement of the board's reasons for the rejection.

Note For the content of a statement of reasons, see the Legislation Act, s 179.

- (5) To remove any doubt, section 120 (Criteria for making parole orders) and section 123 do not apply to the rejection of an application for parole under this section.

123 Board to seek victim's views for parole inquiry

- (1) Before starting an inquiry into an application for parole by an offender, the board must take reasonable steps to give notice of the inquiry to each registered victim of the offender.

Note Section 124 deals with what must be included in the notice.

- (2) The board may give notice of the inquiry to any other victim of the offender if satisfied the circumstances justify giving the victim notice of the inquiry.

- (3) For this section, the chief executive may make an arrangement with the board for a public servant—

- (a) to assist the board; or

- (b) to assist any victim of the offender, or any member of the victim's family, to make a submission, or tell the board about any concern, in accordance with the notice.

Example for s (3)

an arrangement for a victim liaison officer to assist the board or victims

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) If a victim of the offender is a child under 15 years old—
 - (a) the chief executive may give notice of the inquiry to a relevant person; and
 - (b) a relevant person may make a submission, or tell the board about any concern, in accordance with the notice on behalf of the victim.
- (5) In subsection (4):

relevant person means a person who has parental responsibility for the victim under the *Children and Young People Act 1999*, section 18.
- (6) Subsection (4) does not limit the cases in which the board may give information to a person acting for a victim or a member of a victim's family.

124 Notice to victims for parole inquiry

- (1) A notice under section 123 must include the following:
 - (a) an invitation to the victim to—
 - (i) make a written submission to the board about a parole order being made for the offender, including the likely effect on the victim, or on the victim's family, if the order were to be made; 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;
- (b) a statement to the effect that any submission made, or concern expressed, in writing to the board within the period stated in the notice will be considered in deciding—
 - (i) whether a parole order should be made for the offender; and
 - (ii) if a parole order is made—the conditions (if any) that will be imposed on the parole order by the board;
- (c) information about the offender to assist the victim, or a member of the victim's family, to make a submission, or tell the board about any concern, under paragraph (a);
- (d) information about any assistance available to the victim or family member to make the submission, or tell the board about any concern, under paragraph (a).

Examples of information for par (c)

- 1 the offender's conduct while serving the sentence
- 2 the core conditions of a parole 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).

- (2) For subsection (1) (b), the period stated must be a reasonable time (not less than 7 days after the day the victim is given the notice) to allow the victim or family member to make a written submission, or express concern, to the board in writing.
- (3) The notice may include anything else the board considers appropriate.

125 Parole applications—inquiry without hearing

- (1) The board must conduct an inquiry, without holding a hearing, into a parole application by an offender (unless the application is rejected under section 122).
- (2) If the application is an ordinary parole application, and the application does not include a written submission from the offender about the offender's parole, the board must—
 - (a) by written notice, ask the offender to make a written submission to the board for the inquiry within 14 days after the day the offender receives the notice; and
 - (b) after the 14-day period, hold the inquiry whether or not the offender makes the submission requested.

Note A special parole application must be rejected if it does not include a written submission about the exceptional circumstances (see s 122 (1)).

- (3) The board must give written notice of the inquiry to—
 - (a) the chief executive; and
 - (b) the director of public prosecutions.
- (4) The notice must include invitations for the offender and the chief executive to make submissions to the board by a stated date for the inquiry.
- (5) The inquiry must consider whether, on the documents currently before the board, the offender should be released on parole.

126 Parole applications—decision after inquiry without hearing

- (1) This section applies if the board has conducted an inquiry for section 125 into an application for parole by an offender.

- (2) The board must—
- (a) if the board considers that the documents currently before it justify paroling the offender—make a written order (a *parole order*) granting the offender parole on the date stated in the order; or
 - (b) if the board considers that the documents currently before it do not justify paroling the offender—
 - (i) set a time for a hearing by the board about the offender’s parole; and
 - (ii) give notice under section 127 of the hearing.
- (3) If the application is an ordinary parole application, the date stated in a parole order for the offender must be—
- (a) the offender’s parole eligibility date; or
 - (b) if the order is made on or after the offender’s parole eligibility date—a date within a reasonable time after the order is made.
- (4) If the application is a special parole application—
- (a) section 120 (1) (Criteria for making parole orders) does not apply to the board’s consideration of the application; and
 - (b) the board may make a parole order for the offender only if satisfied there are exceptional circumstances for paroling the offender before the offender’s parole eligibility date.

127 Parole applications—notice of hearing

- (1) The board must give written notice of a hearing required by section 126 (2) (b) to each of the following:
- (a) the offender;
 - (b) the chief executive;
 - (c) the director of public prosecutions.

- (2) The notice must include the following:
- (a) a statement to the effect that the board considers that the documents before it do not justify paroling the offender;
 - (b) details of when and where the hearing is to be held;
 - (c) an invitation to the offender to tell the board, within 7 days after the day the offender receives the notice and in writing, if the offender wishes to do either or both of the following:
 - (i) appear at the hearing;
 - (ii) make a submission to the board about being paroled;
 - (d) a statement about the effect of section 128.
- (3) The notice—
- (a) may include anything else the board considers appropriate; and
 - (b) subject to section 192 (Confidentiality of board documents), must be accompanied by a copy of any report or other document intended to be used by the board in deciding whether the offender should be paroled.

128 Parole applications—failure of offender to participate in hearing

The board is taken to have made a decision refusing to parole the offender if—

- (a) the offender does not respond to the invitation mentioned in section 127 (2) (c); or
- (b) the offender tells the board, in accordance with the invitation mentioned in section 127 (2) (c), that the offender will make a submission but the submission is not given to the board within 21 days after the day the board is told the submission will be made; or

- (c) the offender does not give the board a submission about being released on parole or attend the hearing.

129 Parole applications—decision after hearing

- (1) This section applies if the board conducts a hearing into an application for parole by an offender.
- (2) The board must—
 - (a) make a written order (a *parole order*) granting the offender parole on the date stated in the order; or
 - (b) refuse to make a parole order for the offender.
- (3) If the application is an ordinary parole application, the date stated in a parole order for the offender must be—
 - (a) the offender’s parole eligibility date; or
 - (b) if the order is made on or after the offender’s parole eligibility date—a date within a reasonable time after the order is made.
- (4) If the application is a special parole application—
 - (a) section 120 (1) (Criteria for making parole orders) does not apply to the board’s consideration of the application; and
 - (b) the board may make a parole order for the offender only if satisfied there are exceptional circumstances for paroling the offender before the offender’s parole eligibility date.
- (5) The board must make its decision under this section within 60 days after the day the board begins its hearing of the application.

130 Parole orders may include conditions

- (1) This section applies if the board makes a parole order for an offender.

- (2) The board may impose any condition (an *additional condition*) it considers appropriate on the offender's parole order.
- (3) For subsection (2), the board must have regard to any condition recommended under the *Crimes (Sentencing) Act 2005*, section 67 by the sentencing court for the offender's sentence to which the parole relates.

131 When parole orders take effect

A parole order for an offender takes effect when the offender is released from imprisonment under the order.

132 Explanation of parole order

- (1) This section applies if the board makes a parole order for an offender.
- (2) The board must ensure that reasonable steps are taken to explain to the offender in general terms (and in language the offender can readily understand)—
 - (a) the offender's parole obligations; and
 - (b) the consequences if the offender breaches any of the obligations.
- (3) The board must also tell the offender—
 - (a) the date (the *parole release date*) stated in the order for the offender's release from imprisonment; and
 - (b) when the parole order ends.
- (4) The board must ensure that a written record of the explanation is given to the offender.

133 Notice of decisions on parole applications

- (1) This section applies if the board makes a decision to make, or refuse to make, a parole order for an offender.
- (2) The board must give written notice of its decision to each of the following:
 - (a) the offender;
 - (b) the chief executive;
 - (c) the director of public prosecutions;
 - (d) the chief police officer.
- (3) The board—
 - (a) must also, as soon as practicable, take reasonable steps to give each relevant victim written information, about—
 - (i) the board's decision; and
 - (ii) if the board decided to make a parole order for the offender—the offender's parole release date and, in general terms, the offender's parole obligations; and
 - (b) may tell a relevant victim the general area where the offender will live on parole.
- (4) If a victim of the offender is a child under 15 years old—
 - (a) the chief executive may give notice of the inquiry to a relevant person; and
 - (b) a relevant person may make a submission, or tell the board about any concern, in accordance with the notice on behalf of the victim.
- (5) Subsection (4) does not limit the cases in which the board may give information to a person acting for a victim or a member of a victim's family.

(6) In this section:

relevant person means a person who has parental responsibility for the victim under the *Children and Young People Act 1999*, section 18.

relevant victim means each of the following:

- (a) a victim of the offender who made a submission to the board, or told the board about any concern, under section 123 (Board to seek victim's views for parole inquiry);
- (b) any other victim of the offender that the board is aware has expressed concern, or has had concern expressed on their behalf, about the need for the victim, or the victim's family, to be protected from violence or harassment by the offender;
- (c) a registered victim of the offender.

Part 7.3 Release under parole order

134 Application—pt 7.3

This part applies to an offender under a sentence of imprisonment if the board makes a parole order for the offender.

135 Release authorised by parole order

- (1) A parole order for an offender authorises anyone having custody of the offender for the offender's sentence of imprisonment to release the offender in accordance with the order.
- (2) However, the parole order does not authorise the release of the offender if the offender is required to be kept in custody in relation to another offence against a territory law, or an offence against a law of the Commonwealth, a State or another Territory.
- (3) The offender must be released from imprisonment under the offender's sentence of imprisonment on the offender's parole release date.
- (4) The offender may be released from the imprisonment at any time on the parole release date.
- (5) However, if the parole release date is not a working day at the place of imprisonment, the offender may be released from the imprisonment at any time during the last working day at that place before the release date if the offender asks to be released on that day.

Note **Working day** is defined in the Legislation Act, dict, pt 1.

136 Parole obligations

An offender must, while on parole—

- (a) comply with the offender's parole order, including—
 - (i) the core conditions of the order; and
 - (ii) any additional condition of the order; and
- (b) comply with any other requirement under this Act or the *Corrections Management Act 2005* that applies to the offender.

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

137 Parole order—core conditions

- (1) The core conditions of an offender's parole order are as follows:
 - (a) the offender must not commit—
 - (i) an offence against a territory law, or a law of the Commonwealth, a State or another Territory, that is punishable by imprisonment; or
 - (ii) an offence outside Australia against a law of a place outside Australia that, if it had been committed in Australia, would be punishable by imprisonment;
 - (b) if the offender is charged with an offence against a law in force in Australia or elsewhere—the offender must tell the chief executive about the charge as soon as possible, but within 2 days after the day the offender becomes aware of the charge;
 - (c) any change in the offender's contact details is approved by the chief executive under subsection (2);

- (d) the offender must comply with any direction given to the offender by the chief executive under this Act or the *Corrections Management Act 2005* in relation to the offender's parole;
 - (e) the offender must appear before the board as required, or agreed by the offender, under section 205 (Appearance by offender at board hearing);
 - (f) any condition prescribed by regulation that applies to the offender.
- (2) If an offender applies to the chief executive for approval for a change in the offender's contact details, the chief executive must—
- (a) approve, or refuse to approve, the change to which the application relates; and
 - (b) give the offender notice of the decision, orally or in writing.
- (3) An application for approval under subsection (2)—
- (a) may be made orally or in writing; and
 - (b) must be made—
 - (i) before the change to which it applies; or
 - (ii) if it is not possible to apply before the change—as soon as possible after, but no later than 1 day after, the day of the change.
- (4) 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.

138 Parole—chief executive directions

- (1) For this chapter, the chief executive may give directions, orally or in writing, to an offender.
- (2) To remove any doubt, this section does not limit section 321 (Chief executive directions—general).

139 Parole—effect of custody during order

- (1) An offender is taken, during a period, to be serving the sentence of imprisonment for which parole was granted if—
 - (a) the offender is taken into lawful custody during the period while on parole; and
 - (b) the custody is only in relation to the offender's parole obligations.

Example of custody in relation to parole obligations

a period during which the offender is remanded in custody under s 144 (Arrest without warrant—breach of parole obligations)

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) To remove any doubt, the offender is not taken to be serving the sentence of imprisonment for which the parole was granted if the reason for the custody is, or includes, anything other than the offender's parole obligations.

Example of other reason for custody

nonpayment of a fine or other amount (including restitution) under a court order

140 Parole—sentence not discharged unless parole completed

- (1) An offender is taken, while on parole, to be under the sentence of imprisonment for which the parole was granted and not to have served any period of the imprisonment that remained to be served on the offender's parole release date, unless—
 - (a) the parole ends without the parole order being cancelled under part 7.4 (Supervising parole); or
 - (b) the offender is otherwise discharged from the imprisonment.
- (2) However, subsection (1) is subject to section 139.
- (3) If an offender's parole order in relation to a sentence of imprisonment ends without the order being cancelled, the offender is taken to have served the period of imprisonment that remained to be served on the parole release date and to have been discharged from the imprisonment.

Note For the consequences of the cancellation of parole, see s 160.

141 Parole—end of order

An offender's parole order ends—

- (a) at the end of the period of imprisonment under the sentence for which the parole was granted that remained to be served on the offender's parole release date; or
- (b) if the order is cancelled earlier under this chapter—when the cancellation takes effect.

Part 7.4 Supervising parole

Division 7.4.1 Supervising parole—preliminary

142 Application—pt 7.4

This part applies to an offender who is, or has been, on parole.

Division 7.4.2 Breach of parole obligations

143 Corrections officers to report breach of parole obligations

- (1) This section applies if a corrections officer believes, on reasonable grounds, that an offender has breached any of the offender's parole obligations.
- (2) The corrections officer must report the belief to the board in writing.
- (3) The report must be accompanied by a copy of a written record in support of the corrections officer's belief.

144 Arrest without warrant—breach of parole obligations

- (1) This section applies if a police officer believes, on reasonable grounds, that an offender has breached any of the offender's parole obligations.
- (2) The police officer may arrest the offender without a warrant.
- (3) If a police officer arrests the offender, the police officer must, as soon as practicable, bring the offender before—
 - (a) the board; or
 - (b) if the board is not sitting—a magistrate.

