Australian Capital Territory

Crimes (Sentence Administration) Act 2005

A2005-59

Republication No 46

Effective: 9 November 2018 – 2 March 2019

Republication date: 9 November 2018

Last amendment made by A2018-43

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

About this republication

The republished law

This is a republication of the *Crimes (Sentence Administration) Act 2005* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 9 November 2018. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 9 November 2018.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is $160 for an individual and $810 for a corporation (see *Legislation Act 2001*, s 133).

Australian Capital Territory

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Australian Capital Territory

Crimes (Sentence Administration) Act 2005

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

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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:

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Chapter 1 Preliminary

1 Name of Act

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

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.

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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.

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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 2007*.

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 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 2007*.

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;

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(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 2007*.

(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.

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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 2007*.

(4) This Act applies in relation to the person as a full-time detainee, with any changes prescribed by regulation.

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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 161 (Cancellation of parole—recommittal to full-time detention);

(ii) 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) an entity prescribed by regulation sentencing an offender to imprisonment; and

(b) a court ordering the imprisonment of a fine defaulter under section 116ZK.

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).

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11 Effect of committal order

The committal order—

(a) authorises the director-general to have custody of the offender under the order; and

(b) requires the director-general 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 director-general's custody.

(2) The warrant—

(a) must be addressed to the director-general; 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 director-general must keep the offender imprisoned under full-time detention under this Act and the *Corrections Management Act 2007* until released under this Act or another territory law.

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14 Imprisonment not affected by want of proper warrant

The validity of the offender's imprisonment under this Act or the *Corrections Management Act 2007* 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.

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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 director-general to have custody of the remandee under the order; and

(b) requires the director-general 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 director-general's custody.

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(2) The warrant—

(a) must be addressed to the director-general; 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 director-general must have regard; and

(b) must state—

(i) when and where the remanding authority orders the return of the remandee to the remanding authority; or

(ii) that the remanding authority order the return of the remandee—

(A) to the remanding authority at the time and place decided by the registrar; or

(B) to another remanding authority at the time and place decided by the registrar.

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).

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18 Custody of remandee

(1) The director-general must—

(a) keep the remandee in custody under full-time detention under this Act and the *Corrections Management Act 2007* under the order for remand; and

(b) return the remandee to the remanding authority, or another remanding authority, as ordered by the remanding authority.

Note For a young remandee, see s 320E.

(2) The director-general must ensure that the remandee is held in custody in the place that the director-general decides is the most appropriate.

(3) For subsection (2)—

(a) the director-general 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 director-general may have regard to anything else the director-general considers relevant.

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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 2007* 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.

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Part 3.3 Committal—miscellaneous

20 Directions to escort officers

(1) For this chapter, the director-general 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 director-general must arrange for an offender, remandee or other person in the director-general'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.

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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 director-general's custody because of section 11 (Effect of committal order); or

(b) a remandee in the director-general'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.

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23 Definitions—ch 4

(1) In this Act:

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

(a) section 161 (Cancellation of parole—recommittal to full-time detention);

(b) 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).

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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 2007*.

(2) If an offender is recommitted to the director-general'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 2007*.

(3) An offender must also comply with any requirement or direction under this Act, or the *Corrections Management Act 2007*, 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 2007*.

(5) A remandee must also comply with any requirement or direction under this Act, or the *Corrections Management Act 2007*, 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—director-general directions

(1) For this chapter, the director-general may give directions, orally or in writing, to a full-time detainee.

(2) To remove any doubt, this section does not limit section 321 (Director-general directions—general).

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26 Full-time detention in ACT or NSW

(1) The director-general must arrange for a full-time detainee to be kept in full-time detention at—

(a) an ACT correctional centre; or

(b) a NSW correctional centre.

(2) For this section, the director-general may, in writing, direct that a full-time detainee—

(a) be detained at the ACT correctional centre stated in the direction; or

(b) be removed to a NSW correctional centre stated in the direction.

Note The reference to an ACT correctional centre is, in relation to a CYP young offender, a reference to a detention place under the *Children and Young People Act 2008*. A CYP young offender is a young offender required under the *Crimes (Sentencing) Act 2005*, section 133H to serve his or her sentence of imprisonment at a detention place (see this Act, s 320C).

27 Guidelines—allocation of detainees to correctional centres

(1) The director-general 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.

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(4) In this section:

correctional centre includes a NSW correctional centre.

28 Work and activities by full-time detainee

(1) The director-general may direct an offender, orally or in writing—

(a) to participate in an activity that the director-general 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 director-general 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 director-general may allow a remandee to do work at a correctional centre, or community service work outside a correctional centre, that the director-general 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 director-general's custody; and

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(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 director-general

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 director-general 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.

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(3) For subsection (2), the director-general 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 director-general considers appropriate.

(4) If the director-general 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.

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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.

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Part 4.3 Full-time detention in NSW

34 Application—pt 4.3

This part applies if the director-general 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 at a NSW correctional centre, to be serving the sentence of imprisonment at 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);

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(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) the following provisions of the *Corrections Management Act 2007* apply in relation to the detainee:

(i) section 94 (Segregated detainees removed to NSW);

(ii) a provision prescribed by regulation.

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 director-general 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 director-general to be released in the ACT from imprisonment under this Act or another territory law, the director-general 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 at a correctional centre, until released from imprisonment under this Act or another territory law or returned to a NSW correctional centre.

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(5) If the full-time detainee is not released, the director-general'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).

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Chapter 5 Intensive correction orders

Part 5.1 Preliminary

39 Application—ch 5

This chapter applies to an offender sentenced to imprisonment if the sentencing court makes an intensive correction order in relation to the offender.

40 Definitions—ch 5

In this chapter:

additional condition, of an offender's intensive correction order, means—

(a) a condition of the order made by the sentencing court under the *Crimes (Sentencing) Act 2005*, section 11 after the court has considered an intensive correction assessment for the order; or

(b) a condition of the order imposed under—

(i) part 5.6 (Supervising intensive correction orders); or

(ii) part 5.7 (Intensive correction orders—amendment and discharge); or

(c) if a condition is amended under part 5.6 or part 5.7—the condition as amended.

community service condition, of an intensive correction order for an offender—see the *Crimes (Sentencing) Act 2005*, section 80A.

core condition, of an offender's intensive correction order, means a core condition under section 42.

intensive correction—see the *Crimes (Sentencing) Act 2005*, dictionary.

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intensive correction assessment means an assessment by the director-general about whether an intensive correction order is suitable for the offender.

intensive correction order—see the *Crimes (Sentencing) Act 2005*, section 11.

interested person, for an offender's intensive correction order, means any of the following:

(a) the offender;

(b) the director-general;

(c) the director of public prosecutions.

rehabilitation program condition, of an intensive correction order for an offender—see the *Crimes (Sentencing) Act 2005*, section 80G.

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Part 5.2 Serving intensive correction

41 Intensive correction order obligations

(1) An offender must serve intensive correction in the period of the offender's sentence in accordance with this part.

(2) To serve intensive correction, the offender must, during the period of the offender's sentence comply with—

(a) the core conditions of the offender's order; and

(b) any additional condition of the offender's order; and

(c) any non-association order or place restriction order made by the sentencing court for the offender; and

(d) any requirement prescribed by regulation; and

(e) any other requirement under this Act or the *Corrections Management Act 2007* 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 any regulation (see Legislation Act, s 104).

(3) A regulation may make provision in relation to electronic monitoring to monitor the offender's compliance with a condition of the offender's intensive correction order.

42 Intensive correction order—core conditions

(1) The core conditions of an offender's intensive correction 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

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(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 director-general 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 director-general about the change as soon as possible, but not later than 1 day after the day the offender becomes aware of the change of details;

(d) the offender must comply with any direction given to the offender by the director-general under this Act or the *Corrections Management Act 2007* in relation to the intensive correction order;

(e) the offender—

(i) is on probation under the supervision of the director-general; and

(ii) must comply with the director-general's reasonable directions in relation to the probation;

(f) any test sample given by the offender under a direction under section 43 (Intensive correction order—alcohol and drug tests) must not be positive;

(g) the offender must not use or obtain a drug;

Note ***Drug*****—**see the *Corrections Management Act 2007*, s 132.

(h) the offender must not—

(i) leave the ACT without the director-general's approval; or

(ii) leave Australia without the board's written approval;

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(i) if leaving the ACT or Australia, the offender must comply with any condition of the approval to leave;

(j) the offender must comply with any direction given to the offender by the director-general to—

(i) live at any premises; or

(ii) undertake any program; or

(iii) report to a corrections officer; or

(iv) allow a corrections officer to visit the place where the offender lives at any reasonable time;

(k) the offender must comply with any notice made under section 63 to attend a hearing of the board;

(l) any condition prescribed by regulation that applies to the offender.

(2) If an offender applies to the director-general for approval for a change in the offender's contact details, the director-general 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 not later than 1 day after, the day of the change.

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(4) In this section:

contact details means the offender's—

(a) home address or phone number; and

(b) work address or phone number; and

(c) mobile phone number.

43 Intensive correction order—alcohol and drug tests

(1) The director-general may direct an offender, orally or in writing, to give a test sample during the offender's sentence of imprisonment by intensive correction.