Note For remanding or granting bail to the offender, see the *Bail Act 1992*.

145 Arrest warrant—breach of parole obligations

- (1) A judge or magistrate may issue a warrant for an offender's arrest if satisfied by information on oath that there are reasonable grounds for suspecting that the offender has breached, or will breach, any of the offender's parole obligations.
- (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 offender's arrest and bringing the offender before the board.
- (3) A police officer who arrests the offender under the warrant must, as soon as practicable, bring the offender before—
 - (a) the board; or
 - (b) if the board is not sitting—a magistrate.

Note For remanding or granting bail to the offender, see the *Bail Act 1992*.

146 Board inquiry—breach of parole obligations

- (1) The board may, at any time, conduct an inquiry to decide whether an offender has breached any of the offender's parole obligations.
- (2) To remove any doubt, the board may conduct the inquiry—
 - (a) before the offender's release on parole; and
 - (b) in conjunction with any other inquiry under this Act in relation to the offender.

- (3) The board may conduct the inquiry—
 - (a) on its own initiative; or
 - (b) on application by the chief executive.
- (4) If an offender is arrested under section 144 (Arrest without warrant—breach of parole obligations) or section 145 (Arrest warrant—breach of parole obligations), the board must conduct the inquiry as soon as practicable.

147 Notice of inquiry—breach of parole obligations

- (1) Before starting an inquiry under section 146 in relation to an offender, the board must give written notice of the inquiry to each of the following:
 - (a) the offender;
 - (b) the chief executive;
 - (c) the director of public prosecutions.
- (2) The notice must include—
 - (a) the reasons for the inquiry; and
 - (b) invitations for the offender and the chief executive to make submissions to the board by a stated date for the inquiry.

148 Board powers—breach of parole obligations

- (1) This section applies if, after conducting an inquiry under section 146 (Board inquiry—breach of parole obligations) in relation to an offender, the board decides the offender has breached any of the offender's parole obligations.
- (2) The board may do 1 or more of the following:
 - (a) take no further action;

- (b) give the offender a warning about the need to comply with the offender's parole obligations;
- (c) give the chief executive directions about the offender's supervision;
- (d) change the offender's parole obligations by imposing or amending an additional condition of the parole order;
- (e) cancel the offender's parole order.

Examples of additional conditions for par (d)

- 1 a condition prohibiting association with a particular person or being near a particular place
- 2 a condition that the offender participate in an activity

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 of a parole order must not be inconsistent with a core condition of the order.
- (4) To remove any doubt, if an inquiry under section 146 in relation to an offender is conducted in conjunction with any other inquiry under this Act in relation to the offender, the board may exercise its powers under this division with any other powers of the board in relation to the other inquiry.

149 Automatic cancellation of parole order for ACT offence

- (1) This section applies if, while an offender's parole order is in force, the offender is convicted or found guilty by a court of an offence against a territory law that is punishable by imprisonment.
- (2) The parole order is automatically cancelled when the offender is convicted or found guilty of the offence.

Note The court must make an order under s 161 (Cancellation of parole—recommittal to full-time detention).

150 Cancellation of parole order for non-ACT offence

- (1) This section applies if, while an offender's parole order is in force, the board decides that the offender has been convicted or found guilty of—
 - (a) an offence against a law of the Commonwealth, a State or another Territory that is punishable by imprisonment; or
 - (b) an offence outside Australia against a law of a place outside Australia that, if it had been committed in Australia, would be punishable by imprisonment.
- (2) Without limiting section 148 (Board powers—breach of parole obligations), the board must cancel the offender's parole order as soon as practicable under that section.

151 Cancellation after parole order has ended

- (1) This section applies to an offender if the offender's parole order has ended other than by cancellation and, after the order ends, the board decides that—
 - (a) the offender has been convicted or found guilty of—
 - (i) an offence against a territory law, or a law of the Commonwealth, a State or another Territory that is punishable by imprisonment; or
 - (ii) an offence against a law of a place outside the ACT that, if it had been committed in the ACT, would be punishable by imprisonment; and
 - (b) the offence was committed while the offender's parole order was in force.
- (2) The board—
 - (a) must decide the date, or the earliest date, when the offence was committed; and

- (b) is taken to have cancelled the offender's parole on order under section 148 (Board powers—breach of parole obligations) on that date.

152 Exercise of board functions after parole ended

The board may exercise a function under this division in relation to the offender's parole, including a function for breach of the offender's parole order, even though the order for parole has ended.

Division 7.4.3 Parole management

153 Board inquiry—management of parole

- (1) The board may, at any time, conduct an inquiry to review an offender's parole.
- (2) Without limiting subsection (1), the board may conduct the inquiry to consider whether parole is, or would be, appropriate for the offender having regard to—
 - (a) any information about the offender that the board became aware of after it made the offender's parole order; or
 - (b) any change in circumstances applying to the offender; or
 - (c) the history of managing the offender under parole, including any history relating to physical or mental health or discipline.
- (3) To remove any doubt, the board may conduct the inquiry—
 - (a) before the offender's release under the parole order; and
 - (b) in conjunction with any other inquiry under this Act in relation to the offender.
- (4) The board may conduct the inquiry—
 - (a) on its own initiative; or
 - (b) on application by the offender or the chief executive.

154 Notice of inquiry—management of parole

- (1) Before starting an inquiry under section 153 in relation to an offender, the board must give written notice of the inquiry to each of the following:
 - (a) the offender;
 - (b) the chief executive;
 - (c) the director of public prosecutions.
- (2) The notice must include—
 - (a) the reasons for the inquiry; and
 - (b) invitations for the offender and the chief executive to make submissions to the board for the inquiry by a stated date.

155 Parole order—commencement suspended before parole release date

- (1) This section applies if—
 - (a) the board has made a parole order for an offender but the offender has not been released under the order; and
 - (b) the board has given the offender notice of an inquiry under section 154.
- (2) Before starting the inquiry, the board may suspend the commencement of the parole order.
- (3) If the board suspends the commencement of the parole order, the board must hold the inquiry as soon as practicable.
- (4) Unless sooner revoked, the suspension ends when the board's decision in the inquiry takes effect.
- (5) Until the suspension ends, the offender must remain imprisoned under full-time detention.

- (6) The board must give written notice of the suspension to each of the following:
- (a) the offender;
 - (b) the chief executive;
 - (c) the director of public prosecutions.

156 Board powers—management of parole

- (1) After conducting an inquiry under section 153 (Board inquiry—management of parole) in relation to an offender, the board may do 1 or more of the following:
- (a) take no further action;
 - (b) counsel or warn the offender about the need to comply with the offender's parole obligations;
 - (c) give the chief executive direction, about the offender's supervision;
 - (d) change the offender's parole obligations by imposing or amending an additional condition of the offender's parole order;
 - (e) if subsection (3) applies—cancel the offender's parole order.

Example of additional condition for par (d)

a condition prohibiting association with a particular person or being near a particular place

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) An additional condition of a parole order must not be inconsistent with a core condition of the order.

- (3) This subsection applies if the board decides either of the following:
 - (a) that the parole order should be cancelled on the offender's application;
 - (b) that parole is, or would be, no longer suitable for the offender.
- (4) To remove any doubt, if an inquiry under section 153 in relation to an offender is conducted in conjunction with another inquiry under this Act in relation to the offender, the board's powers under this division may be exercised with any other powers of the board in relation to the other inquiry.

Part 7.5 Change or cancellation of parole

157 Notice of board decisions about parole

- (1) This section applies to a decision of the board in relation to an offender under—
 - (a) section 148 (Board powers—breach of parole obligations); or
 - (b) section 156 (Board powers—management of parole).
- (2) The board must give written notice of its decision to each of the following:
 - (a) the offender;
 - (b) the chief executive;
 - (c) the director of public prosecutions.
- (3) The notice must include—
 - (a) the board's reasons for the decision; and
 - (b) the date when the decision takes effect.

Note For the content of a statement of reasons, see the Legislation Act, s 179.

- (4) If the decision is to cancel the offender's parole, the notice of the decision must state where and when the offender must report for full-time detention because of the cancellation.

Note For the offender's recommittal to full-time detention, see s 161.

158 When changes to parole obligations take effect

- (1) This section applies to a decision of the board to change the offender's parole obligations, by imposing or amending an additional condition of the parole order, under part 7.4.

- (2) The decision takes effect—
 - (a) when the board gives the offender written notice of the decision; or
 - (b) if a later date of effect is stated in the notice—on the date stated.

159 When board cancellation of parole order takes effect

- (1) This section applies to a decision of the board to cancel the offender's parole order under part 7.4 (Supervising parole).
- (2) The decision takes effect—
 - (a) when written notice of the decision is given to the offender under section 157 (Notice of board decisions about parole); or
 - (b) if a later date of effect is stated in the notice—on the date stated.

160 Parole order—effect of cancellation

- (1) This section applies if an offender's parole order for a sentence of imprisonment is cancelled under part 7.4 (Supervising parole).
- (2) If the parole order is in force immediately before the cancellation, the cancellation ends the parole order.
- (3) On the cancellation of the parole order, the offender is taken not to have served any period (the *remaining period*) of imprisonment for the sentence that remained to be served on the offender's parole release date.
- (4) However, subsection (3) is subject to section 139 (Parole—effect of custody during order).

- (5) The offender must serve the remaining period of the sentence of imprisonment—
 - (a) by full-time detention; and
 - (b) otherwise in accordance with the sentence.

161 Cancellation of parole—recommittal to full-time detention

- (1) This section applies if an offender's parole order is cancelled under part 7.4 (Supervising parole).
- (2) The recommitting authority must order that the offender be placed in the chief executive's custody to serve a period of imprisonment by full-time detention equal to the period of imprisonment the offender was liable to serve under the offender's sentence on the offender's parole release date.
- (3) However, subsection (2) is subject to section 139 (Parole—effect of custody during order).
- (4) If the offender is not in custody, the recommitting authority may also issue a warrant for the offender to be arrested and placed in the chief executive's custody.
- (5) The warrant—
 - (a) must be in writing; and
 - (b) may be signed by a person authorised by the recommitting authority; and
 - (c) must be directed to all escort officers or a named escort officer.
- (6) An escort officer who arrests the offender under this section must place the offender in the chief executive's custody as soon as practicable.

(7) In this section:

recommitting authority means—

- (a) if the parole order is cancelled under section 149 (Automatic cancellation of parole order for ACT offence)—the court mentioned in that section; or
- (b) if the parole order is cancelled by the board—the board.

Part 7.6 Interstate transfer of parole orders

162 Definitions—pt 7.6

In this part:

corresponding parole law means a law of a State or another Territory that is declared to be a corresponding parole law under section 163.

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 164.

parole order means—

- (a) either—
 - (i) a parole order under this Act or a corresponding parole order; or
 - (ii) an authority under a law of a State or another Territory for the parole of a person from lawful detention; and
- (b) includes a parole order registered under section 167.

Note A reference to an instrument includes a reference to the instrument as originally made and as amended (see Legislation Act, s 102).

register means register under section 167.

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).

163 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 Act.
- (2) A declaration is a notifiable instrument.

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

164 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 chief executive to register 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.

165 Parole order transfer—documents for registration requests

- (1) If the Minister makes a request under section 164 (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 the parolee's classification as a prisoner and any conviction, sentence of imprisonment, minimum term of imprisonment, period of imprisonment served, remission earned and other grant 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.

166 Parole order transfer—consideration of requests

- (1) The Minister must not direct the registration of a parole order unless 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; and
 - (b) the parolee—
 - (i) has consented to, or has requested, the registration; 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 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 that State or Territory.

167 Parole order transfer—registration

- (1) If the Minister directs the chief executive under section 164 (1) (Parole order transfer—registration requests) to register a parole order, the chief executive must register the order by endorsing on the order, or a copy of the order, a memorandum signed by the chief executive to the effect that the order was registered on the date of endorsement.
- (2) If the chief executive registers a parole order under subsection (1), the chief executive 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 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 165 (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, 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.

168 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 section 167, ACT law applies in relation to the order and the parolee.
- (2) If a parole order registered under section 167 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 this chapter.

- (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 section 167 is cancelled under this chapter, the parolee is liable to serve a period of imprisonment by full-time detention equal to the period of imprisonment the parolee was liable to serve under the sentence on the parole release date for the sentence.
- (5) However, subsection (4) is subject to section 139 (Parole—effect of custody during order).

169 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 section 167—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.

170 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 167 (1) (Parole order transfer—registration), and to have been signed by the chief executive, 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 chief executive, and the copy is evidence of the matters stated in the order.

Chapter 8 Sentence administration board

Part 8.1 Establishment, functions and constitution of board

171 Establishment of board

The Sentence Administration Board is established.

Note The Legislation Act, dict, pt 1 defines *establish* as including continue in existence.

172 Functions of board

- (1) The board has the following functions:
 - (a) the functions given to the board under the following provisions:
 - (i) chapter 5 (Periodic detention);
 - (ii) chapter 7 (Parole);
 - (iii) part 13.1 (Release on licence);
 - (b) on request, to provide advice to a Minister about an offender or a young offender;
 - (c) 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*).

- (2) In this section:

young offender—see the *Children and Young People Act 1999*, section 64.

173 Members of board

The board consists of the members appointed under section 174.

174 Appointment of board members

(1) The Minister must appoint the following board members:

- (a) a chair;
- (b) at least 1 deputy chair and not more than 2 deputy chairs;
- (c) not more than 8 other members.

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) The Minister may appoint a person to be chair or deputy chair only if the person is judicially qualified.
- (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 7G (Magistrates not to do 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) For this section, each of the following are *judicially qualified*:
- (a) a judge or retired judge;
 - (b) a magistrate or retired magistrate;
 - (c) a person qualified to be appointed as a judge.

175 Conditions of appointment of board members

The conditions of appointment of a board member are the conditions agreed between the Minister and the member, subject to any determination of the *Remuneration Tribunal Act 1995*.

176 Term of appointment of board member

- (1) The appointment of a board member must not be for 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 board member must state whether the person is appointed as the chair, a deputy chair or a non-judicial member.

177 Disclosure of interests by board members

- (1) If a board member has a material interest in an issue being considered, or about to be considered, by the board, the member must disclose the nature of the interest at a board meeting as soon as possible after the relevant facts have come to the member's knowledge.
- (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 (however described) who is concerned with, or takes part in, the corporation's management (whether or not the person is a director of the corporation).

indirect interest—without limiting the kind of indirect interest 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.

178 Ending board member appointments

- (1) The Minister may end the appointment of a board member—
 - (a) if the member contravenes a territory law; or
 - (b) for misbehaviour; or

- (c) if the member becomes bankrupt or executes a personal insolvency agreement; or
- (d) if the member is convicted, in the ACT, of an offence punishable by imprisonment for at least 1 year; or
- (e) 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
- (f) if the member contravenes section 177 (Disclosure of interests by board members).

Note A member's appointment also ends if the member resigns (see Legislation Act, s 210).

- (2) The Minister must end the appointment of a board member—
 - (a) if the member is absent from 3 consecutive meetings of the board (other than a meeting of a division of the board), without leave approved by the Minister; or
 - (b) if the member is assigned to a division of the board and is absent from 3 consecutive meetings of the division without leave approved by the chair; or
 - (c) if the member fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member's functions; or
 - (d) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions; or
 - (e) for a judicial member, if the member is no longer a judicially qualified person.

- (3) In this section:

judicially qualified—see section 174 (8) (Appointment of board members).

179 Protection from liability for board members etc

- (1) In this section:

official means—

- (a) a board member; or
 - (b) the secretary.
- (2) An official, or anyone engaging in conduct under the direction of an official, is not civilly liable for conduct engaged in honestly and not recklessly—
- (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (3) Any liability that would, apart from this section, attach to a person attaches to the Territory.

Part 8.2 Divisions of board

180 Meaning of board's *supervisory functions*

For this Act, the board's *supervisory functions* are—

- (a) its functions under the following provisions:
 - (i) chapter 5 (Periodic Detention);
 - (ii) chapter 7 (Parole);
 - (iii) part 13.1 (Release on licence); and
- (b) any other function of the board declared by regulation to be a supervisory function.

181 Exercise of board's *supervisory functions*

- (1) The supervisory functions of the board must be exercised by a division of the board.
- (2) In exercising a supervisory function, the division of the board is taken to be the board.

182 Constitution of divisions of board

- (1) The chair must ensure that there are enough divisions of the board for the proper exercise of the board's supervisory functions.
- (2) Each division is to consist only of the following members assigned by the chair:
 - (a) a judicial member;
 - (b) 2 non-judicial members.

- (3) To remove any doubt—
- (a) a division of the board, as constituted at any time, may exercise any supervisory function of the board; and
 - (b) the chair may assign board members to a division from time to time for the exercise of the board's supervisory functions in a particular case or in any case; and
 - (c) a judicial member or non-judicial member may be assigned to 2 or more divisions at the same time.

Part 8.3 Proceedings of board

183 Time and place of board meetings

- (1) Meetings of the board are to be held when and where it decides.
- (2) The chair of the board may at any time call a meeting.
- (3) The chair must give the other members reasonable notice of the time and place of a meeting called by the chair.
- (4) The board may adjourn a proceeding, for any reason it considers appropriate, to a time and place decided by it.

184 Presiding member at board meetings

The chair, or another judicial member nominated by the chair, presides at a meeting of the board.

185 Quorum at board meetings

- (1) 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) This section is subject to section 181 (Exercise of board's supervisory functions).

186 Voting at board meetings

- (1) At a meeting of the board each member has a vote on each question to be decided.
- (2) A question is decided by a majority of the votes of members present and voting but, if the votes are equal, the presiding member has a casting vote.

187 Conduct of board meetings

- (1) The board may conduct its proceedings (including its meetings) as it considers appropriate.
- (2) However, this section is subject to section 196 (Conduct of inquiry).
- (3) 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.

Examples

phone link, satellite link

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) A member who takes part in a meeting conducted under subsection (3) is taken to be present at the meeting.
- (5) A resolution of the board is valid, even if 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.
- (6) The board must keep minutes of its meetings.

188 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 the judicial member—
 - (i) any other member who was present at that meeting; or
 - (ii) the secretary of the board.

189 Evidentiary certificate about board decisions

A certificate that is given by the chair or secretary of the board, and records any decision of the board, is admissible in any legal proceeding and is evidence of the matters recorded.

190 Proof of certain board-related matters 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.

191 Board secretary

The secretary of the board is the public servant whose functions include the functions of the secretary.

Note The secretary's functions can be exercised by a person for the time being occupying the position of secretary (see Legislation Act, s 200).

192 Confidentiality of board documents

- (1) This section applies to a document under the control of the board.

- (2) The board must ensure, as far as practicable, that a document given to an offender does not contain any of the following details about a any 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.
- (3) The board must ensure, as far as practicable, that a document is not given to a person if a judicial member of the board considers there is a substantial risk that giving it to the person would—
- (a) adversely affect the security or good order and discipline of a correctional centre or a NSW correctional centre; or
 - (b) jeopardise the conduct of a lawful investigation; or
 - (c) endanger the person or anyone else; or
 - (d) otherwise prejudice the public interest.
- (4) In this section:
- document*** includes part of a document.

Chapter 9 Inquiries by board

Part 9.1 Inquiries—general

193 Meaning of *inquiry*

In this Act:

inquiry means an inquiry by the board under this chapter.

194 Application of Criminal Code, ch 7

An inquiry is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

Note That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to an inquiry.

195 Board inquiries and hearings

- (1) This chapter is subject to part 7.2 (Making of parole orders).
- (2) The board must conduct an inquiry for the exercise of a supervisory function of the board.
- (3) The board may conduct an inquiry for the exercise of any other function of the board.
- (4) The board may, but is not required to, hold a hearing for an inquiry.
- (5) For an inquiry in relation to a supervisory function, the board must ensure, as far as practicable, that—
 - (a) it completes the inquiry without holding a hearing; and
 - (b) it holds a hearing only if it believes, on reasonable grounds, that natural justice would not be satisfied if the inquiry were completed without a hearing.

- (6) A regulation may provide for circumstances when a hearing may, must or must not be held for an inquiry.
- (7) Subsections (4) and (5) are subject to any regulation made under subsection (6).
- (8) The board may conduct an inquiry for the exercise of a supervisory function in relation to an offender in conjunction with any other inquiry for the exercise of another supervisory function in relation to the offender.
- (9) A hearing by the board must be in accordance with part 9.2.

196 Conduct of inquiry

- (1) For an inquiry, the board is not bound by the rules of evidence and may be informed of anything in any way it considers appropriate, but, for the exercise of a supervisory function, must observe natural justice.
- (2) An inquiry must be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and any other relevant enactment and a proper consideration of the matters before the board allow.
- (3) Proceedings at an inquiry are not open to the public, unless the board decides otherwise in a particular case.
- (4) Subject to part 9.2 (Hearings for inquiry), a person is entitled to be present at a meeting of the board only with the board's leave.
- (5) Subsection (4) does not apply to the following:
 - (a) the secretary of the board;
 - (b) an escort officer escorting an offender for an inquiry;
 - (c) a public servant assisting the board for the inquiry.
- (6) A decision of the board is not invalid only because of any informality or lack of form.

197 Submissions for inquiry

- (1) This section applies to an inquiry in relation to a supervisory function.
- (2) The offender to whom the inquiry relates, and the chief executive, may make submissions to the board for the inquiry.
- (3) The board must consider any submission given to the secretary of the board by the offender or the chief executive before the closing date for submissions stated in the board's notice of the inquiry given to the offender.

198 Board may require official reports

- (1) For an inquiry, a judicial member may by written notice given to any of the following, require the person to give the board a written report about an offender:
 - (a) the chief executive;
 - (b) the commissioner for corrective services under the *Crimes (Administration of Sentences) Act 1999* (NSW);
 - (c) the director of public prosecutions;
 - (d) a public servant prescribed by regulation.
- (2) The person given the notice must comply with it.

199 Board may require information and documents

- (1) For an inquiry, a judicial member may, by written notice given to a person, require the person—
 - (a) to provide stated information to the board relevant to the inquiry; or
 - (b) to produce to the board a stated document or thing relevant to the inquiry.

- (2) This section does not require a person to give information, or produce a document or other thing, to the board if the Minister certifies in writing that giving the information, or producing the document or other thing—
- (a) may endanger an offender or anyone else; or
 - (b) is contrary to the public interest.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

200 Expenses—production of documents etc

- (1) This section applies to a person who is required to—
- (a) give information, or produce a document or other thing, to the board for an inquiry; or
 - (b) appear before, or produce a document or other thing to, the board at a hearing for an inquiry.
- (2) The person is entitled to be paid the reasonable expenses that the board decides.
- (3) This section does not apply to—
- (a) the offender to whom the inquiry relates; or
 - (b) a witness who is a full-time detainee in a correctional centre (however described) in the ACT or elsewhere; or
 - (c) a person prescribed by regulation.

201 Possession of inquiry documents etc

The board may have possession of a document or other thing produced to the board for an inquiry for as long as the board considers necessary for the inquiry.

202 **Record of inquiry**

The board must keep a written record of proceedings at an inquiry.

Part 9.2 Hearings for inquiry

203 Application—pt 9.2

This part applies to a hearing for an inquiry for the exercise of any of the board's supervisory functions in relation to an offender.

204 Notice of board hearing

- (1) The board must give written notice of a hearing for an inquiry in relation to an offender to each of the following:
 - (a) the offender;
 - (b) the chief executive;
 - (c) the director of public prosecutions.
- (2) The notice must include the following:
 - (a) a statement about where and when the hearing is to be held;
 - (b) a statement about the effect of section 209 (Offender's rights at board hearing).
- (3) A person who is given notice of a hearing under this section may appear at the hearing.

205 Appearance by offender at board hearing

- (1) For a hearing for an inquiry in relation to an offender, a judicial member may, by written notice given to the offender, require the offender to appear before the board, at a stated time and place, to do either or both of the following:
 - (a) give evidence;
 - (b) produce a stated document or other thing relevant to the inquiry.

- (2) The offender is taken to have complied with a notice under subsection (1) (b) if the offender gives the document or other thing to the secretary of the board before the time stated in the notice for its production.
- (3) A judicial member, the chief executive or a police officer may ask an offender to sign a voluntary agreement to appear before the board at a hearing for an inquiry in relation to the offender.

206 Arrest of offender for board hearing

- (1) This section applies if—
 - (a) an offender does not appear before the board at a hearing in accordance with a notice under section 205 (1), or an agreement mentioned in section 205 (3); or
 - (b) a judicial member of the board considers that—
 - (i) an offender will not appear before the board as mentioned in paragraph (a); or
 - (ii) for any other reason, the offender must be arrested immediately and brought before the board for a hearing.
- (2) A judicial member may issue a warrant for the offender to be arrested and brought before the board for the hearing.
- (3) The warrant must—
 - (a) be signed by the 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 offender's arrest and bringing the offender before the board for the hearing.

- (4) A police officer who arrests the offender under the warrant must, as soon as practicable, bring the offender before—
- (a) the board; or
 - (b) if the board is not sitting—a magistrate.

Note For remanding or granting bail to the offender, see the *Bail Act 1992*.

207 Appearance at board hearing by audiovisual or audio link

- (1) This section applies if, in relation to a hearing for an inquiry, or a part of a hearing for an inquiry, the board has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (Territory courts may take evidence and submissions from outside ACT) or section 32 (Use of link in proceedings).
- (2) A person may appear in the hearing, and take part or give evidence, in accordance with the direction, if the person—
- (a) is required or entitled to appear personally, whether as a party or as a witness; or
 - (b) is entitled to appear for someone else.
- (3) A person who appears in the hearing under this section is taken to be before the board.

208 Evidence at board hearings etc

- (1) A judicial member may, by written notice given to a person (other than the offender), require the person to appear before the board at a hearing for an inquiry, at a stated time and place, to do either or both of the following:
- (a) give evidence;

- (b) produce a stated document or other thing relevant to the inquiry.

Note Section 205 deals with requiring the offender to appear at a hearing for an inquiry.

- (2) A person is taken to have complied with a notice under subsection (1) (b) if the offender gives the document or other thing to the secretary of the board before the time stated in the notice for its production.
- (3) The judicial member presiding at a hearing for an inquiry may require the offender, or a witness, appearing before the board to do 1 or more of the following:
- (a) take an oath;
 - (b) answer a question relevant to the inquiry;
 - (c) produce a document or other thing relevant to the inquiry.
- (4) The judicial member presiding at the hearing may disallow a question put to a person if the member considers the question is unfair or unduly prejudicial.

Note 1 The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

Note 2 **Oath** includes affirmation, and **take** an oath includes make an affirmation (see Legislation Act , dict, pt 1).

209 Offender's rights at board hearing

At a hearing 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 inquiry; 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 inquiry.

210 Custody of offender during board hearing adjournment

- (1) This section applies if the board adjourns a hearing for an inquiry in relation to an offender.
- (2) The board may order that the offender be remanded in custody during the adjournment.

Note Pt 3.2 (Remand) applies in relation to the order for remand.

- (3) However, the board may order the remand of the offender—
 - (a) for no longer than 7 days for each adjournment; and
 - (b) only twice for the same inquiry; and
 - (c) if the offender has previously been remanded in custody in relation to the same inquiry—only if the hearing was adjourned on the second occasion because of circumstances beyond the board's control.
- (4) For subsection (3) (a), the day the board adjourns the hearing, and the day the offender appears before the board at the adjourned hearing, are both counted.

Note For the grant of bail to the offender, see the *Bail Act 1992*.

211 Record of board hearings

- (1) The chief executive must ensure that a sound or audiovisual record is made of each hearing for an inquiry in relation to an offender.
- (2) Subject to section 192 (Confidentiality of board documents), the board must ensure that a copy of the record is available for access by an eligible person.

Example of available for access

providing for the person to be given, or to be able to buy, a copy of the record or a transcript made from the record

Note 1 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).

Note 2 A fee may be determined under s 323 for this section.

Note 3 If a form is approved under s 324 for this provision, the form must be used.

(3) 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 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*.

212 Protection of witnesses etc at board hearings

- (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.

Chapter 10 Victim and offender information

213 Definitions—ch 10

In this Act:

registered victim, of an offender, means a victim of the offender about whom information is entered in the victim's register.

victim, of an offender—see section 214.

victims register means the register under section 215.