(2) The provisions of the *Corrections Management Act 2007* relating to alcohol and drug tests apply in relation to a direction under this section and any sample given under the direction.

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Part 5.3 Intensive correction order—community service work

44 Application—pt 5.3

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

45 Intensive correction orders—compliance with community service condition

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

46 Intensive correction orders—community service work—director-general directions

(1) The director-general may direct an offender, orally or in writing, to do community service work that the director-general 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 (8) applies (the ***corrections supervisor***).

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(3) The direction may also include a requirement that the offender must comply with when reporting to do the community service work.

Note For examples of reporting requirements directed by the director-general, see s 91 (3) (Good behaviour orders—community service work—director-general directions).

(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 an 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 director-general'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.

Note For examples where the offender cannot comply, see s 91 (8) (Good behaviour orders—community service work—director-general directions).

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47 Intensive correction orders—community service work—failure to report etc

(1) Subsection (2) applies if an offender fails to—

(a) report to do community service work in accordance with a direction under section 46; or

(b) do community service work in accordance with a direction under section 46; or

(c) comply with a reasonable direction given to the offender by the work supervisor under section 46 in relation to the work.

(2) The director-general 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.

(3) Subsection (4) applies if—

(a) an offender fails to report to do community service work for a period (a ***work period***) in accordance with a direction under section 46; and

(b) the offender is at the time of the work period—

(i) remanded in custody under a territory law or a law of the Commonwealth or a State; or

(ii) detained at a place under the *Mental Health Act 2015*.

(4) The offender is taken to have performed community service work in accordance with the direction for the work period.

48 Intensive correction orders—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.

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(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 46, is counted; and

(b) if the total work time on any day includes part of an hour, that part is counted as 1 hour.

Note For examples of maximum daily hours, see s 93 (2) (Good behaviour orders—community service work—maximum daily hours).

48A Intensive correction orders—community service work—therapy and education program limit

Participation in a program for therapy or education must not make up more than 25% of the total number of hours of community service work required to be performed by an offender subject to a community service condition under an intensive correction order.

49 Intensive correction orders—community service work—health disclosures

An offender must tell the director-general 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.

Example—unsuitability

The indicators of unsuitability for community service set out in the *Crimes (Sentencing) Act 2005*, s 80D.

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).

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50 Intensive correction orders—community service work—alcohol and drug tests

(1) The director-general 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 2007* relating to alcohol and drug tests apply in relation to a direction under this section and any sample given under the direction.

51 Intensive correction orders—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 director-general must ensure that the agreement requires the entity, on the director-general's request, to give the director-general written reports about the offender's participation in the community service work.

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Part 5.4 Intensive correction order—rehabilitation programs

52 Application—pt 5.4

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

53 Intensive correction orders—rehabilitation program condition—compliance

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

54 Intensive correction orders—rehabilitation programs—director-general directions

(1) The director-general may give an offender directions, orally or in writing, in relation to a rehabilitation program condition to which the offender's intensive correction 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.

55 Intensive correction orders—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.

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

Part 5.5 Intensive correction order—curfew

56 Application—pt 5.5

This part applies if an offender's intensive correction order is subject to a curfew condition.

57 Compliance with curfew

To comply with a curfew condition of an offender's intensive correction order, the offender must comply with the requirements of this part.

58 Curfew—directions

(1) A curfew condition of an intensive correction order must include details of the following:

(a) the place where the offender must remain for the curfew;

(b) the period of time (not longer than the offender's sentence) that the curfew will be in place.

(2) The director-general may, at any time while a curfew condition is in effect, direct the offender to remain at a different place for the curfew if satisfied that each adult who is living at the place, or has parental responsibility or guardianship for a person who is living at the place, consents to the place being used for that purpose.

(3) The sentencing court may recommend an amount of time that the offender should remain at the curfew place each day.

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(4) The director-general may, after taking into account any recommendation of the sentencing court, direct the offender, orally or in writing, to remain at the curfew place for a period of time (not more than 12 hours in a 24-hour period) each day.

Example

Max is directed to comply with a curfew. Max may be required to remain at the curfew place between 10 pm and 7 am, and between 3 pm and 6 pm on Mondays, Wednesdays and Fridays.

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) 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.

(6) The offender must comply with a direction under this section.

(7) In this section:

curfew place means—

(a) the place detailed in the curfew condition under subsection (1) (a); or

(b) if the director-general directs the offender to remain at a different place under subsection (2)—the different place.

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Part 5.6 Supervising intensive correction orders

Division 5.6.1 Intensive correction orders—supervision

59 Corrections officers to report breach of intensive correction order obligations

(1) This section applies if a corrections officer believes on reasonable grounds that an offender has breached any of the offender's intensive correction order obligations.

(2) The corrections officer must report the belief to the board.

(3) A report under this section must be made in writing and set out the grounds for the corrections officer's belief.

60 Arrest without warrant—breach of intensive correction order obligations

(1) This section applies if a police officer believes on reasonable grounds that an offender has breached any of the offender's intensive correction order 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*.

(4) If the offender is brought before a magistrate under subsection (3) (b), the magistrate must adjourn the matter until the offender can be brought before the board.

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61 Arrest warrant—breach of intensive correction order 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 intensive correction order 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 and 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*.

Division 5.6.2 Intensive correction orders—breach

62 Board inquiry—breach of intensive correction order obligations

(1) The board may conduct an inquiry to decide whether an offender has breached any of the offender's intensive correction order obligations.

(2) The board must hold a hearing for an inquiry—

(a) on application by the director-general; or

(b) after receiving a report from a corrections officer under section 59 (Corrections officers to report breach of intensive correction order obligations); or

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(c) if the offender is arrested under section 60 (Arrest without warrant—breach of intensive correction order obligations) or section 61 (Arrest warrant—breach of intensive correction order obligations).

(3) This section does not apply if the offender has been convicted of a new offence punishable by imprisonment.

Note Section 65 requires the sentencing court to cancel the offender's intensive correction order in certain circumstances.

(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) The board must, as soon as practicable—

(a) tell the director-general of an inquiry conducted under subsection (2) (c); and

(b) conduct the inquiry.

63 Notice of inquiry—breach of intensive correction order obligations

(1) Before the board starts an inquiry under section 62 in relation to an offender, the director-general must give written notice of the inquiry to—

(a) the offender; and

(b) the director of public prosecutions.

(2) The notice must include—

(a) the reasons for the inquiry; and

(b) an invitation for the offender to make submissions to the board by a stated date for the inquiry; and

(c) if a board hearing is to be held in relation to the inquiry—

(i) the date, time and location of the hearing; and

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(ii) a statement about the effect of section 209 (Offender's rights at board hearing).

(3) An offender who is given notice of a hearing under this section must appear at the hearing.

(4) The director-general must, as soon as practicable, tell the board of the offender being given written notice under subsection (1) (a).

64 Board powers—breach of intensive correction order obligations

(1) This section applies if, after conducting an inquiry under section 62 (Board inquiry—breach of intensive correction order obligations) in relation to an offender, the board is satisfied that the offender has breached any of the offender's intensive correction order obligations.

(2) The board may do 1 or more of the following:

(a) give the offender a warning about the need to comply with the offender's intensive correction order obligations;

(b) suspend the offender's intensive correction order for—

(i) if the offender admits that the offender has breached an obligation—3 days to be served by imprisonment by full-time detention, but not past the end of the offender's sentence; or

(ii) in any other case—7 days to be served by imprisonment by full-time detention, but not past the end of the offender's sentence;

(c) cancel the offender's intensive correction order;

Note Section 65 requires the sentencing court to cancel the offender's intensive correction order in certain circumstances and s 66 requires the board to cancel the order if the offender withdraws consent.

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(d) refer the offender to a court for amendment or discharge of the intensive correction order if the board decides that the offender is unlikely to be able to serve the remainder of the order by intensive correction, having regard to—

(i) the offender's health; or

(ii) any exceptional circumstances affecting the offender.

(3) The board must not give more than 3 warnings under subsection (2) (a) in a 12-month period.

(4) To remove any doubt, if an inquiry under section 62 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.

65 Cancellation of intensive correction order on further conviction etc

(1) This section applies if, after an offender was sentenced to serve intensive correction, the offender commits, and is 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 that, if it had been committed in Australia, would be punishable by imprisonment.

(2) The sentencing court must, as soon as practicable—

(a) cancel the intensive correction order, unless cancellation is not in the interests of justice; and

(b) if the court cancels the intensive correction order—order that the remainder of the offender's sentence be served by full-time detention.

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(3) If the court makes an order under subsection (2) (b), the court—

(a) must state when the period of full-time detention starts and ends; and

(b) may set a nonparole period for the period of full-time detention if—

(i) the sentence of imprisonment for which the intensive correction order was made is more than 12 months; and

(ii) the period of full-time detention is more than 30 days.

(4) To remove any doubt, the *Crimes (Sentencing) Act 2005*, part 5.2, applies to a nonparole period set under subsection (3) (b) as if the nonparole period had been set under that part.