214 Meaning of *victim*

- (1) For this Act, each of the following is a *victim* of an offender:
 - (a) a person (a *primary victim*) who suffers harm because of an offence by the offender;
 - (b) if a primary victim dies because of an offence by the offender—a person who was financially or psychologically dependent on the primary victim immediately before the primary victim's death.
- (2) In this section:

because of—see the *Crimes (Sentencing) Act 2005*, section 47.

harm—see the *Crimes (Sentencing) Act 2005*, section 47.

215 Victims register

- (1) The chief executive must maintain a register of victims of offenders.

- (2) The chief executive must enter in the register information about a victim of an offender that the victim, or someone acting for the victim, asks the chief executive to enter in the register.
- (3) As soon as practicable after entering the victim's information in the register, the chief executive must give the victim information, orally or in writing, about the following:
 - (a) the role of the board;
 - (b) the rights of registered victims under section 216 to information about offenders who are sentenced;
 - (c) the role of victims under chapter 7 (Parole) and part 13.1 (Release on licence) in relation to the release of an offender from imprisonment under a parole order or licence.
- (4) If the victim is a child under 15 years old, the chief executive may give the information to a person who has parental responsibility for the victim under the *Children and Young People Act 1999*, section 18.
- (5) Subsection (4) does not limit the cases in which the chief executive may give information to a person acting for a victim.

216 Disclosures to registered victims about sentenced offenders

- (1) The chief executive may disclose information about an offender who has been sentenced to a registered victim of the offender if satisfied the disclosure is appropriate in the circumstances.

Examples of disclosures

- 1 any non-association order or place restriction order that applies to the offender
- 2 if the offender is subject to periodic detention—the offender's periodic detention period, reporting place and reporting time
- 3 if the offender is under a good behaviour order—the place where the offender may do community service work or attend a rehabilitation program

- 4 if the offender is serving a sentence of imprisonment by full-time detention:
- (a) the correctional centre where the offender is detained
 - (b) the offender's classification in detention
 - (c) the transfer of the offender between correctional centres, including NSW correctional centres
 - (d) the offender's parole eligibility date
 - (e) any unescorted leave given to the offender under the *Corrections Management Act 2005*
 - (f) the death or escape of, or any other exceptional event relating to, 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 victim is a child under 15 years old, the chief executive may give the information to a person who has parental responsibility for the victim under the *Children and Young People Act 1999*, section 18.

Note The *Crimes (Sentencing) Act 2005*, s 136 (Information exchanges between criminal justice entities) also deals with information about a victim of an offence.

- (3) Subsection (2) does not limit the cases in which the chief executive may give information to a person acting for a victim.

Chapter 11 Transfer of prisoners

Part 11.1 Interstate transfer of prisoners

Division 11.1.1 Interstate transfer—preliminary

217 Definitions—pt 11.1

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 221 (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 Minister of the State 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 221 (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 222 (Interstate transfer—requests from ACT and joint prisoners for transfer to participating state);
- (b) section 223 (Interstate transfer—requests from ACT and joint prisoners for transfer to non-participating territory);

- (c) section 231 (Interstate transfer—order of transfer);
- (d) section 232 (8) (Interstate transfer—review of Magistrates Court decision);
- (e) section 237 (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 officer.

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 the person's behaviour.

remission instrument means an instrument of remission under section 313 (Remission of penalties).

sentence of imprisonment—see section 218.

subject to a sentence of imprisonment—see section 219.

translated sentence means a sentence of imprisonment that is taken under section 243 (Interstate transfer—translated sentences) to have been imposed on a person by an ACT court.

218 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 is taken, except as prescribed by regulation, 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.

219 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 (a *relevant law*) 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 a relevant law to require the person to serve all or part of the sentence;

- (c) a person whose sentence, or the remaining part of whose sentence, has been remitted under section 313 (Remission of penalties);
- (d) a person who has been pardoned under section 314 (Grant of pardons);
- (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.

220 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.

221 Interstate transfer—corresponding courts and interstate laws

- (1) The Minister may, in writing, declare that—
 - (a) a law of a State 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 this section in relation to a law of a State only if 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 is a notifiable instrument.

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

Division 11.1.2 Interstate transfer—prisoner’s welfare

222 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) considers that the prisoner should be transferred to the participating state in the interests of the prisoner’s welfare.
- (2) The Minister must give the corresponding Minister of the participating state 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 receives from the corresponding Minister written notice of consent to the transfer of the prisoner to the participating state.
- (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 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.

223 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) considers that the prisoner should be transferred to the non-participating 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 Commonwealth 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 receives 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.
- (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 222 (5).
- (7) 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.

224 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 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 unless—

- (a) 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
- (b) the transfer of the prisoner is otherwise authorised under that Act.

225 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 the day a similar request is made by the prisoner.

226 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 222 (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 222 (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.

227 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

228 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 ACT Attorney-General.
- (4) However, the Minister need not refer the transfer request to the ACT Attorney-General if it is made within 1 year after a similar request is made by the prisoner.

- (5) If the ACT Attorney-General refuses to consent to the transfer of a prisoner, the ACT Attorney-General must give the prisoner a written statement of 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.

229 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 a request for transfer—
 - (i) to a non-participating territory; or
 - (ii) for the purpose of an arrest warrant issued under a law of the Commonwealth;
- 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.

230 Interstate transfer—order for prisoner to be brought before Magistrates Court

- (1) If the Magistrates Court is satisfied that section 229 (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.

231 Interstate transfer—order of transfer

At a hearing under section 230 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 229 (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.

232 Interstate transfer—review of Magistrates Court decision

- (1) Within 14 days after a decision is made under section 231 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 this section, 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.

233 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 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 unless—

- (a) 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
- (b) the transfer of the prisoner is otherwise authorised under that Act.

234 Interstate transfer—execution of orders for prisoners to be brought before courts

If an order is made under section 230 (1) (Interstate transfer—order for prisoner to be brought before Magistrates Court) or section 232 (5) (Interstate transfer—review of Magistrates Court decision)—

- (a) the person 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.

235 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.

236 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 ACT Attorney-General refuses to consent to the transfer of a prisoner, the ACT Attorney-General must give the prisoner a written statement of 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

237 Interstate transfer—return of prisoner to participating state

- (1) The Minister must, subject to section 238 (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 231 (Interstate transfer—order of transfer) or section 232 (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 a law of the ACT or Commonwealth has been finally dealt with according to law and that the consequences set out in subsection (2) apply.
- (2) For subsection (1) (b), the consequences are that—
- (a) the prisoner did not become liable to serve any sentence of imprisonment in the ACT; or
- (b) 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—
- (i) any translated sentence (other than a translated sentence originally imposed by an ACT court); and
- (ii) any sentence of imprisonment to which the person is subject for an offence against a law of the Commonwealth or a non-participating territory.
- (3) 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 made, 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.

- (4) In deciding the period, or the total period, remaining to be served under a sentence or sentences of imprisonment mentioned in subsection (2) (b)—
- (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.
- (5) 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.

238 Interstate transfer—prisoner’s request to serve sentence in ACT

- (1) Section 237 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
- (c) if the prisoner is a joint prisoner transferred from a non-participating territory—the Commonwealth Attorney-General.

239 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 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 unless—

- (a) 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
- (b) the transfer of the prisoner is otherwise authorised under that Act.

Division 11.1.5 Interstate transfer—operation of transfer orders

240 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 of the prison 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 delivering the prisoner into the custody of the person in charge of that prison.
- (2) An order of transfer under an interstate law, 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 (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 any 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).

241 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.

242 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 by regulation.

243 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 under 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.

244 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.

245 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 314 (Grant of pardons) 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 314.
- (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.

246 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, until 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 taken to be entitled under a remission instrument to any remission of the person's translated sentence for which, until 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 taken into account if—
 - (a) the person subject to the sentence was eligible for remission until 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.

247 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

248 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.

249 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, 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 the 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.

250 Interstate transfer—escape from custody of person being transferred

- (1) A person in the custody of an escort under section 249 who escapes from the custody may be apprehended without warrant by the escort, a police officer or anyone else.
- (2) Subsection (3) applies if a person in custody under section 249—
 - (a) has escaped and been apprehended; or
 - (b) has attempted to escape.
- (3) If this subsection applies, 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—
 - (a) 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
 - (b) for that purpose, order the person to be delivered into the custody of an escort.

- (4) A person who is the subject of a warrant issued under subsection (3) may be detained as an ACT prisoner until the earlier of the following:
- (a) the person is 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.
- (5) If a person who is the subject of a warrant issued under subsection (3) 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.
- (6) 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).
- (7) 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 participating state.

251 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).

252 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 by regulation, 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

253 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 Act by enabling the prisoners to be transferred to and from the ACT.

254 International transfer—meaning of *Commonwealth Act*

In this part:

Commonwealth Act means the *International Transfer of Prisoners Act 1997* (Cwlth).

255 International transfer—terms defined Commonwealth Act

A term defined in the Commonwealth Act has the same meaning in this part.

256 International transfer—Minister's functions

The Minister may exercise any function given to the Minister under the Commonwealth Act.

257 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 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 258.
- (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 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 Act that the officer is authorised to take under that Act.

258 International transfer—arrangements for administration of Commonwealth Act

- (1) The Chief Minister may, in accordance with the Commonwealth 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 Act.
- (2) An arrangement may be varied or ended in accordance with the Commonwealth Act.

259 International transfer—prisoners transferred to Australia

- (1) A prisoner who is transferred to Australia under the Commonwealth 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 law of the Commonwealth.

- (2) Without limiting subsection (1), enforcement laws relating to the following matters apply to a prisoner who is transferred to Australia under the Commonwealth 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 described);
 - (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 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;
- (b) a law of the Commonwealth, a State or another Territory;
- (c) a practice or procedure lawfully observed.

260 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 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—general

261 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.

262 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 licence; or
 - (c) a sentence to the extent that it imposes a fine or other financial penalty (however described); or
 - (d) a sentence to the extent that it requires the making of reparation (however described).
- (3) In this section:
parole order—see section 162.

263 Community-based sentence transfer—definitions ch 12

In this chapter:

community-based sentence—see section 264.

corresponding community-based sentence law—see section 267.

interstate authority—see section 268.

interstate jurisdiction—see section 265.

interstate sentence—see section 266.

jurisdiction—see section 265.

local authority—see section 268.

local register—see section 271.

local sentence—see section 266.

offender, for 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 265.

registration criteria—see section 276.

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 265.

Part 12.2 Transfer of community-based sentences—important concepts

264 Meaning of *community-based sentence*

- (1) A *community-based sentence* is—
 - (a) for this jurisdiction—any of the following:
 - (i) a periodic detention period;
 - (ii) a good behaviour order;
 - (iii) a sentence declared by regulation 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), the following are taken to be a single community-based sentence:
 - (a) a periodic detention period and the sentence of imprisonment for which the period is set;
 - (b) a suspended sentence order under the *Crimes (Sentencing) Act 2005*, section 12 (2), the good behaviour order for the suspended sentence order and the sentence of imprisonment for the suspended sentence order;
 - (c) a combination of 2 or more sentences prescribed by regulation.

265 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 by regulation to be a participating jurisdiction.
- (4) An *interstate jurisdiction* is a participating jurisdiction other than this jurisdiction.

266 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 284.

- (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 281.

267 Meaning of *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 by regulation to be a corresponding community-based sentence law, whether or not the law corresponds, or substantially corresponds, to this chapter.

268 Community-based sentence transfer—local and interstate authorities

- (1) The *local authority* is the person appointed under section 269 as the local authority for this jurisdiction.

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Transfer of community-based sentences—important concepts

Section 268

- (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 Transfer of community-based sentences—administration

269 Community-based sentence transfer—appointment of local authority

The chief executive may appoint a public servant as 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).

270 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.

271 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

272 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.

273 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.

274 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.

275 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.

276 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 by regulation to correspond to the interstate sentence, whether or not the sentence corresponds, or substantially corresponds, to the interstate sentence.

277 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 278; 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 281.

- (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.

278 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.

279 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 satisfied that the preconditions have been met.
- (3) In this section:

required details means the details of the offender and the interstate sentence prescribed by regulation.

280 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.

281 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 by regulation.
- (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

282 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.

283 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.

284 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

285 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.

286 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.

287 Community-based sentence transfer—evidentiary certificates for registration and registered particulars

- (1) A certificate that appears to be signed by or for 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 may state a matter by reference to a date or period.

- (3) A certificate that appears to be signed by or for the local authority or the interstate authority for an interstate jurisdiction, and states any matter prescribed by regulation, is evidence of the matter.
- (4) A certificate that appears to be signed by or for 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 by regulation in the circumstances prescribed by regulation.

Chapter 13 **Release on licence, remission and pardon**

Part 13.1 **Release on licence**

Division 13.1.1 **Release on licence—general**

288 **Application—pt 13.1**

This part applies to an offender if—

- (a) the offender is serving a sentence of life imprisonment for an offence against a territory law; and
- (b) the offender has served at least 10 years of the sentence.

289 **Definitions—pt 13.1**

In this Act:

core condition, of an offender's licence, means a core condition under section 301 (Release on licence—core conditions).

licence means a licence under section 295 (Release on licence—decision by Executive).

licence release date, for an offender—see section 296 (2) (b).

release on licence obligations, of an offender, means the offender's obligations under section 300 (Release on licence obligations).

Division 13.1.2 Grant of licence

290 Release on licence—request for board recommendation

- (1) The Attorney-General may, in writing, ask the board to recommend whether an offender should be released from imprisonment on licence.
- (2) If the board receives a request under this section, the board must hold an inquiry.

291 Release on licence—notice of board inquiry

- (1) Before starting an inquiry in relation to the release of an offender on licence, the board must give written notice of the inquiry to each of the following:
 - (a) the offender;
 - (b) the chief executive;
 - (c) the director of public prosecutions.
- (2) The notice must—
 - (a) include invitations for the offender and the chief executive to make submissions to the board by a stated date for the inquiry; and
 - (b) be accompanied by a copy of any report or other document intended to be used by the board in making its recommendations about the offender's release on licence.
- (3) However, subsection (2) (b) is subject to section 192 (Confidentiality of board documents).
- (4) The board may hold the inquiry whether or not the offender makes a submission in accordance with the invitation.

292 Release on licence—board to seek victim’s views

- (1) Before starting an inquiry into an application for the release of an offender on licence, the board must take reasonable steps to give notice of the inquiry to each registered victim of the offender.
- (2) The board may give notice of the inquiry to any other victim of the offender if satisfied the circumstances justify giving the victim notice of the inquiry.
- (3) For this section, the chief executive may make an arrangement with the board for a public servant—
 - (a) to assist the board for this section; or
 - (b) to assist any victim of the offender, or any member of the victim’s family, to make a submission, or tell the board about any concern, in accordance with the notice.

Example for s (3)

an arrangement for a victim liaison officer to assist the board or victims

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) If a victim of the offender is a child under 15 years old—
 - (a) the chief executive may give notice of the inquiry to a person (a **relevant person**) who has parental responsibility for the victim under the *Children and Young People Act 1999*, section 18; and
 - (b) a relevant person may make a submission, or tell the board about any concern, in accordance with the notice on behalf of the victim.
- (5) Subsection (4) does not limit the cases in which the board may give information to a person acting for a victim or a member of a victim’s family.

- (6) The notice must include the following:
- (a) an invitation to the victim to—
 - (i) make a written submission to the board about the granting of a licence for the offender, including the likely effect on the victim, or on the victim’s family, if the licence were to be granted; 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;
 - (b) a statement to the effect that any submission made, or concern expressed, in writing to the board within the period stated in the notice will be considered in recommending to the Attorney-General—
 - (i) whether a licence should be granted to the offender; and
 - (ii) if a licence is granted—the conditions (if any) that should be imposed on the licence by the Executive;
 - (c) information about the offender to assist the victim, or a member of the victim’s family, to make a submission, or tell the board about any concern, under paragraph (a);
 - (d) information about any assistance available to the victim or family member to make the submission, or tell the board about any concern, under paragraph (a).

Examples of information for par (c)

- 1 the offender’s conduct while serving the sentence
- 2 the core conditions of a licence

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).

- (7) For subsection (6) (b), the period stated must be a reasonable time (not less than 7 days after the day the victim is given the notice) to allow the victim or family member to make a written submission, or express concern, to the board in writing.
- (8) The notice may include anything else the board considers appropriate.

293 Release on licence—criteria for board recommendations

- (1) The board may make a recommendation for the release of an offender on licence only if it considers that the offender's release is appropriate, having regard to the principle that the public interest is of primary importance.
- (2) In deciding whether to recommend the offender's release on licence, the board must consider the following matters:
 - (a) any relevant recommendation, observation and comment made by the sentencing court;
 - (b) any submission made, and concern expressed, to the board by a victim;
 - (c) the likely effect on any victim, and on the victim's family, of the offender being released on licence, and, in particular, any concern, of which the board is aware, expressed by or for a victim, or the victim's family, about the need for protection from violence or harassment by the offender;
 - (d) any report required by regulation in relation to the release of the offender on licence;
 - (e) any other report prepared by or for the Territory in relation to the release of the offender on licence;
 - (f) the offender's conduct while serving the offender's sentence of imprisonment;

- (g) the offender's participation in activities while serving the offender's sentence of imprisonment;
 - (h) the offender's preparedness to undertake further activities while released on licence;
 - (i) the likelihood that, if released on licence, the offender will commit further offences;
 - (j) the likelihood that, if released on licence, the offender will comply with any condition to which the licence would be subject;
 - (k) the offender's acceptance of responsibility for the offence;
 - (l) any special circumstances in relation to the offender;
 - (m) anything else prescribed by regulation.
- (3) Subsection (2) does not limit the matters that the board may consider.

294 Release on licence—board recommendations

- (1) After conducting an inquiry in relation to the release of an offender on licence, the board must recommend, in writing, to the Executive whether the offender should be released from imprisonment on licence.
- (2) If the board recommends the offender's release on licence, the board may recommend any condition, not inconsistent with this Act or the *Crimes (Sentencing) Act 2005*, that the board considers appropriate for the offender's release on licence.

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

- (3) The board may also make a recommendation about anything else it considers appropriate.

Examples

- 1 if the board recommends against the offender's release, the board may recommend when it might be appropriate to reconsider the offender's release
- 2 if the board recommends the offender's release, the board may recommend whether (and when) the board should review the appropriateness of the offender being at large under the licence

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) A recommendation by the board must be accompanied by its reasons for the recommendation.

295 Release on licence—decision by Executive

- (1) In deciding whether to release an offender on licence, the Executive—
 - (a) must consider any recommendation by the board under section 294 and its reasons for the recommendation; and
 - (b) may consider anything else it considers appropriate.
- (2) The Executive may grant, or refuse to grant, the offender a licence to be released from imprisonment under the offender's sentence.
- (3) The Executive may impose any condition it considers appropriate on a licence.

296 Release on licence—grant

- (1) If the Executive decides to grant a licence to an offender, the Executive must give the licence to the offender.
- (2) A licence for an offender must be in writing and include the following:
 - (a) the offender's full name;

- (b) the date (the *licence release date*) for the offender's release from imprisonment on licence;
 - (c) any condition imposed on the licence by the Executive.
- (3) The licence may also include any other information the Executive considers appropriate.

297 Explanation of licence

- (1) This section applies if the Executive grants an offender a licence.
- (2) 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 release on licence obligations; and
 - (b) the consequences if the offender breaches the obligations.
- (3) The board must ensure that a written record of the explanation is given to the offender.

298 Release on licence—notice of Executive decision

- (1) This section applies if the Executive makes a decision to grant, or refuse to grant, an offender a licence.
- (2) The chief executive must give written notice of the Executive's decision to each of the following:
- (a) the offender;
 - (b) the board;
 - (c) the director of public prosecutions;
 - (d) the chief police officer.
- (3) The chief executive may also give notice of the Executive's decision to any other entity the chief executive considers appropriate.

- (4) The board must, in writing, take reasonable steps to tell each relevant victim of the offender, as soon as is practicable, about—
- (a) the Executive’s decision; and
 - (b) if the Executive grants a licence to the offender—
 - (i) the offender’s licence release date; and
 - (ii) in general terms, the offender’s release on licence obligations.
- (5) The board may also tell a relevant victim the general area where the offender will, on release, live.
- (6) If a victim of the offender is a child under 15 years old, the chief executive may give the information to a person who has parental responsibility for the victim under the *Children and Young People Act 1999*, section 18.
- (7) Subsection (6) does not limit the cases in which the board may give information to a person acting for a victim.
- (8) In this section:
- relevant victim*** means each of the following:
- (a) a victim of the offender who made a submission to the board, or told the board about any concern, under section 292 (Release on licence—board to seek views of victims);
 - (b) any other victim of the offender that the board is aware has expressed concern, or has had concern expressed on their behalf, about the need for the victim, or the victim’s family, to be protected from violence or harassment by the offender;
 - (c) a registered victim of the offender.

Division 13.1.3 Operation of licences

299 Release authorised by licence

- (1) A licence for an offender authorises anyone having custody of the offender for the offender's sentence of imprisonment to release the offender in accordance with the licence.
- (2) However, the licence does not authorise the release of the offender if the offender is required to be kept in custody in relation to another offence against a territory law, or an offence against a law of the Commonwealth, a State or another Territory.
- (3) The offender must be released from imprisonment on the offender's licence release date.
- (4) The offender may be released from imprisonment at any time on the offender's licence release date.
- (5) However, if the offender's licence release date is not a working day at the place of imprisonment, the offender may be released from the imprisonment at any time during the last working day at that place before the release date if the offender asks to be released on that day.

Note **Working day** is defined in the Legislation Act, dict, pt 1.

300 Release on licence obligations

An offender released on licence must—

- (a) comply with the licence, including—
 - (i) the core conditions of the licence; and
 - (ii) any condition imposed on the licence by the Executive; and

- (b) comply with any other requirement under this Act or the *Corrections Management Act 2005* that applies to the offender.

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

301 Release on licence—core conditions

- (1) The core conditions of an offender's licence are as follows:
- (a) the offender must not commit—
 - (i) an offence against a territory law, or a law of the Commonwealth, a State or another Territory, that is punishable by imprisonment; or
 - (ii) an offence outside Australia against a law of a place outside Australia that, if it had been committed in Australia, would be punishable by imprisonment;
 - (b) if the offender is charged with an offence against a law in force in Australia or elsewhere—the offender must tell the chief executive about the charge as soon as possible, but within 2 days after the day the offender becomes aware of the charge;
 - (c) any change in the offender's contact details is approved by the chief executive under subsection (2);
 - (d) the offender must comply with any direction given to the offender by the chief executive under this Act or the *Corrections Management Act 2005* in relation to the offender's licence;
 - (e) the offender must appear before the board as required, or agreed by the offender, under section 205 (Appearance by offender at board hearing);

- (f) any condition prescribed by regulation that applies to the offender.
- (2) If an offender applies to the chief executive for approval for a change in the offender's contact details, the chief executive must—
 - (a) approve, or refuse to approve, the change to which the application relates; and
 - (b) give the offender notice of the decision, orally or in writing.
- (3) An application for approval under subsection (2)—
 - (a) may be made orally or in writing; and
 - (b) must be made—
 - (i) before the change to which it applies; or
 - (ii) if it is not possible to apply before the change—as soon as possible after, but no later than 1 day after, the day of the change.
- (4) 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.

302 Release on licence—chief executive directions

- (1) For this part, the chief executive may give directions, orally or in writing, to the offender.
- (2) To remove any doubt, this section does not limit section 321 (Chief executive directions—general).

303 Release on licence—sentence not discharged

While released on the licence, an offender is taken to be serving the offender's sentence.

Division 13.1.4 Supervision of licensees

304 Arrest without warrant—breach of release on licence obligations

- (1) This section applies if a police officer believes, on reasonable grounds, that an offender has breached any of the offender's release on licence obligations.
- (2) The police officer may arrest the offender without a warrant.
- (3) If the police officer arrests the offender, the police officer must, as soon as practicable, bring the offender before—
 - (a) the board; or
 - (b) if the board is not sitting—a magistrate.

Note For remanding or granting bail to the offender, see the *Bail Act 1992*.

305 Arrest warrant—breach of release on licence obligations

- (1) A judge or magistrate may issue a warrant for an offender's arrest if satisfied by information on oath that there are reasonable grounds for suspecting that the offender has breached, or will breach, any of the offender's release on licence obligations.
- (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 board.
- (3) A police officer who arrests the offender under the warrant, must, as soon as practicable, bring the offender before—
 - (a) the board; or
 - (b) if the board is not sitting—a magistrate.

Note For remanding or granting bail to the offender, see the *Bail Act 1992*.

306 Board inquiry—review of release on licence

- (1) The board may, at any time, conduct an inquiry to review the offender's release on licence.
- (2) Without limiting subsection (1), the board may conduct an inquiry to consider—
 - (a) whether release on licence continues to be appropriate for the offender having regard to any change in circumstances affecting the offender; or
 - (b) whether the offender has breached any of the offender's release on licence obligations.
- (3) The board may conduct the inquiry—
 - (a) on its own initiative; or
 - (b) on application by the offender or the chief executive.
- (4) If the offender is arrested under section 304 (Arrest without warrant—breach of release on licence obligations) or section 305 (Arrest warrant—breach of release on licence obligations), the board must review the offender's release on licence as soon as practicable.

307 Board inquiry—notice of review of release on licence

- (1) Before starting an inquiry under section 306 in relation to an offender, the board must give written notice of the inquiry to each of the following:
 - (a) the offender;
 - (b) the chief executive;
 - (c) the director of public prosecutions.
- (2) The notice must include—
 - (a) the reasons for the inquiry; and
 - (b) invitations for the offender and the chief executive to make submissions to the board by a stated date for the inquiry.

308 Board powers—review of release on licence

- (1) After conducting an inquiry under section 306 (Board inquiry—review of release on licence) to review an offender’s release on licence, the board may do 1 or more of the following:
 - (a) take no further action;
 - (b) give the offender a warning about the need to comply with the offender’s release on licence obligations;
 - (c) give the chief executive directions about the offender’s supervision;
 - (d) change the offender’s release on licence obligations by imposing a condition on the licence or amending a condition imposed on the licence by the Executive;
 - (e) cancel the offender’s licence.

Examples of conditions for par (d)

- 1 a condition prohibiting association with a particular person or being near a particular place
- 2 a condition that the offender participates in an activity

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 condition imposed or amended under subsection (1) (d) must not be inconsistent with a core condition of the licence.

309 Release on licence—automatic cancellation of licence for ACT offence

- (1) This section applies if, while an offender's licence is in force, the offender is convicted or found guilty by a court of an offence against a territory law that is punishable by imprisonment.
- (2) The licence is automatically cancelled when the offender is convicted or found guilty of the offence.

Note The court must make an order under s 312 (Cancellation of licence—recommittal to full-time detention).

310 Release on licence—cancellation of licence for non-ACT offence

- (1) This section applies if, while an offender's licence is in force, the board decides that the offender has been convicted or found guilty of—
 - (a) an offence against a law of the Commonwealth, a State or another Territory that is punishable by imprisonment; or
 - (b) an offence outside Australia against a law of a place outside Australia that, if it had been committed in Australia, would be punishable by imprisonment;

- (2) Without limiting section 308 (Board powers—review of release on licence), the board must cancel the offender’s licence as soon as practicable under that section.

311 Release on licence—notice of board’s decision on review

- (1) The board must give written notice of a decision under section 308 (Board powers—review of release on licence) in relation to an offender to each of the following:
- (a) the offender;
 - (b) the chief executive;
 - (c) the director of public prosecutions;
 - (d) the chief police officer.
- (2) If the decision is to cancel the offender’s licence, the notice of the decision must state where and when the offender must report for full-time detention because of the cancellation.
- (3) The notice must include—
- (a) the board’s reasons for the decision; and
 - (b) the date when the decision takes effect.
- Note* For the content of a statement of reasons, see the Legislation Act, s 179.
- (4) The chief executive may also give notice of the board’s decision to any other entity the chief executive considers appropriate.
- (5) If the decision is to cancel the offender’s licence, the board must also take reasonable steps to give each relevant victim under section 298 (Release on licence—notice of Executive decision) notice of the cancellation.