Note The *Crimes (Sentencing) Act 2005*, pt 5.2 deals with setting and review of nonparole periods.

(5) If the court decides that it is not in the interests of justice to cancel the intensive correction order, the court must give reasons for the decision.

66 Cancellation of intensive correction order if offender withdraws consent

(1) This section applies if the board is satisfied that the offender has withdrawn the offender's consent to serve the offender's sentence by intensive correction.

(2) The board must cancel the offender's intensive correction order.

Division 5.6.3 Suspension and cancellation of intensive correction order

67 Application—div 5.6.3

This division applies to a decision made by the board under section 64 or section 66.

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68 Notice of board decisions about intensive correction order

The board must give written notice of its decision to each interested person.

69 Intensive correction order—effect of suspension or cancellation

(1) This section applies to a decision of the board to suspend or cancel the offender's intensive correction order.

(2) The decision takes effect—

(a) when written notice of the decision is given to the offender under section 68; 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 intensive correction order—

(a) during the suspension the offender must be imprisoned under full-time detention; and

(b) while serving the full-time detention the offender is taken to comply with the offender's intensive correction obligations.

(4) If the decision is to cancel the offender's intensive correction order, the cancellation ends the intensive correction order and the offender must serve the remainder of the sentence of imprisonment—

(a) by full-time detention until when the intensive correction order would have ended apart from the cancellation; and

(b) otherwise in accordance with the sentence.

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70 Intensive correction orders—effect of suspension or cancellation on other intensive correction order

(1) This section applies if—

(a) the board decides to suspend or cancel an offender's intensive correction order; and

(b) when the suspension or cancellation takes effect the offender is also subject to intensive correction under another sentence of imprisonment.

(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 intensive correction order.

71 Intensive correction orders—effect of suspension or cancellation on parole

(1) This section applies if—

(a) the board decides to suspend or cancel an offender's intensive correction order; 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.

72 Suspension or cancellation of intensive correction order—recommittal to full-time detention

(1) This section applies if the board decides to suspend or cancel an offender's intensive correction order.

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(2) The board must order that the offender be placed in the director-general's custody to serve the relevant part of the offender's sentence by imprisonment under full-time detention.

Note See s 69 (Intensive correction order—effect of suspension or cancellation).

(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 director-general's custody.

(4) The warrant must—

(a) be in writing signed by the chair, or deputy 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 director-general's custody as soon as practicable.

73 Cancellation of intensive correction order—offender may apply for order to be reinstated

(1) This section applies if the board decides to cancel an offender's intensive correction order.

(2) On application by the offender, the board may order that the offender's intensive correction order be reinstated if—

(a) following the cancellation of the order, the offender has served at least 30 days of the offender's sentence by imprisonment under full-time detention; and

(b) the board—

(i) is satisfied by information provided by the offender that the offender will comply with the offender's intensive correction order obligations; and

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(ii) has considered an assessment by the director-general about whether an intensive correction order is suitable for the offender.

(3) If the board decides not to reinstate the offender's intensive correction order, the offender must not make another application under this section within 6 months after the day the board makes the decision.

(4) However, if the offender believes there are exceptional circumstances, the offender may apply to the board before the day mentioned in subsection (3).

(5) The board may refuse an application under this section if—

(a) satisfied the application is frivolous, vexatious or misconceived; or

(b) the board decided not to reinstate the offender's intensive correction order within the 6-month period before the application was made.

(6) To remove any doubt, if an offender's intensive correction order is reinstated under this section, the period the offender served by imprisonment under full-time detention is taken to be part of the offender's sentence of imprisonment by intensive correction.

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Part 5.7 Intensive correction orders—amendment or discharge

74 Court powers—amendment or discharge of intensive correction order

(1) A court may, by order—

(a) amend an offender's intensive correction order; or

(b) discharge an offender's intensive correction order.

Example—par (a)

- impose an additional condition
- amend a condition

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 referral by the board under section 64 (2) (d) (Board powers—breach of intensive correction order obligations); or

(b) on application by an interested person.

(3) However, if the court is acting on referral by the board under section 64 (2) (d), the court must consider any report given to the court by the board about the offender before making the order.

(4) The amendment of the intensive correction order takes effect as stated in the court order.

(5) This section is subject to section 75.

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75 Intensive correction orders—limitations on amendment or discharge

(1) A court must not discharge an intensive correction order unless—

(a) the court is satisfied that the offender has complied with the order; and

(b) the offender has served at least 12 months of the offender's sentence by intensive correction; and

(c) the order is replaced with a—

(i) suspended sentence order; and

(ii) good behaviour order with core conditions.

(2) Despite subsection (1) a court may, on application by the director-general or referral by the board under section 64 (2) (d), discharge an intensive correction order if—

(a) the court is satisfied that the offender is unlikely to be able to serve the remainder of the order by intensive correction, having regard to—

(i) the offender's health; or

(ii) any exceptional circumstances affecting the offender; and

(b) the order is replaced with a—

(i) suspended sentence order; and

(ii) good behaviour order with core conditions.

(3) A court must not amend the length of an intensive correction order.

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Part 5.8 Intensive correction orders—reporting and records

76 Record-keeping by director-general

The director-general must keep data of—

(a) each intensive correction order made in relation to an offender; and

(b) the offence for which an order is made; and

(c) each order that is cancelled, suspended or discharged including the reasons for the cancellation, suspension or discharge.

77 Authorised person may access data

The director-general—

(a) may allow a person, authorised in writing by the director-general, access to the data mentioned in section 76 for research, analysis and evaluation of intensive correction orders; but

(b) must not allow access to the data in any form that would allow the identity of anyone taking part in an intensive correction order to be worked out.

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Part 5.9 Intensive correction orders—miscellaneous

78 Intensive correction order proceedings—rights of interested person

(1) An interested person for an intensive correction order may appear before a court in a proceeding under this chapter.

(2) A court must—

(a) give each interested person for an intensive correction order (whether or not the person appeared before the court)—

(i) written notice of the court's decision; and

(ii) a copy of the order or direction by the court; and

(b) hear any relevant submissions put to the court by an interested person.

78A Intensive correction order cancellation by court—official notice of sentence

(1) This section applies if a court makes an order under section 65 (a ***cancellation order***) cancelling an offender's intensive correction order.

(2) As soon as practicable (but no later than 10 working days) after the day the court makes the cancellation order, the court must ensure that written notice of the order, together with a copy of the order, is given to—

(a) the offender; and

(b) the director-general; and

(c) if the court sets a nonparole period for any part of the remainder of the offender's sentence—the secretary of the sentence administration board.

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(3) The notice must include the following information:

(a) when the period of full-time detention starts or is taken to have started;

(b) when the period of full-time detention ends;

(c) if a nonparole period is set for the period of full-time detention—the nonparole period and when it starts and ends;

(d) the earliest day (on the basis of the information currently available to the court) that the offender will—

(i) become entitled to be released from full-time detention; and

(ii) if the offender's sentence includes a nonparole period—be eligible to be released on parole.

(4) Failure to comply with this section does not invalidate the cancellation order.

79 Intensive correction order—court and board powers after end of order

A court or the board may act under this chapter in relation to anything arising during the term of an intensive correction order, even if the term of the order has ended.

80 Intensive correction orders—outstanding warrants

(1) This section applies if a warrant is issued for an offender's arrest under this chapter.

(2) Any period for which the warrant is outstanding and the offender is not in custody does not count as part of the offender's term of imprisonment by intensive correction.

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(3) In this section:

in custody means:

(a) remanded in custody under a territory law or a law of the Commonwealth or a State; or

(b) detained at a place under the *Mental Health Act 2015*.

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

81 Review—ch 5

(1) The Minister must—

(a) review the operation and effectiveness of this chapter at the end of its 3rd year of operation (2 March 2019); and

(b) present a report of the review to the Legislative Assembly before the end of the chapter's 4th year of operation (2 March 2020).

(2) This section expires 4 years after the day it commences.

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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

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 85.

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.

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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 director-general;

(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 2007* 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).

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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 director-general 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 director-general 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 director-general under this Act or the *Corrections Management Act 2007* in relation to the good behaviour order;

(e) any test sample given by the offender under a direction under section 95 (Good behaviour orders—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 director-general's approval;

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(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 director-general's supervision.

87 Good behaviour—director-general directions

(1) For this chapter, the director-general may give directions, orally or in writing, to an offender.

(2) To remove any doubt, this section does not limit section 321 (Director-general directions—general).

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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.

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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 Good behaviour orders—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 Good behaviour orders—community service work—director-general directions

(1) The director-general may direct an offender, orally or in writing, to do community service work that the director-general 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***).

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(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 director-general

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 director-general's direction under this section, the offender must—

(a) tell the corrections supervisor as soon as possible; and

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(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 Good behaviour orders—community service work—failure to report etc

(1) Subsection (2) 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 director-general 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.

(3) Subsection (4) applies if—

(a) an offender fails to report to do community service work for a period (a ***work period***) in accordance with a direction under section 91; and

(b) the offender is at the time of the work period—

(i) remanded in custody under a territory law or a law of the Commonwealth or a State; or

(ii) detained at a place under the *Mental Health Act 2015*.

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(4) The offender is taken to have performed community service work in accordance with the direction for the work period.

93 Good behaviour orders—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).

93A Good behaviour orders—community service work—therapy and education program limit

Participation in a program for therapy or education must not make up more than 25% of the total number of hours of community service work required to be performed by an offender subject to a community service condition under a good behaviour order.

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94 Good behaviour orders—community service work—health disclosures

An offender must tell the director-general 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 Good behaviour orders—community service work—alcohol and drug tests

(1) The director-general 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 2007* relating to alcohol and drug tests apply in relation to a direction under this section and any sample given under the direction.

(3) In this section:

offender—

(a) includes a young offender for whom the director-general responsible for this Act is responsible in accordance with a decision under section 320F; but

(b) does not include any other young offender.

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96 Good behaviour orders—community service work—frisk searches

(1) The director-general 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 2007* relating to searches apply, with any necessary changes, in relation to a direction under this section and any frisk search conducted under the direction.

(3) In this section:

offender—

(a) includes a young offender for whom the director-general responsible for this Act is responsible in accordance with a decision under section 320F; but

(b) does not include any other young offender.

97 Good behaviour orders—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 director-general must ensure that the agreement requires the entity, on the director-general's request, to give the director-general written reports about the offender's participation in the community service work.

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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 Good behaviour orders—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 Good behaviour orders—rehabilitation programs—director-general directions

(1) The director-general 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 Good behaviour orders—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.

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

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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.

(4) In this section:

offender—

(a) includes a young offender for whom the director-general responsible for this Act is responsible in accordance with a decision under section 320F; but

(b) does not include any other young offender.

Note For other young offenders, see s 320G (Young offenders—breach of good behaviour obligations).

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

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(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*.

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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.

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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;

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(c) give the director-general 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.

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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.

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(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 intensive correction.

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

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(b) whether or not the order remains in force; and

(c) even though the court sentences or re-sentences the offender for the offence.

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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.

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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.

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(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.

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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.

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Chapter 6A Court imposed fines

Part 6A.1 General

116A Definitions—ch 6A

In this chapter:

administrative fee means the administrative fee mentioned in section 116G.

default—a person ***defaults*** in paying a fine (or any relevant administrative fee in relation to the fine) if the person fails to pay any part of the amount payable by—

(a) the due date stated in the relevant penalty notice; or

(b) if a default notice has been issued in relation to the fine—the date stated in the default notice; or

(c) if the person has an arrangement approved under section 116K for the fine—the date required under the arrangement.

default notice means a notice in force under section 116H and includes any variation under section 116K.

earnings redirection order—see section 116Y (2).

enforcement officer means—

(a) the sheriff, a deputy sheriff or a sheriff's assistant under the *Supreme Court Act 1933*; or

(b) a person appointed by the director-general as an enforcement officer for this chapter.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

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examination hearing means an examination hearing under section 116T.

examination notice—see section 116P.

examination warrant—see section 116R.

fine means—

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

(b) a fee or charge payable to the Territory that is imposed by a court in a proceeding for an offence; or

(c) costs payable to the Territory under a court order in a proceeding for an offence; or

(d) a victims financial assistance levy imposed under the *Victims of Crime (Financial Assistance) Act 2016*; or

(e) a victims services levy imposed under the *Victims of Crime Act 1994*; or

(f) an amount payable under a reparation order under the *Crimes (Sentencing) Act 2005* to—

(i) the Territory; or

(ii) a person in relation to whom a reparation order agreement mentioned in section 116ZQ is in force; or

(g) a financial penalty imposed, other than under the *Crimes (Sentencing) Act 2005*, in relation to an offence.

fine defaulter means a person who defaults in paying a fine (or any relevant administrative fee in relation to the fine).

fine enforcement order means an order of the Magistrates Court under section 116X for the enforcement of a fine.

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outstanding fine, in relation to a person, means the total of—

(a) the whole or any part of a fine that the person is liable to pay; and

(b) the whole or any part of an administrative fee that the person is liable to pay in relation to the fine.

penalty notice means a notice in force under section 116C and includes any variation under section 116K.

property seizure order—see section 116ZA.

registrar means the registrar of the Magistrates Court and includes a deputy registrar of the court.

reminder notice means a notice mentioned in section 116J.

territory entity—see the *Auditor-General Act 1996*, dictionary.

voluntary community work order—see section 116ZE.

young fine defaulter means a fine defaulter who was under 18 years old when the offence to which the fine relates was committed.

116B Payment of fine

A fine is payable under this chapter to the Territory (through the registrar or the director-general).

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Part 6A.2 Penalty notices, default notices and payment arrangements

116C Registrar to send penalty notice

(1) If an offender is liable to pay a fine as a result of a conviction or order by the Supreme Court—

(a) the registrar of the Supreme Court must give the registrar a copy of the conviction or order; and

(b) the registrar must give the offender a penalty notice for the fine.

(2) If an offender is liable to pay a fine as a result of a conviction or order by the Magistrates Court, the notice of the conviction or order required by the *Magistrates Court Act 1930*, section 116I (Consequences of conviction in absence of defendant) or section 141 (1) (b) (Minute of decision and notice to defendant) must contain a penalty notice for the fine.

(3) A penalty notice for a fine must—

(a) state the amount of the fine and the due date for payment; and

(b) if the fine is payable by instalments—specify the amount of each instalment; and

(c) state that if the fine or any instalment is not paid by the due date for payment the offender is liable for the administrative fee under section 116G in addition to the outstanding amount of the fine; and

(d) state that, under section 116K, the director-general may, on written application made before the due date for payment, approve an alternative arrangement about payment of the fine; and

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(e) state the obligation to notify the registrar of the offender's address, and any change of address, under section 116D.

Note A penalty notice may be varied under s 116K (Payment arrangements).

116D Offender to give registrar details of address

(1) An offender on whom a fine is imposed must give the registrar details of his or her home address and postal address within 7 days after the day the fine is imposed.

Maximum penalty: 5 penalty units.

(2) An offender who is liable to pay a fine and who changes his or her home address or postal address before the fine and any relevant administrative fee are paid must give the registrar details of the new address within 7 days after the day the change happens.

Maximum penalty: 5 penalty units.

(3) An offender who is liable to pay a fine must give the registrar evidence of his or her home address and postal address if required to do so by the registrar.

Maximum penalty: 5 penalty units.

116E Registrar may ask other people for details of offender's address

(1) The registrar may, in writing, ask a relevant person to give the registrar any details held by the person about an address of a stated offender who is liable to pay a fine.

(2) The relevant person must comply with the request as far as practicable.

(3) In this section:

relevant person means—

(a) the chief police officer; or

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(b) the housing commissioner; or

(c) the chief executive (however described) of—

(i) an administrative unit; or

(ii) Icon Water Limited; or

(iii) a territory entity prescribed by regulation.

116F Doubtful service

(1) This section applies if—

(a) a document has been served on an offender for this chapter otherwise than by personal service; and

(b) the registrar is satisfied that—

(i) the document has not come to the knowledge of the offender; or

(ii) doubt exists whether the document has come to the knowledge of the offender.

(2) The registrar must not take any further action under this chapter in relation to the offender unless—

(a) the document has been served again on the offender in the way the registrar considers appropriate; and

(b) the registrar is satisfied that the document has come to the knowledge of the offender.

116G Liability for administrative fee

If any part of a fine payable by an offender remains unpaid after the due date stated in the penalty notice for the fine, the offender is liable to pay to the Territory, in addition to the amount of the fine that remains unpaid, the administrative fee determined under the *Court Procedures Act 2004*, part 3 (Court and tribunal fees).

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116H Default notice

(1) If an offender defaults in paying a fine, the director-general must send the fine defaulter a default notice.

(2) However, the director-general must not send the default notice to the fine defaulter until 28 days after the due date for payment of the fine.

116I Form of default notice

(1) A default notice must include the following:

(a) details about the fine to which the notice relates including the following:

(i) the offence for which the fine was imposed;

(ii) the date on which the fine was imposed;

(iii) the amount of the fine imposed;

(iv) the due date for payment of the fine;

(v) if the fine was ordered to be paid by instalments—the due dates for payment;

(vi) the outstanding amount of the fine;

(vii) the administrative fee payable for the fine;

(viii) the default to which the notice relates;

(b) a statement that an arrangement for the fine defaulter to pay the fine may, on application, be approved by the director-general under section 116K;

(c) a statement that the director-general will commence fine enforcement action against the defaulter if—

(i) the fine and administrative fee is not paid in full; and

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(ii) an arrangement is not approved under section 116K for the fine or, if an arrangement is approved, the defaulter fails to comply with the arrangement;

(d) a list of the following fine enforcement measures that may or must be imposed on the defaulter if the director-general commences fine enforcement action:

(i) suspension of the defaulter's driver licence;

(ii) if the defaulter is the responsible person (or a responsible person) for a vehicle—suspension of the vehicle's registration;

(iii) an order allowing the outstanding amount of the fine to be deducted from the defaulter's earnings or account with a financial institution or both;

(iv) seizure and sale of the defaulter's property;

(v) a voluntary community work order;

(vi) imprisonment;

(e) a statement of the obligation of the defaulter to notify the registrar of any change of address under section 116D.