312 Cancellation of licence—recommittal to full-time detention

- (1) This section applies if the board cancels an offender's licence.
- (2) The board must order that the offender be placed in the chief executive's custody to serve the remainder of the offender's sentence by imprisonment under full-time detention.
- (3) If the offender is not in lawful custody, the board may also issue a warrant for the offender to be arrested and placed in the chief executive's custody.
- (4) The warrant must—
 - (a) be in writing signed by a judicial member of the board; and
 - (b) be directed to all escort officers or a named escort officer.
- (5) An escort officer who arrests the offender under this section must place the offender in the chief executive's custody as soon as practicable.

Part 13.2 Remissions and pardons

313 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.

314 Grant of pardons

- (1) The Executive may, in writing, pardon 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.

Chapter 14 Community service work— general

315 Definitions—ch 14

- (1) In this Act:

community service work—see section 316.

- (2) In this chapter:

person involved, in community service work, includes each of the following (other than an offender doing the work):

- (a) an entity for whose benefit the work is done;
- (b) an entity who directs or supervises the work;
- (c) an entity that owns or occupies the premises or land where the work is done.

316 Meaning of *community service work*

A regulation may declare work to be *community service work*.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision for different categories (see Legislation Act, s 48).

317 Protection from liability for people involved in community service work

- (1) A person involved in community service work is not civilly liable to someone (other than the offender doing the work) for conduct engaged in by the offender in doing the work.

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

- (2) A person involved in community service work is not civilly liable to the offender for conduct engaged in by the person in relation to the work.
- (3) Any civil liability that would, apart from this section, attach to the person involved attaches instead to the Territory.
- (4) However, subsections (1) and (2) do not apply if—
 - (a) the community service work was not approved by the chief executive; or
 - (b) the conduct was intended (whether by itself or with other conduct) to cause injury, loss or damage.

318 Community service work not to displace employees

The chief executive must not direct or allow an offender to do community service work if the chief executive believes, on reasonable grounds, that, in doing the work, the offender would take the place of someone who would otherwise be employed to do the work.

319 No employment contract for community service work

- (1) To remove any doubt, community service work, and any arrangement under this Act or the *Corrections Management Act 2005* in relation to community service work, is not taken to create a contract of employment.
- (2) In particular, a contract of employment is not taken to exist between the following in relation to community service work by an offender:
 - (a) the offender and the Territory;
 - (b) the offender and a person involved in the work;
 - (c) the Territory and a person involved in the work.

320 Community service work—occupational health and safety

- (1) The chief executive must ensure, as far as practicable, that the conditions for doing community service work comply with requirements under the *Occupational Health and Safety Act 1989* in relation to the doing of the work by employees.
- (2) In particular, the chief executive must ensure that arrangements for an offender do to community service work take account, as far as practicable, of the need—
 - (a) to secure the health, safety and welfare of the offender; and
 - (b) to protect people at or near community service work workplaces from risks to health or safety arising out of the activities of the offender.
- (3) A regulation may provide for the application of the *Occupation Health and Safety Act 1989* in relation to community service work, including modifications of the Act in its application in relation to an offender doing community service work.

Chapter 15 Miscellaneous

321 Chief executive directions—general

- (1) For this Act, the chief executive may give a direction to a person who is in the chief executive's custody under this Act.
- (2) Without limiting subsection (1), the chief executive may give a direction that the chief executive considers necessary for any of the following:
 - (a) the welfare or safe custody of the person or anyone else;
 - (b) the security or good order of a correctional centre;
 - (c) ensuring compliance with any requirement under this Act or any other territory law.
- (3) A direction may be given orally or in writing and may apply to a particular person or 2 or more people.

322 Criminology or penology research

- (1) In this section:

approved researcher—a person is an *approved researcher* if the chief executive approves the conduct of research by the person under this section.

divulge includes communicate.

protected information means information about a person (the *protected person*) that—

- (a) is disclosed to, or obtained by, an approved researcher because the chief executive approves the conduct of research by the person under this section; and

- (b) identifies the protected person or would allow the identity of the protected person to be worked out.

research means research in relation to criminology or penology, including—

- (a) the administration (including the operation and management) of correctional centres; and
 - (b) services provided to a person in the chief executive's custody under this Act or the *Corrections Management Act 2005*.
- (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 custody, or being supervised, under this Act or the *Corrections Management Act 2005*.
- (3) In deciding whether to approve the conduct of research by the person, the chief executive may have regard to any recommendation made by an ethics committee established by the chief executive.
- (4) If the chief executive approves the conduct of research by the 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 who is or has been an approved researcher commits an offence if the person contravenes a condition of the person's approval under this section.

Maximum penalty: 50 penalty units.

- (6) A person who is or has been an approved researcher commits an offence if the person—
- (a) does something that divulges protected information about someone else; and
 - (b) is reckless about whether—
 - (i) the information is protected information about someone else; and
 - (ii) doing the thing would result in the information being disclosed.

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

- (7) Subsection (6) does not apply to the divulging of protected information with the person's consent.

323 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.

324 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).

Note Forms for use in relation to courts may be approved under the *Court Procedures Act 2004*, s 8.

- (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.

325 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation 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) A regulation may create offences and fix maximum penalties of not more than 30 penalty units for the offences.

Chapter 16 Transitional

Part 16.1 Preliminary

326 Purpose—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 with which the offender was charged 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 with which the offender was charged before the commencement day.

Note The *Crimes (Sentencing) Act 2005*, s 140 (Application of Act—charges after commencement) provides for the application of the territory law as in force immediately before the commencement day in relation to proceedings for charges laid before the commencement day.

327 Application of Act to offenders and other people in custody

- (1) This Act applies in relation to sentenced offenders and their sentences, whether the offender was sentenced before, on or after the commencement day.
- (2) This Act applies in relation to offenders remanded in custody, whether the offender was remanded before, on or after the commencement day.

328 Definitions—ch 16

In this chapter:

amend, a direction or order of a court, the board, the chief executive or the director of corrective services, 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 2005*, chapter 10 (Transitional) commences.

consequential amendments Act means the *Crimes (Sentencing Legislation) Consequential Amendments Act 2005*.

director of corrective services means the director of corrective services under the *Periodic Detention Act 1995* (repealed).

ends—a sentence administration proceeding **ends** when—

- (a) a court, or the 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, pt 2.4 and pt 2.5 (which deal with the administration and performance of home detention orders) and pt 3.3, pt 3.4 and pt 3.5 (which deal with the making and administration of parole orders and the performance of parole)
- 3 the *Periodic Detention Act 1995*, pt 2 and pt 3 (which deal with the making and administration of periodic detention orders and the performance of periodic detention)

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).

recognisance includes any form of giving security.

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 board, the chief executive or the director of corrective services:

- (a) a proceeding in relation to a breach of the order or direction;
- (b) 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 at any time before the commencement day;
- (c) 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 at any time before the commencement day;
- (d) a proceeding for leave 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) for 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.

Part 16.2 Transitional—detention

329 Relationship with Corrections Management Act—pt 16.2

This part is additional to, and does not limit, the transitional provisions of the *Corrections Management Act 2005*.

330 Full-time imprisonment—sentenced offenders

- (1) This section applies if—
 - (a) an offender is charged with an offence before the commencement day (whether the proceeding for the offence starts or ends before, on or after the commencement day); and
 - (b) a court sentences the offender under the old sentence administration law to full-time imprisonment in a correctional centre (however described); and
 - (c) if the sentence was imposed before the commencement day—the term of the sentence did not end before the commencement day.

Note A court may sentence an offender to imprisonment under the old sentencing law if the offender was charged with the offence before the commencement day (see *Crimes (Sentencing) Act 2005*, s 140 (2) (Application of Act—charges after commencement)).

- (2) If the sentence was imposed before the commencement day, this Act applies in relation to the offender on and after the commencement day.
- (3) If the sentence is imposed on or after the commencement day, this Act applies in relation to the offender from the time when the sentence is imposed.

331 Full-time imprisonment—remandees

- (1) This section applies if—
 - (a) an offender is charged with an offence before the commencement day; and
 - (b) a court makes an order for the remand of the offender in custody for the offence (whether the remand starts or ends before, on or after the commencement day); and
 - (c) if the order was made before the commencement day—the offender is still on remand for the alleged offence immediately before the commencement day.
- (2) If the order for remand was made before the commencement day, this Act applies in relation to the offender’s remand 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 offender’s remand from the time when the order was made.

332 Home detention orders—Rehabilitation of Offenders (Interim) Act

- (1) In this section:
relevant interim Act provisions means—
 - (a) a provision of the *Rehabilitation of Offenders (Interim) Act 2001* (the *interim Act*), other than chapter 3 (Nonparole periods and parole), chapter 4 (Sentence Administration Board) and chapter 5 (Miscellaneous); and
 - (b) the *Rehabilitation of Offenders (Interim) Regulation 2002*, other than section 8 (Standard conditions of parole—Act, s 38 (1) (a)).

young offender—see the *Children and Young People Act 1999*, section 64.

- (2) This section applies to an offender if—
- (a) a court made an order under the interim Act, section 6 (Imprisonment by way of home detention) or section 7 (Remand by way of home detention) for the offender; and
 - (b) the order is, immediately before the commencement day, still in force.

Note A court cannot make an home detention order after the commencement of the *Crimes (Sentencing) Act 2005* (see that Act, s 140 (3) (Application of Act—charges after commencement)).

- (3) Despite the repeal of the interim Act—
- (a) the order continues in force; and
 - (b) the relevant interim Act provisions as in force immediately before the commencement day are taken, on and after the commencement day, to continue to apply in relation to the administration, performance and enforcement of the order.
- (4) If the offender is a sentenced offender (other than a young offender), the offender is, for chapter 7 (Parole), taken to be a full-time detainee.

Note A nonparole period set under the interim Act, s 31 is taken to be a nonparole period set under the *Crimes (Sentencing) Act 2005*, s 65 (see that Act, s 141).

333 Existing home detention orders—community-based sentences for this jurisdiction

For section 264 (a) (Meaning of *community-based sentence*), an order to which section 332 (Home detention orders—Rehabilitation of Offenders (Interim) Act) applies is a community-based sentence for this jurisdiction.

334 Periodic detention orders—Periodic Detention Act, s 4

- (1) This section applies if—
- (a) an offender is charged with an offence before the commencement day (whether the proceeding for the offence starts or ends before, on or after the commencement day); and
 - (b) a court makes an order under the *Periodic Detention Act 1995*, section 4 (the *periodic detention order*) for the offender; and
 - (c) if the order was made before the commencement day—the order is, immediately before the commencement day, 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 if the offender was charged with the offence before the commencement day (see *Crimes (Sentencing) Act 2005*, s 140 (2) (Application of Act—charges after commencement)).

- (2) If the periodic detention order was made before the commencement day, then, on and after the commencement day—
- (a) the order (as in force immediately before the commencement day) is taken to be the setting of a periodic detention period under the *Crimes (Sentencing) Act 2005*; and
 - (b) the old core conditions, and any additional conditions included in the order (as in force immediately before the commencement day), apply to the offender for the periodic detention period; and
 - (c) the periodic detention period ends when the offender has served the number of detention periods to be served under the order (as in force immediately before the commencement day), unless the periodic detention period is amended under this Act; and

- (d) the number of detention periods required to be served by the offender under the periodic detention period is the number of detention periods remaining to be served under the 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 offender for periodic detention period; and
 - (f) section 58 (Failing to perform periodic detention—extension of periodic detention period) applies to the offender only in relation to a detention period after the commencement of this section.
- (3) However, if the periodic detention order was made before the commencement day, and, on the commencement day, a sentence administration proceeding had started (but not ended) under the *Periodic Detention Act 1995* in relation to the order, then, on and after the commencement day—
- (a) the proceeding may be continued under the *Periodic Detention Act 1995*; and
 - (b) the *Periodic Detention Act 1995* applies in relation to the proceeding as if this Act and the consequential amendments Act had not been enacted; and
- Note* The consequential amendments Act repeals the *Periodic Detention Act 1995*.
- (c) the order continues in force, subject to the *Periodic Detention Act 1995*, under that Act until the proceeding ends; 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; and

- (e) if, as part of the proceeding, the court makes an order under the *Periodic Detention Act 1995*, section 32 (Conditional release), the order is, from immediately after the time the proceeding ends, taken to be a s 403 (1) (a) order to which section 337 (2) (a) to (e) (Conditional release of convicted offenders—Crimes Act, s 403 (1) (a)) applies.
- (4) If the periodic detention order is made on or after the commencement day—
- (a) the order is, from immediately after the time it is made, taken to be the setting of a periodic detention period under the *Crimes (Sentencing) Act 2005* for the offender; and
 - (b) any conditions included in the order apply to the offender for the periodic detention period; and
 - (c) the periodic detention period ends when the offender has served the number of detention periods to be served under the order, unless the periodic detention period is amended under this Act; and
 - (d) the new core conditions apply to the offender for the periodic detention period; and
 - (e) the old core conditions do not apply to the offender.
- (5) To remove any doubt, this Act applies in relation to the periodic detention period mentioned in subsection (2) or (4) as if the period has been set under the *Crimes (Sentencing) Act 2005*, subject to subsection (2) (f) and subsection (3) (c) (if applicable).
- (6) In this section:
- new core conditions***, in relation to the periodic detention period, mean the core conditions under section 43 (Periodic detention—core conditions).

old core conditions, in relation to the periodic detention order, mean the core conditions for the order under the *Periodic Detention Act 1995*, section 5.

335 Conditional release—Periodic Detention Act, s 32

- (1) This section applies if—
 - (a) a court made an order under the *Periodic Detention Act 1995*, section 32 (a *conditional release order*); and
 - (b) the order is, immediately before the commencement day, still in force.
- (2) On and after the commencement day, the conditional release order is taken to be a s 403 (1) (a) order to which section 337 (2) (a) to (e) (Conditional release of convicted offenders—Crimes Act, s 403 (1) (a)) applies.
- (3) However, if, on the commencement day, a sentence administration proceeding had started (but not ended) under the old sentence administration law in relation to the conditional release order, then, 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 in relation to the proceeding as if this Act and the consequential amendments Act had not been enacted; and

Note The consequential amendments Act repeals the old sentence administration law.

 - (c) the order continues in force under the *Periodic Detention Act 1995* until the proceeding ends, subject to the old sentence administration law; and

- (d) the order (as amended, if at all) is, from immediately after the time the proceeding ends, taken to be a s 403 (1) (a) order to which section 337 (2) (a) to (e) applies, unless the order ceases to be in force because of the proceeding.