(2) The director-general may specify in a default notice particulars about a fine defaulter's property or financial circumstances that must be set out in any application by the defaulter for approval of an arrangement under section 116K.

Note A default notice may be varied under s 116K (Payment arrangements).

(3) In this section:

responsible person, for a vehicle—see the *Road Transport (General) Act 1999*, section 10 and section 11.

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116J Reminder notice

(1) The director-general must send a reminder notice to a fine defaulter 14 days after sending a default notice to the defaulter if—

(a) the outstanding fine has not been paid; and

(b) no arrangement has been approved under section 116K for the fine or, if an arrangement has been approved, the defaulter failed to comply with the arrangement.

(2) The reminder notice must be sent to the fine defaulter's last known address.

116K Payment arrangements

(1) The director-general may, on application, approve in writing an arrangement for—

(a) further time for the payment of all or part of an outstanding fine; or

(b) payment of all or part of an outstanding fine by instalments.

(2) An arrangement under subsection (1) may also be made for an amount that is overdue for payment under a previous approved arrangement.

(3) To the extent to which an approved arrangement is inconsistent with an order about payment of the fine made by the court that imposed it, the arrangement prevails.

(4) An application for approval of an arrangement must—

(a) be in writing; and

(b) state the grounds on which it is made; and

(c) be given to the director-general by the due date for payment stated in the current penalty notice or default notice for the fine; and

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(d) for an offender to whom a default notice has been sent—contain any particulars requested by the director-general in the notice.

(5) An offender may not make an application under this section in relation to a fine if the offender is subject to a voluntary community work order, or committed to imprisonment, in relation to the fine.

(6) If an approval of an arrangement concerns a fine for which a penalty notice or default notice has been given to an offender, the director-general must—

(a) vary the current penalty notice or default notice in accordance with the approval; and

(b) give the offender a copy of the notice as varied.

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Part 6A.3 Fine enforcement action

Division 6A.3.1 Reporting fine defaulters

116L Application—pt 6A.3

This part applies if—

(a) a default notice and reminder notice have been sent to a fine defaulter in relation to a fine; and

(b) 28 days after the default notice was sent—

(i) the outstanding fine has not been paid; and

(ii) no arrangement has been approved under section 116K for the fine or, if an arrangement has been approved, the defaulter has failed to comply with the arrangement.

116M Director-general to notify road transport authority

(1) The director-general must give written notice to the road transport authority with the following information:

(a) the fine defaulter's name, home address and date of birth;

(b) the offence for which the defaulter was convicted;

(c) the amount of the fine imposed for the offence;

(d) a statement that the fine and administrative fee for the fine have not been paid in full;

(e) if the defaulter has failed to comply with an arrangement approved under section 116K for the fine—a statement to that effect.

(2) The director-general must give the road transport authority written notice if—

(a) the outstanding fine is paid; or

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(b) the director-general approves an arrangement under section 116K for payment of the outstanding fine; or

(c) the outstanding fine is remitted under section 116ZO (Remission of fine by director-general) or section 313 (Remission of penalties); or

(d) the outstanding fine is discharged because the fine defaulter has completed a voluntary community work order under division 6A.3.7 or served a period of imprisonment under an order under division 6A.3.8; or

(e) the conviction or order that gave rise to the liability to pay the fine is quashed or set aside.

Division 6A.3.2 Examining fine defaulter's financial circumstances

116O Examination by director-general

The director-general may conduct an examination of a fine defaulter under this division to determine—

(a) the financial position of the defaulter; and

(b) what fine enforcement action (if any) should be taken against the defaulter.

116P Examination notice

(1) The director-general may serve a notice (an ***examination notice***) on a fine defaulter if the director-general considers that information in documents sought under the notice would assist the director-general to make a determination under section 116O.

Note The Legislation Act, pt 19.5, deals with service of documents on individuals and corporations.

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(2) An examination notice may require the fine defaulter to produce to the director-general, within 14 days after the date of the notice and at a time and place stated in the notice, a document or documents stated in the notice.

(3) The director-general may allow the fine defaulter to satisfy the requirement to produce a document by providing oral information about any document required to be produced under the notice.

(4) An examination notice in relation to a fine must not be served on a fine defaulter if the defaulter would be required to comply with the notice within 6 months after having complied with an earlier examination notice for the same fine.

116Q Examination notice—content

An examination notice may require the fine defaulter to produce a document with 1 or more of the following:

(a) details about any account the defaulter has with a financial institution, including the balance of the account;

(b) details about the defaulter's income;

(c) details about any cash the defaulter possesses or has access to;

(d) details about any other property the defaulter owns or has a legal or equitable interest in;

(e) details about any debts owing to the defaulter;

(f) the amount of money the defaulter reasonably needs for living expenses;

(g) whether the defaulter has any dependents and, if so, the amount of money the defaulter needs to provide for them;

(h) the hardship (if any) that would be caused to the defaulter as a result of paying the fine;

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(i) the hardship (if any) that would be caused to anyone else as a result of the defaulter paying the fine;

(j) relevant information relating to matters mentioned in this section.

116R Examination warrant—issue

(1) If the director-general believes on reasonable grounds that a fine defaulter served with an examination notice has not complied with the notice, the director-general may apply to the registrar for a warrant (an ***examination warrant***) for the arrest of the defaulter.

(2) The registrar may refuse to consider the application until the director-general gives the registrar all the information the registrar requires about the application in the way the registrar requires.

(3) The registrar may issue an examination warrant for a fine defaulter only if satisfied that the defaulter was served with an examination notice under section 116P and—

(a) the defaulter, without reasonable excuse, failed to comply with a requirement of the notice; or

(b) the defaulter—

(i) provided information that was false or misleading in a material particular; or

(ii) omitted something without which the information was misleading.

(4) An examination warrant authorises an enforcement officer to—

(a) arrest the fine defaulter named or otherwise described in the warrant; and

(b) bring the defaulter before the registrar.

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116S Examination warrant—contents and execution

(1) An examination warrant must—

(a) name or otherwise describe the fine defaulter whose apprehension is authorised by the warrant; and

(b) state briefly the reason for its issue; and

(c) require an enforcement officer to arrest the defaulter and bring him or her before the registrar to be examined at an examination hearing; and

(d) be expressed to end not later than 3 months after the day it is issued.

(2) An enforcement officer executing the warrant—

(a) may, with necessary assistance and force, enter any premises to arrest the fine defaulter named or otherwise described in the warrant; and

(b) must use not more than the minimum amount of force necessary to arrest the defaulter and remove him or her to the place stated in the warrant; and

(c) may ask a police officer to help in the exercise of the enforcement officer's powers under the warrant; and

(d) must, before removing the defaulter, explain to him or her the purpose of the warrant; and

(e) must bring the defaulter immediately before the registrar; and

(f) if the defaulter is under a legal disability—must tell a parent or guardian of the defaulter about the arrest; and

(g) must tell the director-general of the defaulter's arrest.

(3) A police officer asked by an enforcement officer to help execute the warrant must give the enforcement officer the reasonable help the enforcement officer requires, if it is practicable to give the help.

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(4) The enforcement officer must immediately release a fine defaulter arrested under an examination warrant if the officer believes on reasonable grounds that the defaulter—

(a) has, before or after being arrested, complied with the requirements of the examination notice that gave rise to the examination warrant; or

Example

A defaulter may comply with an examination notice requirement after being arrested if someone else helps the defaulter to comply with the requirement while the defaulter is under arrest.

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

(b) cannot be brought immediately before the registrar.

(5) An examination warrant continues in force until whichever of the following happens first:

(a) the warrant is executed;

(b) the warrant is set aside by the registrar and the enforcement officer is told that the warrant has been set aside;

(c) the end of 3 months after the day the warrant is issued.

(6) For subsection (5) (a), a warrant is executed when—

(a) the fine defaulter has been brought before the registrar and examined under section 116T; or

(b) the examination is adjourned to another day.

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116T Examination hearing before registrar

(1) This section applies if an examination warrant for a fine defaulter has been issued and—

(a) the defaulter has been brought before the registrar on the warrant; or

(b) otherwise attends before the registrar.

(2) The registrar must—

(a) set a date for an examination hearing and, by subpoena, require the fine defaulter to attend before the registrar, at the time and place stated in the subpoena—

(i) to answer questions and give information; and

(ii) to produce the documents or other things (if any) stated in the subpoena; and

(b) conduct the examination hearing to determine the financial position of the defaulter.

(3) The registrar may adjourn an examination hearing from time to time and may, by order, require the fine defaulter to attend an adjourned examination hearing.

(4) The director-general is a party to any proceeding conducted under this section.

(5) If the director-general has been told the date, time and place for the examination hearing, or adjourned examination hearing, but does not attend before the registrar, the registrar may—

(a) set aside the order for the examination hearing; or

(b) conduct the examination in the absence of the director-general.

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(6) At an examination hearing, the fine defaulter may—

(a) be examined orally on oath about—

(i) the assets, liabilities, expenses and income of the defaulter; and

(ii) any other means the defaulter has of satisfying the outstanding fine; and

(iii) the defaulter's financial circumstances generally; and

Note ***Oath*** includes affirmation (see Legislation Act, dict, pt 1).

(b) be required, by order, to produce any document substantiating anything relevant to—

(i) the assets, liabilities, expenses and income of the defaulter; and

(ii) any other means the defaulter has of satisfying the outstanding fine; and

(iii) the defaulter's financial circumstances generally.

(7) The examination hearing—

(a) must be conducted by the registrar; and

(b) may be conducted in open court or in the absence of the public as the registrar directs.

(8) An examination hearing before the registrar is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

Note The *Magistrates Court Act 1930*, s 307 deals with contempt of the Magistrates Court.

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116U Examination hearing warrant—issue

(1) This section applies if—

(a) a fine defaulter is required to attend an examination hearing, including an adjourned examination hearing; and

(b) the defaulter fails to attend the hearing as required by the order.

(2) The registrar may issue a warrant (an ***examination hearing warrant***) ordering an enforcement officer to apprehend the fine defaulter and bring the defaulter before the registrar to be examined at the examination hearing if the registrar—

(a) is satisfied that the defaulter was aware that he or she was required to attend the hearing; and

(b) considers that the defaulter does not have a reasonable excuse for not attending the hearing.

(3) The registrar may issue the examination hearing warrant on application by the director-general or on the registrar's own initiative.

(4) A fine defaulter apprehended under an examination hearing warrant must be brought before the registrar to be examined at an examination hearing.

116V Examination hearing warrant—contents and execution

(1) An examination hearing warrant must—

(a) name or otherwise describe the fine defaulter whose apprehension is authorised by the warrant; and

(b) state briefly the reason for its issue; and

(c) require an enforcement officer to arrest the defaulter and bring him or her before the registrar to be examined at an examination hearing; and

(d) be expressed to end not later than 3 months after the day it is issued.

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(2) An enforcement officer executing the warrant—

(a) may, with necessary assistance and force, enter any premises to arrest the fine defaulter named or otherwise described in the warrant; and

(b) must use not more than the minimum amount of force necessary to arrest the defaulter and remove him or her to the place stated in the warrant; and

(c) may ask a police officer to help in the exercise of the enforcement officer's powers under the examination hearing warrant; and

(d) must, before removing the defaulter, explain to him or her the purpose of the warrant; and

(e) must bring the defaulter immediately before the registrar; and

(f) if the defaulter is under a legal disability—must tell a parent or guardian of the defaulter about the arrest; and

(g) must tell the director-general of the defaulter's arrest.

(3) A police officer asked by an enforcement officer to assist in executing the warrant must give the enforcement officer the reasonable help the enforcement officer requires, if it is practicable to give the help.

(4) An examination hearing warrant continues in force until whichever of the following happens first:

(a) the warrant is executed;

(b) the warrant is set aside by the registrar and the enforcement officer is told that the warrant has been set aside;

(c) the end of 3 months after the date the warrant is issued.

(5) For subsection (4) (a), a warrant is executed when—

(a) the fine defaulter has been brought before the registrar and examined under section 116T; or

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(b) the examination is adjourned to another day.

Division 6A.3.3 Fine enforcement orders—general

116W Director-general may apply for fine enforcement order

(1) The director-general may apply to the Magistrates Court for a fine enforcement order against a fine defaulter.

(2) An application by the director-general under this section must include the following:

(a) a statement setting out the grounds of the application including—

(i) the reasons why the director-general considers the order would not be unfair or cause undue hardship to the fine defaulter or any other person affected by the order; and

(ii) if the director-general seeks a particular fine enforcement order—the reasons why the director-general seeks the order;

(b) an affidavit from the director-general setting out—

(i) details of the offence for which the fine forming the basis of the application was imposed; and

(ii) details of the steps taken by the director-general to tell the fine defaulter about the default; and

(iii) if any oral information about the defaulter's financial circumstances was given to the director-general under an examination notice—the information given;

(c) if any documents were produced to the director-general under an examination notice—the documents;

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(d) if the defaulter appeared at an examination hearing, the following information:

(i) if the defaulter produced any documents—the documents;

(ii) if the defaulter gave oral evidence—a transcript of the evidence.

116X Magistrates court may make fine enforcement order

(1) The Magistrates Court may, on application by the director-general, make a fine enforcement order against a fine defaulter if the court is satisfied that—

(a) the order would not be unfair or cause undue hardship to the defaulter or any other person affected by the order; and

Example—other person affected

a dependent of the defaulter

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

(b) it is otherwise in the interests of justice to make the order.

(2) A fine enforcement order may contain 1 or more of the following orders:

(a) an earnings redirection order;

(b) a financial institution deduction order;

(c) a property seizure order.

(3) For subsection (1) (a) and (b), the court must have regard to information the court has about any of the following:

(a) the defaulter's income;

(b) the defaulter's assets;

(c) the defaulter's equitable interest in property;

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(d) any debts payable to the defaulter;

(e) any other means the defaulter has of satisfying the outstanding fine;

(f) the defaulter's reasonable living expenses, including the reasonable living expenses of anyone dependent on the defaulter;

(g) the need to give effect to the considerations of specific and general deterrence that formed part of the decision of the sentencing court that imposed the fine on the defaulter;

(h) whether the defaulter has knowingly attempted to misrepresent his or her financial affairs to evade payment of the fine;

(i) any other relevant matter.

(4) The court may make a fine enforcement order against a fine defaulter in the absence of, and without notice to, the defaulter.

Division 6A.3.4 Fine enforcement orders—earnings redirection orders

116Y Fine enforcement order—earnings redirection order

(1) In this section:

earnings, of a fine defaulter, means any of the following that are owing or accruing to the defaulter:

(a) wages or salary, including, for example, any allowance, bonus, commission, fee, overtime pay or other amount received under a contract of employment;

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).

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(b) an amount that, although not payable under a contract of employment, is analogous to or in the nature of wages or salary, including, for example, an amount received under a contract for services;

(c) any other amount received, or the value of any benefit gained, as compensation for services or profit arising from a contract of employment, contract for services or position;

(d) a pension, benefit or similar payment;

(e) an annuity;

(f) an amount payable instead of leave;

(g) retirement benefit.

employer, of a fine defaulter, means a person who, as principal, rather than as employee or agent, pays, or is likely to pay, earnings to the defaulter.

(2) The court may make an order (an ***earnings redirection order***) directing the employer of a fine defaulter mentioned in the order to deduct an amount from the defaulter's earnings, in the form of a lump sum or instalments, and pay the amount in accordance with the order.

(3) For each payday while an earnings redirection order is in force, the employer—

(a) must deduct from the defaulter's earnings the amount stated in the order and pay it to the registrar; and

(b) may deduct from the defaulter's earnings a reasonable administration charge and keep it as a contribution towards the administrative cost of making payments under the order; and

(c) must give the defaulter a notice detailing the deductions.

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(4) Any charge deducted by an employer under subsection (3) (b) must not be more than—

(a) if the employer has an amount the employer usually charges employees for making a periodic payment—that amount; or

(b) otherwise—an amount that covers the employer's costs and expenses of complying with the order.

(5) An employer commits an offence if, because of an earnings redirection order against a fine defaulter, the employer does any of the following:

(a) dismisses the defaulter;

(b) changes the defaulter's position to the defaulter's disadvantage;

(c) discriminates against the defaulter.

Maximum penalty: 20 penalty units.

Division 6A.3.5 Fine enforcement orders—financial institution deduction orders

116Z Financial institution deduction order

(1) This section applies if—

(a) a fine defaulter has an account with a financial institution; and

(b) the account has, or is likely to have, sufficient funds deposited in it to satisfy all or part of the defaulter's outstanding fine.

(2) The court may make an order directing the financial institution to deduct an amount, either as a lump sum or in the form of instalments, from the account of the fine defaulter and pay the amount in accordance with the order.

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(3) An order under this section must state the following:

(a) the name of the fine defaulter to whom the order relates;

(b) the name of the financial institution;

(c) details of the defaulter's account from which deductions under the order must be made;

(d) the amount or amounts to be deducted by the institution.

(4) For each deduction made from the fine defaulter's account under the order, the financial institution—

(a) may deduct from the account a reasonable administration charge and keep it as a contribution towards the administrative cost of making payments under the order; and

(b) must give the defaulter notice detailing the deductions.

(5) Any charge deducted under subsection (4) (a) must not be more than—

(a) if the financial institution has an amount it usually charges its customers for making a periodic payment—that amount; or

(b) otherwise—an amount that covers the financial institution's costs and expenses of complying with the order.

(6) In this section:

account includes a joint account.

Division 6A.3.6 Fine enforcement orders—property seizure orders

116ZA Property seizure order

The court may make an order for the seizure of the personal property of a fine defaulter (a ***property seizure order***).