Part 16.3 Transitional—non-detention

336 Conditional release without conviction—Crimes Act, s 402 (1)

- (1) This section applies if—
- (a) an offender is charged with an offence before the commencement day (whether the proceeding for the offence starts or ends before, on or after the commencement day); and
 - (b) 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
 - (c) if the s 402 (1) order was made before the commencement day—the order is, immediately before the commencement day, 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 offender was charged with the offence before the commencement day (see *Crimes (Sentencing) Act 2005*, s 140 (2) (Application of Act—charges after commencement)).

- (2) If the s 402 (1) order was made before the commencement day, and the offender has, before the commencement day, entered into a recognisance as required by the order, then, 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 2005* that is a good behaviour order under that Act; and
 - (b) the recognisance is taken to be an undertaking signed under the *Crimes (Sentencing) Act 2005*, section 13 (2) for the order; and

- (c) the good behaviour order 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 order 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; and
 - (e) the core conditions under section 86 (Good behaviour—core conditions) do not apply to the good behaviour order.
- (3) If the s 402 (1) order was made before the commencement day, and, after the commencement day, 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 2005* 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 an undertaking signed under the *Crimes (Sentencing) Act 2005*, section 13 (2) for the order; and
 - (c) the good behaviour order 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 order 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 section 86 (Good behaviour—core conditions) apply to the good behaviour order.
- (4) If the s 402 (1) order was made before the commencement day, and the offender fails to enter into a recognisance in accordance with the order after the commencement day, the *Crimes (Sentencing) Act 2005*, section 105 (Good behaviour—consequences of failure to sign undertaking) applies to the offender as if the offender had failed to sign an undertaking under that Act, section 13 (2) for the order.
- (5) 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, then, on and after the commencement day—
- (a) the proceeding may be continued under the *Crimes Act 1900*; and
 - (b) the *Crimes Act 1900* applies to the proceeding as if this Act and the consequential amendments Act had not been enacted; and
- Note* The consequential amendments Act repeals the relevant provisions of the *Crimes Act 1900*.
- (c) the order and the recognisance (if any) entered into under the order continue in force, subject to the *Crimes Act 1900*, under that Act until the proceeding ends; 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.

- (6) 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 2005* 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 an undertaking signed under the *Crimes (Sentencing) Act 2005*, section 13 (2) for the order; and
 - (c) the good behaviour order 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 order 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 section 86 (Good behaviour—core conditions) apply to the good behaviour order.
- (7) 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, the *Crimes (Sentencing) Act 2005*, section 105 (Good behaviour—consequences of failure to sign undertaking) applies to the offender as if the offender had failed to sign an undertaking under that Act, section 13 (2) for the order.
- (8) To remove any doubt, this Act applies in relation to a good behaviour order mentioned in subsection (2), (3) or (6) as if the offender had signed an undertaking under the *Crimes (Sentencing) Act 2005*, section 13 (2) for the order.

337 Conditional release of convicted offenders—Crimes Act, s 403 (1) (a)

- (1) This section applies if—
- (a) an offender is charged with an offence before the commencement day (whether the proceeding for the offence starts or ends before, on or after the commencement day); and
 - (b) 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
 - (c) if the s 403 (1) (a) order was made before the commencement day—the order is, immediately before the commencement day, 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 offender was charged with the offence before the commencement day (see *Crimes (Sentencing) Act 2005*, s 140 (2) (Application of Act—charges after commencement)).

- (2) If the s 403 (1) (a) order was made before the commencement day, and the offender has, before the commencement day, entered into a recognisance as required by the order, then, 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 2005*; and
 - (b) the recognisance is taken to be an undertaking signed under the *Crimes (Sentencing) Act 2005*, section 13 (2) for the order; and

- (c) the good behaviour order 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 order 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 section 86 (Good behaviour—core conditions) do not apply to the good behaviour order.
- (3) If the s 403 (1) (a) order was made before the commencement day, and, after the commencement day, 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 2005*; and
 - (b) the recognisance is, from immediately after the time it is entered into, taken to be an undertaking signed under the *Crimes (Sentencing) Act 2005*, section 13 (2) for the order; and
 - (c) the good behaviour order 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 order 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 section 86 (Good behaviour—core conditions) apply to the good behaviour order.
- (4) If the s 403 (1) (a) order was made before the commencement day, and the offender fails to enter into a recognisance in accordance with the order after the commencement day, the *Crimes (Sentencing) Act 2005*, section 105 (Good behaviour—consequences of failure to sign undertaking) applies to the offender as if the offender had failed to sign an undertaking under that Act, section 13 (2) for the order.
- (5) 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, then, on and after the commencement day—
- (a) the proceeding may be continued under the *Crimes Act 1900*; and
- (b) the *Crimes Act 1900* applies to the proceeding as if this Act and the consequential amendments Act had not been enacted; and
- Note* The consequential amendments Act repeals the relevant provisions of the *Crimes Act 1900*.
- (c) the order and the recognisance (if any) entered into under the order continue in force, subject to the *Crimes Act 1900*, under that Act until the proceeding ends; 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.

- (6) 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 2005*; and
 - (b) the recognisance is, from immediately after the time it is entered into, taken to be an undertaking signed under the *Crimes (Sentencing) Act 2005*, section 13 (2) for the order; and
 - (c) the good behaviour order 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 order 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 section 86 (Good behaviour—core conditions) apply to the good behaviour order.
- (7) 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, the *Crimes (Sentencing) Act 2005*, section 105 (Good behaviour—consequences of failure to sign undertaking) applies to the offender as if the offender had failed to sign an undertaking under that Act, section 13 (2) for the order.
- (8) To remove any doubt, this Act applies in relation to a good behaviour order mentioned in subsection (2), (3) or (6) as if the offender had signed an undertaking under the *Crimes (Sentencing) Act 2005*, section 13 (2) for the order.

338 Conditional release and suspended sentences—Crimes Act, s 403 (1) (b)

- (1) This section applies if—
- (a) an offender is charged with an offence before the commencement day (whether the proceeding for the offence starts or ends before, on or after the commencement day); and
 - (b) 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 directing the offender's release and requiring the offender to enter into a recognisance; and
 - (c) if the s 403 (1) (b) order was made before the commencement day—the order is, immediately before the commencement day, 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 offender was charged with the offence before the commencement day (see *Crimes (Sentencing) Act 2005*, s 140 (2) (Application of Act—charges after commencement)).

- (2) If the s 403 (1) (b) order was made before the commencement day, and the offender has, before the commencement day, entered into a recognisance as required by the order, then, 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 both—
 - (i) a suspended sentence order under the *Crimes (Sentencing) Act 2005* suspending the offender's sentence; and
 - (ii) a good behaviour order under the *Crimes (Sentencing) Act 2005*; and

- (b) the recognisance is taken to be an undertaking signed under the *Crimes (Sentencing) Act 2005*, section 13 (2) for the good behaviour order; and
 - (c) the good behaviour order 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 suspended sentence order and the term of the good behaviour order end 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 section 86 (Good behaviour—core conditions) do not apply to the good behaviour order.
- (3) If the s 403 (1) (b) order was made before the commencement day, and, after the commencement day, 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 both—
 - (i) a suspended sentence order under the *Crimes (Sentencing) Act 2005* suspending the offender's sentence; and
 - (ii) a good behaviour order under the *Crimes (Sentencing) Act 2005*; and
 - (b) the recognisance is, from immediately after the time it is entered into, taken to be an undertaking signed under the *Crimes (Sentencing) Act 2005*, section 13 (2) for the good behaviour order; and

- (c) the good behaviour order 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 suspended sentence order and the term of the good behaviour order end 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 section 86 (Good behaviour—core conditions) apply to the good behaviour order.
- (4) If the s 403 (1) (b) order was made before the commencement day, and the offender fails to enter into a recognisance in accordance with the order after the commencement day, the *Crimes (Sentencing) Act 2005*, section 105 (Good behaviour—consequences of failure to sign undertaking) applies to the offender as if the offender had failed to sign an undertaking under that Act, section 13 (2) for the order.
- (5) 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, then, on and after the commencement day—
- (a) the proceeding may be continued under the *Crimes Act 1900*; and
 - (b) the *Crimes Act 1900* applies to the proceeding as if this Act and the consequential amendments Act had not been enacted; and

Note The consequential amendments Act repeals the relevant provisions of the *Crimes Act 1900*.

- (c) the order and the recognisance (if any) entered into under the order continue in force, subject to the *Crimes Act 1900*, under that Act until the proceeding ends; 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.
- (6) 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 both—
 - (i) a suspended sentence order under the *Crimes (Sentencing) Act 2005* suspending the offender's sentence; and
 - (ii) a good behaviour order under the *Crimes (Sentencing) Act 2005*; and
 - (b) the recognisance is, from immediately after the time it is entered into, taken to be an undertaking signed under the *Crimes (Sentencing) Act 2005*, section 13 (2) for the good behaviour order; and
 - (c) the good behaviour order 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 suspended sentence order and the term of the good behaviour order end 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 section 86 (Good behaviour—core conditions) apply to the good behaviour order.
- (7) 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, the *Crimes (Sentencing) Act 2005*, section 105 (Good behaviour—consequences of failure to sign undertaking) applies to the offender as if the offender had failed to sign an undertaking under that Act, section 13 (2) for the order.
- (8) To remove any doubt, this Act applies in relation to a good behaviour order mentioned in subsection (2), (3) or (6) as if the offender had signed an undertaking under the *Crimes (Sentencing) Act 2005*, section 13 (2) for the order.

**339 Community service without good behaviour order—
Crimes Act, s 408**

- (1) This section applies if—
 - (a) an offender is charged with an offence before the commencement day (whether the proceeding for the offence starts or ends before, on or after the commencement day); and
 - (b) 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
 - (c) the court does not make an order under the *Crimes Act 1900*, section 403 (1) (a) for the offender for the offence; and
 - (d) if the old community service order was made before the commencement day—the order is, immediately before the commencement day, 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 offender was charged with the offence before the commencement day (see *Crimes (Sentencing) Act 2005*, s 140 (2) (Application of Act—charges after commencement)).

- (2) If the old community service order was made before the commencement day, then, 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 2005*; and
 - (b) the offender is taken to have signed an undertaking under the *Crimes (Sentencing) Act 2005*, section 13 (2) for the order; and
 - (c) the good behaviour order is taken to include—
 - (i) a community service condition under the *Crimes (Sentencing) Act 2005* requiring the offender to do 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 done by the offender under the good behaviour order 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 order 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 section 86 (1) (c), (d) and (e) (Good behaviour—core conditions) apply to the good behaviour order; and
 - (g) the core conditions under section 86 (1) (a), (b), (f), (g) and (h) do not apply to the good behaviour order.
- (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 *Crimes Act 1900*; and
 - (b) the *Crimes Act 1900* applies to the proceeding as if this Act and the consequential amendments Act had not been enacted; and
- Note* The consequential amendments Act repeals the relevant provisions of the *Crimes Act 1900*.
- (c) the order continues in force, subject to the *Crimes Act 1900*, under that Act until the proceeding ends; 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 2005*; and

- (b) the offender is taken, from immediately after the time the old community service order is made, to have signed an undertaking under the *Crimes (Sentencing) Act 2005*, section 13 (2) for the order; and
 - (c) the good behaviour order is taken to include—
 - (i) a community service condition under the *Crimes (Sentencing) Act 2005* requiring the offender to do 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 done by the offender under the good behaviour order 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 core conditions under section 86 (1) (c), (d) and (e) (Good behaviour—core conditions) apply to the good behaviour order; and
 - (f) the core conditions under section 86 (1) (a), (b), (f), (g) and (h) do not apply to the good behaviour order.
- (5) To remove any doubt, a court may do either of the following in relation to a good behaviour order mentioned in subsection (2) or (4) as if the offender had signed an undertaking under the *Crimes (Sentencing) Act 2005*, section 13 (2) for the order, subject to this Act:
- (a) amend the order;
 - (b) cancel or discharge the order.

**340 Community service and good behaviour order—
Crimes Act, s 408**

- (1) This section applies if—
- (a) an offender is charged with an offence before the commencement day (whether the proceeding for the offence starts or ends before, on or after the commencement day); and
 - (b) 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
 - (c) the court also makes an order under the *Crimes Act 1900*, section 403 (1) (a) for the offender for the offence; and
 - (d) if the old community service order was made before the commencement day—the order is, immediately before the commencement day, 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 offender was charged with the offence before the commencement day (see *Crimes (Sentencing) Act 2005*, s 140 (2) (Application of Act—charges after commencement)).

- (2) Section 337 (Conditional release of convicted offenders—Crimes Act, s 403 (1) (a)) applies to the offender as if—
- (a) the s 403 (1) (a) order for that section included a community service condition; and
 - (b) the good behaviour order is taken to include a community service condition under the *Crimes (Sentencing) Act 2005* requiring the offender to do the same number of hours of work, or the number of hours remaining to be done, on the same terms, as the old community service order; and

- (c) the community service condition of the good behaviour order ends at the same time as the term of the old community service order, unless the good behaviour order is amended under this Act to extend the term of the community service condition.
- (3) For subsection (2) (c), the court may extend the term of the community service condition for the good behaviour order if the court considers that it is necessary or desirable to extend the term of the condition.

Part 16.4 **Transitional—unfinished requests for transfer of prisoners and sentences**

341 **Prisoners (Interstate Transfer) Act—unfinished requests**

- (1) This section applies if—
 - (a) before the commencement day, the Minister received a request under the *Prisoners (Interstate Transfer) Act 1993*; and
 - (b) immediately before the commencement day, the request had not been finalised.
- (2) On and after the commencement day, this Act applies to the request as if the request had been made under this Act.

342 **Community Based Sentences (Transfer) Act—unfinished requests for registration**

- (1) This section applies if—
 - (a) before the commencement day, the local authority received a request from a participating jurisdiction for the transfer of a community based sentence under the *Community Based Sentences (Transfer) Act 2003*; and
 - (b) immediately before the commencement day, the request had not been finalised.
- (2) On and after the commencement day, this Act applies to the request as if the request had been made under this Act.