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116ZB Property seizure order—authority to enter premises etc

(1) A property seizure order authorises the director-general to—

(a) enter any premises stated in the order, between 7 am and 6 pm on the same day, using the force that is necessary and reasonable to enter the premises if—

(i) the director-general has given a person at the premises an opportunity to allow entry and has been refused entry; or

(ii) there is no one at the premises; and

(b) ask a police officer to help the director-general enter the premises; and

(c) seize any personal property found on the premises or in a public place that—

(i) apparently belongs, entirely or partly, to the fine defaulter; and

(ii) does not include clothing, bedding or other necessities of life; and

(d) seize and remove any documents that may prove the defaulter's title to any personal property; and

(e) place and keep any seized personal property or documents in safe custody for 28 days from the day the property was seized before selling the property; and

(f) sell as much of the defaulter's personal property as necessary to satisfy the outstanding fine to which the order relates.

(2) A police officer asked by the director-general under subsection (1) (b) to help the director-general enter the premises—

(a) must give any reasonable help the director-general requires if it is practicable to give the help; and

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(b) may use reasonable force against a person as part of giving the help.

(3) However, this section does not authorise the director-general to use force against a person unless it is reasonable and necessary in the interests of a person's safety.

(4) If the director-general seizes any property from premises the director-general must—

(a) make an inventory of the property seized; and

(b) in a prominent place on the premises, attach—

(i) a notice explaining that property has been seized from the premises in accordance with an order of the court under section 116ZA; and

(ii) a copy of the inventory of property seized; and

(iii) a notice setting out a person's rights under section 116ZD to recover the property seized.

(5) As far as possible, the director-general must seize personal property that the director-general considers—

(a) may be sold promptly and without unnecessary expense to satisfy an outstanding fine; and

(b) if sold will not cause undue hardship to the fine defaulter or other people.

116ZC Property seizure order—sale of seized property

(1) Property seized under a property seizure order must be sold by the director-general and the proceeds of the sale paid to the registrar.

(2) However, seized property may not be sold unless—

(a) the holding period for the property has ended; and

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(b) if an application under section 116ZD (1) has been made in relation to the property—the director-general has decided to refuse to return the property to the applicant; and

(c) if the director-general's decision has been appealed under section 116ZD (5)—the appeal has been withdrawn or refused.

(3) As far as possible, the director-general must sell personal property—

(a) in the order that the director-general considers—

(i) is likely to satisfy an outstanding fine promptly and without unnecessary expense; and

(ii) minimises undue hardship to the fine defaulter or other people; and

(b) at the best price reasonably obtainable, having regard to the circumstances existing when the property is sold.

(4) The director-general may retain part of the proceeds from the sale of personal property under this section to cover the director-general's reasonable costs of the sale.

(5) If property sold under this section results in proceeds that exceed the outstanding fine for which the property was sold, the excess amount must be given to any person who had a legal or equitable interest in the property in proportion to the share of the person's interest.

(6) In this section:

holding period means 28 days after the day the property was seized by the director-general.

116ZD Property seizure order—restoration application

(1) A person may apply to the director-general in writing for the return of any property seized by the director-general under a property seizure order.

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(2) An application under subsection (1) must—

(a) be made within the holding period under section 116ZC for the property to which it relates; and

(b) clearly identify the items of property the applicant seeks to have returned (the ***disputed property***); and

(c) if the applicant is the fine defaulter to whom the seized property relates—state the reasons why a refusal to return the disputed property would cause undue hardship or unfairness to the applicant; and

(d) if the applicant is not the fine defaulter—state the following:

(i) the reasons why a refusal to return the disputed property would result in undue hardship or unfairness to the applicant;

(ii) whether the applicant claims a legal or equitable interest in the disputed property.

(3) The director-general must—

(a) consider an application made under subsection (1); and

(b) notify the applicant of the director-general's decision.

(4) In considering whether a refusal to return disputed property to an applicant would result in undue hardship or unfairness to the applicant, the director-general may take into account the following:

(a) the relationship between the applicant and any other person likely to be affected by the loss of the disputed property;

(b) if the property can be easily replaced;

(c) the value of the property;

(d) the applicant's claim over the property;

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(e) if the applicant was aware of, or party to, the commission of an offence for which a fine was imposed and to which the seizure of the property relates;

(f) any other relevant matter.

(5) If the director-general refuses the application, the applicant may, within 28 days after the decision, apply to the Magistrates Court for an order for the return of the property.

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

(6) In considering the application, the Magistrates Court may take into account the matters mentioned in subsection (4).

Division 6A.3.7 Voluntary community work orders

116ZE Voluntary community work order

(1) The director-general may apply to the Magistrates Court for an order requiring a fine defaulter to perform voluntary community work to discharge an outstanding fine (a ***voluntary community work order***).

(2) The court may make a voluntary community work order for a fine defaulter if—

(a) the fine defaulter agrees to undertake voluntary community work under the order; and

(b) if the outstanding fine for which the fine defaulter is liable is or includes an amount payable under a reparation order under the *Crimes (Sentencing) Act 2005*—the entity in whose favour the reparation order was made consents to the reparation order being discharged by a voluntary community work order; and

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(c) the court is of the opinion that—

(i) it would not be appropriate to make a fine enforcement order; and

(ii) the fine defaulter is likely to comply with a voluntary community work order; and

(d) the fine defaulter has not been convicted of a personal violence offence.

(3) The court may inform itself in any way it considers appropriate about a matter mentioned in subsection (2).

(4) The order must state the number of hours the fine defaulter must work to discharge the outstanding fine.

Note The number of hours is to be worked out at the rate of 1 hour for each $37.50 of the outstanding fine (see s 116ZG).

(5) In this section:

personal violence offence—see section 216A (5).

116ZF Voluntary community work order—administration

(1) A voluntary community work order made for a fine defaulter is to be administered by—

(a) the director-general; or

(b) if the director-general authorises another entity, in writing, to administer the order—the other entity.

(2) The entity administering the order must—

(a) decide the kind of work to be performed by the defaulter, in accordance with the defaulter's ability; and

(b) decide the hours the defaulter must work (not more than 8 hours a day) having regard to the defaulter's family, work and other commitments; and

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(c) change the arrangements in accordance with any reasonable request of the defaulter.

116ZG Voluntary community work order—rate of discharge of outstanding fine

A fine defaulter performing work under a voluntary community work order discharges the defaulter's outstanding fine at the rate of $37.50 for each hour of work performed under the order.

116ZH Voluntary community work order—noncompliance

(1) This section applies if—

(a) the entity administering a voluntary community work order believes on reasonable grounds that the fine defaulter has failed to comply with the order; and

(b) the defaulter has not asked the entity for an appropriate change in arrangements that would enable the defaulter to comply with the order.

(2) The entity must report the failure to the court.

(3) If the court is satisfied that the fine defaulter failed to comply with the order, the court may do 1 or more of the following:

(a) take no further action;

(b) give the defaulter a warning about the need to comply with the order;

(c) amend the order;

(d) cancel the order.

(4) If the court amends or cancels the order, the court must give the fine defaulter written notice of the amendment or cancellation.

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116ZI Voluntary community work order—certificate of completion

If the entity administering a voluntary community work order is satisfied that the fine defaulter has completed the hours of work required to discharge the outstanding fine, the entity must give the court a certificate of completion in relation to the order.

116ZJ Voluntary community work order—ends if outstanding fine paid

If a fine defaulter is subject to a voluntary community work order and an amount is paid to the Territory that completely discharges the outstanding fine, the order ceases to have effect.

Division 6A.3.8 Imprisonment

116ZK Imprisonment order

(1) The Magistrates Court may, on application by the director-general, order the imprisonment of a fine defaulter if—

(a) the court is satisfied that all appropriate enforcement action has been taken under this chapter to secure payment and there is no real likelihood of the outstanding fine being paid; and

(b) the outstanding fine has not been remitted under section 116ZO (Remission of fine by director-general) or section 313 (Remission of penalties); and

(c) if the outstanding fine for which the fine defaulter is liable is or includes an amount payable under a reparation order under the *Crimes (Sentencing) Act 2005*—the entity in whose favour the reparation order was made consents to the reparation order being discharged by imprisonment.

Note If the court makes an imprisonment order, it must issue a warrant for the imprisonment of the person in the director-general's custody (see s 12).

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(2) The order, or any warrant under section 12, must not be given effect if the amount of the outstanding fine is paid to the Territory before the fine defaulter is imprisoned.

(3) The period for which the fine defaulter must be committed (the ***imprisonment period***) is the lesser of—

(a) the period worked out at the rate of 1 day for each $300, or part of $300, of the outstanding fine; and

(b) 6 months.

(4) However, for a young fine defaulter, the imprisonment period is the lesser of—

(a) the period worked out at the rate of 1 day for each $500, or part of $500, of the outstanding fine; and

(b) 7 days.

116ZM Imprisonment—rate of discharge of outstanding fine

(1) A fine defaulter imprisoned for a period under section 116ZK (3), discharges the outstanding fine—

(a) if the defaulter is committed for less than 6 months—at the rate of $300 for each day or part of a day for which the defaulter is imprisoned; or

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

(2) A fine defaulter imprisoned for a period under section 116ZK (4), discharges the outstanding fine—

(a) if the defaulter is committed for less than 7 days—at the rate of $500 for each day or part of a day for which the defaulter is imprisoned; or

(b) if the defaulter is committed for 7 days—at the end of the 7-day period.