Part 16.5 Transitional—parole orders

343 Parole orders before commencement day

- (1) This section applies if a parole order (the *old parole order*) under the *Rehabilitation of Offenders (Interim) Act 2001* is 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 7 (the *new parole order*); and
 - (b) the old standard conditions, and any additional conditions included in the old parole order by the 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, on the commencement day, a sentence administration proceeding had started (but not ended) in relation to the old parole order, then, on and after the commencement day—
 - (a) the proceeding may be continued under the *Rehabilitation of Offenders (Interim) Act 2001*; and
 - (b) the *Rehabilitation of Offenders (Interim) Act 2001* applies to the proceeding as if this Act and the consequential amendments Act had not been enacted; and

Note The consequential amendments Act repeals the *Rehabilitation of Offenders (Interim) Act 2001*.

 - (c) the order continues in force, subject to the *Rehabilitation of Offenders (Interim) Act 2001*, under that Act until the proceeding ends; 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, the board may, under chapter 7, do either of the following in relation to the new parole order mentioned in subsection (2) as if the new parole order had been made under that chapter:
- (a) amend the order;
- (b) cancel or discharge the order.
- (5) In this section:

new core conditions, in relation to the new parole order, mean the core conditions for the order under section 137 (Parole order—core conditions).

old standard conditions, in relation to the old parole order, mean the standard conditions for the order prescribed by regulation made for the *Rehabilitation of Offenders (Interim) Act 2001*, section 38 (1) (a).

Note A nonparole period set under the *Rehabilitation of Offenders (Interim) Act 2001* for an offender is taken to be a nonparole period set under the *Crimes (Sentencing) Act 2005*, s 65 (see that Act, s 141).

344 Unfinished parole orders proceedings on commencement day

- (1) This section applies if—
- (a) before the commencement day, a proceeding for an offender had been started by the board in relation to the making of a parole order (the ***old parole order***) under the *Rehabilitation of Offenders (Interim) Act 2001*; and

- (b) immediately before commencement day, the proceeding had not ended.
- (2) On and after the commencement day, the proceeding may be continued, and the board may make an old parole order for the offender, under the *Rehabilitation of Offenders (Interim) Act 2001* as if this Act and the consequential amendments Act had not been enacted.

Note The consequential amendments Act repeals the *Rehabilitation of Offenders (Interim) Act 2001*.

- (3) If the board makes an old parole order for the offender—
 - (a) the old parole order is taken to be a parole order under chapter 7 (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, the board may, under chapter 7, do either of the following in relation to the new parole order mentioned in subsection (3) as if the new parole order had been made under that chapter:
 - (a) amend the order;
 - (b) cancel or discharge the order.
- (5) In this section:
new core conditions, in relation to the new parole order, mean the core conditions for the order under section 137 (Parole order—core conditions).

old standard conditions, in relation to the old parole order, mean the standard conditions for the order prescribed by regulation made for the *Rehabilitation of Offenders (Interim) Act 2001*, section 38 (1) (a).

Note A nonparole period set under the *Rehabilitation of Offenders (Interim) Act 2001* for an offender is taken to be a nonparole period set under the *Crimes (Sentencing) Act 2005*, s 65 (see that Act, s 141).

345 Parole Orders (Transfer) Act—unfinished requests for registration

- (1) This section applies if—
 - (a) before the commencement day, the registrar received a request for the registration of a parole order under the *Parole Orders (Transfer) Act 1983*, section 6 (1); and
 - (b) immediately before the commencement day, the request has not been finalised.
- (2) On and after the commencement day, this Act applies to the request as if the request had been made under this Act.

346 Board may reject parole application without inquiry—Act, s 122

Despite section 122 (2) (Board may reject parole application without inquiry), the board may reject an application for parole by an offender if the board has, within the 12-month period before the application is made, refused to make a parole order under the *Rehabilitation of Offenders (Interim) Act 2001* for the offender.

Part 16.6 Transitional—general

347 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

Three 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.

One month before the commencement day, under the *Periodic Detention Act 1975*, section 24 (1) (part of the *old sentence administration law*), Jan applied to the director of corrective services for leave 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 under that Act, section 24 (3). This application *started* (see this Act, s 328, def) the proceeding in the Magistrates Court (a *sentence administration proceeding*—see this Act, s 328, 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).

348 Sentence administration proceedings—started on or after commencement day

- (1) This section applies if a sentence administration proceeding is started on or after the commencement day under the old sentence administration law.
- (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 offender was charged with the offence before the commencement day (see *Crimes (Sentencing) Act 2005*, s 140 (2) (Application of Act—charges after commencement)).

Note 2 Because of this Act, pt 16.2, pt 16.3 and pt 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 2005* (or, for a parole order, this Act). If a recognisance is entered into under an order under the *Crimes Act 1900*, pt 18, the recognisance is taken to be an undertaking signed under the *Crimes (Sentencing) Act 2005*, s 13 (2) for the order.

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).

349 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act, the *Crimes (Sentencing) Act 2005*, the *Corrections Management Act 2005* or the *Crimes (Sentencing Legislation) Consequential Amendments Act 2005*.
- (2) A regulation may modify this part (including its operation in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.
- (4) This section expires 2 years after the day it commences.

350 Expiry of ch 16

This chapter expires 5 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 For example, the Legislation Act, dict, pt 1, defines the following terms:

- breach
- chief executive (see s 163)
- director of public prosecutions
- document
- entity
- Executive
- fail
- found guilty
- function
- judge
- lawyer
- magistrate
- may (see s 146)
- Minister (see s 162)
- must (see s 146)
- NSW correctional centre
- police officer
- public servant
- State
- under.

activity includes education, counselling, personal development and treatment activities and programs.

ACT prisoner, for chapter 11 (Interstate transfer of prisoners)—see section 217.

ACT sentence of imprisonment, for chapter 11 (Interstate transfer of prisoners)—see section 217.

additional condition means—

- (a) of an offender's periodic detention—see section 40; or
- (b) of an offender's good behaviour order—see section 84; or
- (c) of an offender's parole order—see section 117.

application, for parole—see section 117.

arrest warrant, for a person, for chapter 11 (Interstate transfer of prisoners)—see section 217.

board means the Sentence Administration Board established under section 171.

chair means the chair of the board.

combination sentence—see the *Crimes (Sentencing) Act 2005*, section 29.

committal order, for part 3.1 (Imprisonment)—see section 10.

committing authority, for part 3.1 (Imprisonment)—see section 10.

Commonwealth Act, for part 11.2 (International transfer of prisoners)—see section 254.

commonwealth sentence of imprisonment, for chapter 11 (Interstate transfer of prisoners)—see section 217.

community-based sentence, for chapter 12 (Transfer of community-based sentences)—see section 264.

community service condition, of a good behaviour order for an offender—see the *Crimes (Sentencing) Act 2005*, section 86.

community service work—see section 316.

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 by regulation.

core condition means—

- (a) of an offender's periodic detention—see section 40; or
- (b) of an offender's good behaviour order—see section 84; or
- (c) of an offender's parole order—see section 117; or
- (d) of an offender's licence—see section 289.

correctional centre means a correctional centre under the *Corrections Management Act 2005*.

corrections officer means a corrections officer under the *Corrections Management Act 2005*.

corresponding ACT court, in relation to a court of a participating state, for chapter 11 (Interstate transfer of prisoners)—see section 217.

corresponding community-based sentence law, for chapter 12 (Transfer of community-based sentences)—see section 267.

corresponding Minister, of a participating state, for chapter 11 (Interstate transfer of prisoners)—see section 217.

corresponding parole law, for part 7.6 (Interstate transfer of parole orders)—see section 162.

default imprisonment, for chapter 11 (Interstate transfer of prisoners)—see section 217.

deputy chair means a deputy chair of the board.

designated authority, for a State or another Territory, for part 7.6 (Interstate transfer of parole orders)—see section 162.

detention period, for an offender's periodic detention—see section 41.

drug means—

- (a) a controlled drug under the Criminal Code, section 600; or
- (b) a substance prescribed by regulation for this definition.

engage in conduct means—

- (a) do an act; or
- (b) omit to do an act.

escort officer means—

- (a) a police officer; or
- (b) an escort officer under the *Corrections Management Act 2005*.

finishing time, for an offender's detention period—see section 52.

frisk search—see the *Corrections Management Act 2005*, dictionary.

full-time detainee—see section 22 (1).

good behaviour obligations, for chapter 6 (Good behaviour orders)—see section 84.

good behaviour order—see the *Crimes (Sentencing) Act 2005*, section 13.

Governor, of a participating state, for chapter 11 (Interstate transfer of prisoners)—see section 217.

hearing means a hearing for an inquiry under part 9.2.

indeterminate sentence, for chapter 11 (Interstate transfer of prisoners)—see section 217.

inquiry—see section 193.

interested person, for an offender's good behaviour order—see section 84.

interstate authority, for chapter 12 (Transfer of community-based sentences)—see section 268.

interstate jurisdiction, for chapter 12 (Transfer of community-based sentences)—see section 265.

interstate law, for chapter 11 (Interstate transfer of prisoners)—see section 217.

interstate sentence, for chapter 12 (Transfer of community-based sentences)—see section 266 (2).

interstate sentence of imprisonment, for chapter 11 (Interstate transfer of prisoners)—see section 217.

joint prisoner, for chapter 11 (Interstate transfer of prisoners)—see section 217.

judicial member, of the board, means the chair or a deputy chair.

jurisdiction, for chapter 12 (Transfer of community-based sentences)—see section 265 (1).

law enforcement agency—see the *Spent Convictions Act 2000*, dictionary, and includes an entity prescribed by regulation for this definition.

licence—see section 289.

licence release date, for an offender—see section 289.

local authority, for chapter 12 (Transfer of community-based sentences)—see section 268.

local register, for chapter 12 (Transfer of community-based sentences)—see section 271.

local sentence, for chapter 12 (Transfer of community-based sentences)—see section 266 (1).

member, of the board, includes the chair and a deputy chair.

non-association order—see the *Crimes (Sentencing) Act 2005*, section 21.

non-judicial member, of the board, means a member other than the chair or a deputy chair.

nonparole period—

- (a) see the *Crimes (Sentencing) Act 2005*, dictionary; and
- (b) for a full-time detainee whose nonparole period is subject to reduction or remission under a NSW law—includes the nonparole period less the period of reduction or remission.

Note Reduction or remission under a NSW law may apply to full-time detainees serving sentences in a NSW correctional centre (see s 75 (4)).

non-participating territory, for chapter 11 (Interstate transfer of prisoners)—see section 217.

offender—

- (a) means a person convicted or found guilty of an offence by a court; but
- (b) for chapter 4 (Full-time detention)—see section 22; and
- (c) for a community-based sentence, for chapter 12 (Transfer of community-based sentences)—see section 263.

order of transfer, for part 11.1 (Interstate transfer of prisoners)—see section 217.

ordinary parole application—see section 121.

originating jurisdiction, for a community based sentence, for chapter 12 (Transfer of community-based sentences)—see section 263.

parole eligibility date, for an offender, means the day the offender's nonparole period ends.

parole obligations, of an offender—see section 117.

parole order means—

- (a) for this Act—see section 117; but
- (b) for part 7.6 (Interstate transfer of parole orders)—see section 162.

parole release date—see section 117.

participating jurisdiction, for chapter 11 (Transfer of community-based sentences)—see section 265.

participating state, for part 11.1 (Interstate transfer of prisoners)—see section 217.

periodic detention, for an offender—see section 40.

periodic detention obligations, of an offender—see section 40.

periodic detention period, of an offender's sentence of imprisonment—see section 40.

person involved, in community service work, for chapter 14 (Community service work—general)—see section 315 (2).

place restriction order—see the *Crimes (Sentencing) Act 2005*, section 21.

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, for a test sample—see the *Corrections Management Act 2005*, dictionary.

prison, for part 11.1 (Interstate transfer of prisoners)—see section 217.

prisoner, for part 11.1 (Interstate transfer of prisoners)—see section 217.

prison officer, for part 11.1 (Interstate transfer of prisoners)—see section 217.

recommitted, for an offender—see section 23.

register, for part 7.6 (Interstate transfer of parole orders)—see section 162.

registered victim, of an offender—see section 213.

registration criteria, for chapter 12 (Transfer of community-based sentences)—see section 276.

rehabilitation program condition, of a good behaviour order for an offender—see the *Crimes (Sentencing) Act 2005*, section 93.

release date, for an offender for a sentence—see section 23 (1).

release on licence obligations, of an offender—see section 289.

release on parole, for part 11.1 (Interstate transfer of prisoners)—see section 217.

relevant security, for part 11.1 (Interstate transfer of prisoners)—see section 217.

remandee means—

- (a) a person remanded in custody by a remanding authority; but
- (b) for chapter 4 (Full-time detention)—see section 22.

remanding authority—see section 15.

remission instrument, for part 11.1 (Interstate transfer of prisoners)—see section 217.

reporting day, for an offender's detention period—see section 51.

reporting place, for an offender's detention period—see section 50.

reporting time, for an offender's detention period—see section 52.

secretary, of the board, means the secretary of the board under section 191.

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 263.

sentence of imprisonment, for part 7.6 (Interstate transfer of parole orders)—see section 162.

sentencing court, for an offender under a sentence, means the court by which the sentence was first imposed, and includes that court differently constituted.

serve a sentence, for chapter 12 (Transfer of community-based sentences)—see section 263.

served—a period of imprisonment is **served** when—

- (a) the person is discharged from the imprisonment; or
- (b) the person would have been discharged from the imprisonment if the person were not serving (or to serve) another sentence of imprisonment.

special parole application—see section 121.

subject to a sentence of imprisonment, for part 11.1 (Interstate transfer of prisoners)—see section 219.

supervisory functions, of the board—see section 180.

surety, for a good behaviour order—see the *Crimes (Sentencing) Act 2005*, dictionary.

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

test sample—see the *Corrections Management Act 2005*, dictionary.

this jurisdiction, for chapter 12 (Transfer of community-based sentences)—see section 265.

translated sentence, for part 11.1 (Interstate transfer of prisoners)—see section 217.

victim, of an offender—see section 214.

victims register—see section 213.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 30 June 2005.

2 Notification

Notified under the Legislation Act on 2 December 2005.

3 Republications of amended laws

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

I certify that the above is a true copy of the Crimes (Sentence Administration) Bill 2005, which was passed by the Legislative Assembly on 22 November 2005.

Clerk of the Legislative Assembly

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