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116ZN Imprisonment—release if outstanding fine paid

(1) This section applies if—

(a) a person is imprisoned under section 116ZK; and

(b) an amount is paid to the Territory that completely discharges the outstanding fine.

(2) The director-general must release the person from imprisonment immediately unless the person must otherwise be lawfully detained.

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Part 6A.4 Miscellaneous

116ZO Remission of fine by director-general

(1) The director-general may, in writing, remit all or part of an outstanding fine that a fine defaulter is liable to pay if the director-general is satisfied on reasonable grounds that—

(a) a fine enforcement order would not be effective to secure payment or is not otherwise appropriate; and

(b) a voluntary community work order is not possible or appropriate; and

(c) it is appropriate in all the circumstances to remit the fine.

(2) In deciding whether to remit a fine, the director-general—

(a) must consider the following:

(i) any information the director-general has about the fine defaulter's financial and personal circumstances;

(ii) the offence for which the fine was imposed;

(iii) the amount of the fine;

(iv) whether the defaulter has any other outstanding fines;

(v) anything the defaulter has done to frustrate, render impracticable or evade the making or effect of a fine enforcement order or voluntary community work order; and

(b) may consider anything else the director-general considers on reasonable grounds is relevant.

Note A fine may also be remitted by the Executive under s 313. Also, this Act does not affect the prerogative of mercy (see s 314A).

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116ZP Time served in custody to count

(1) If a fine defaulter is imprisoned other than under an order under section 116ZK, the time served is to count toward reducing the amount of any outstanding fines (the ***outstanding liability***) for which the defaulter is liable.

(2) If the defaulter has more than 1 outstanding fine, the defaulter's outstanding liability is the aggregate amount of the defaulter's outstanding fines.

(3) The defaulter's outstanding liability is reduced at the rate of $300 for each day or part of a day for which the defaulter is imprisoned.

(4) However, a young fine defaulter's outstanding liability is reduced at the rate of $500 for each day or part of a day for which the defaulter is imprisoned.

(5) In this section:

outstanding fine does not include an amount payable under a reparation order under the *Crimes (Sentencing) Act 2005* to—

(a) the Territory; or

(b) a person in relation to whom a reparation order agreement mentioned in section 116ZQ is in force.

116ZQ Reparation order agreements

(1) An entity (other than the Territory) in whose favour a reparation order was made may make an agreement with the director-general for the reparation order to be enforceable under this chapter as a fine.

(2) A reparation order agreement must be in writing.

(3) If a reparation order agreement with an entity is in force, any amount received by the director-general that is to be applied in payment of a reparation order covered by the agreement must—

(a) be paid to the entity; or

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(b) otherwise dealt with in accordance with the agreement or any later written direction of the entity.

116ZR Apportionment of fine amounts

Amounts received in payment of an unpaid amount of a fine must be applied towards satisfying the unpaid amount in the following order:

(a) an amount payable under a reparation order under the *Crimes (Sentencing) Act 2005* to a person in relation to whom a reparation order agreement mentioned in section 116ZQ is in force;

(b) an amount payable under a reparation order under the *Crimes (Sentencing) Act 2005* to the Territory;

(c) a victims financial assistance levy imposed under the *Victims of Crime (Financial Assistance) Act 2016*;

(d) a victims services levy imposed under the *Victims of Crime Act 1994*;

(e) a fine payable under a fine order under the *Crimes (Sentencing) Act 2005*;

(f) a financial penalty imposed, other than under the *Crimes (Sentencing) Act 2005*, in relation to an offence;

(g) a fee or charge payable to the Territory that is imposed by a court in a proceeding for an offence;

(h) costs payable to the Territory under a court order in a proceeding for an offence.

116ZS Conviction or order quashed or set aside

If the conviction or order that gave rise to a person's liability to pay a fine is quashed or set aside, the registrar must, in addition to notifying the road transport authority under part 6A.3 refund to the person any amount (including any administrative fee) paid in relation to the fine.

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116ZT Sharing information

A person exercising a function under this chapter may give to another person exercising a function under this chapter information the other person needs for the exercise of the other person's functions under this chapter.

Example

registrar giving director-general details of fine defaulter's address

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).

116ZU Orders may be made on conditions

Subject to this chapter, the court may make an order under this chapter on any conditions it considers appropriate.

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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).

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

special parole application—see section 121 (3).

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.

118A Parole—meaning of *registered victim* and *victim*

In this chapter:

registered victim, of an offender, means a person who is a registered victim of an offence by the offender only if this chapter applies to the sentence of imprisonment for the offence.

victim, of an offender, means a person who is a victim of an offence by the offender only if this chapter applies to the sentence of imprisonment for the offence.

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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;

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(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.

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(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.

Example of when board might be satisfied application is frivolous, vexatious or misconceived

The board previously rejected an application because the offender's proposed accommodation after release was unsuitable. The offender's later application proposes the same unsuitable accommodation without including new information or new reasons.

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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 director-general.

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

Note For what must be included in 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.

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(3) For this section, the director-general 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 director-general 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 2008*, division 1.3.2.

(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.

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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).

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(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 director-general; and

(b) the director of public prosecutions.

(4) The notice must include invitations for the offender and the director-general 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.

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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.

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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 director-general;

(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.

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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.

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(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.

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(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 director-general;

(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.

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(4) If a victim of the offender is a child under 15 years old—

(a) the director-general 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 2008*.

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.

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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

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(b) comply with any other requirement under this Act or the *Corrections Management Act 2007* 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 director-general 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 director-general under subsection (2);

(d) the offender must comply with any direction given to the offender by the director-general under this Act or the *Corrections Management Act 2007* 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.

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(2) If an offender applies to the director-general for approval for a change in the offender's contact details, the director-general 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—director-general directions

(1) For this chapter, the director-general may give directions, orally or in writing, to an offender.

(2) To remove any doubt, this section does not limit section 321 (Director-general directions—general).

138A Parole—alcohol and drug tests

(1) The director-general may direct an offender, orally or in writing, to give a test sample.

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(2) The provisions of the *Corrections Management Act 2007* relating to alcohol and drug tests apply, with any necessary changes, in relation to a direction under this section and any sample given under the direction.

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

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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.

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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*.

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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.

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(3) The board may conduct the inquiry—

(a) on its own initiative; or

(b) on application by the director-general.

(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 director-general;

(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 director-general 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;

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(b) give the offender a warning about the need to comply with the offender's parole obligations;

(c) give the director-general 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—

(a) commits an offence against a territory law that is punishable by imprisonment; and

(b) is convicted or found guilty by a court of the offence.

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(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 offender commits, and is 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.

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(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 on parole; and

(b) in conjunction with any other inquiry under this Act in relation to the offender.

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(4) The board may conduct the inquiry—

(a) on its own initiative; or

(b) on application by the offender or the director-general.

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 director-general;

(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 director-general 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.

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(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 director-general;

(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 director-general 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).

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(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.

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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 director-general;

(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 what must be included in 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.

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(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.

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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 director-general'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 director-general'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 director-general'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.

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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 law; 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 at a correctional centre (however described).

163 Parole order transfer—declaration of corresponding parole laws

(1) The Minister may declare that a law of a State or another Territory is a corresponding parole law for this Act.

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(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 director-general 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

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(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

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(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 director-general under section 164 (1) (Parole order transfer—registration requests) to register a parole order, the director-general must register the order by endorsing on the order, or a copy of the order, a memorandum signed by the director-general to the effect that the order was registered on the date of endorsement.

(2) If the director-general registers a parole order under subsection (1), the director-general 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

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(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.

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(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 offender's parole release date.

(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.

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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 director-general, 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 director-general, and the copy is evidence of the matters stated in the order.

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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

The board has the following functions:

(a) the functions given to the board under the following provisions:

(i) chapter 5 (Intensive correction orders);

(ii) chapter 7 (Parole);

(iii) part 13.1 (Release on licence);

(b) on request, to provide advice to a Minister about an 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***).

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;

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(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, a person is ***judicially qualified*** if the person has been a legal practitioner for not less than 5 years.

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*.

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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.

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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;

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(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 personally insolvent; or

Note ***Bankrupt or personally insolvent***—see the Legislation Act, dictionary, pt 1.

(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).

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(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

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(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.

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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 (Intensive correction orders);

(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) The chair must assign 3 board members to each division including at least 1 judicial member.

(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

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(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 board member may be assigned to 2 or more divisions at the same time.

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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.

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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

a phone link, a satellite link, an internet or intranet 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

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(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).

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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.

(5) For this section, a document is ***given*** to a person if the contents of the document are made known to the person.

Examples—making known the contents of a document to a person

- reading the document to the person
- showing the document to the person

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).

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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.

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(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.

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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 director-general, 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 director-general 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 director-general;

(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.

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(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 self-incrimination 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 at a correctional centre (however described) in the ACT or elsewhere; or

(c) a person prescribed by regulation.

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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.

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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 director-general;

(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.

(4) This section does not apply if the offender is given notice under section 63 (Notice of inquiry—breach of intensive correction order obligations).

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.

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(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 director-general 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—

(i) a notice under section 63 (Notice of inquiry—breach of intensive correction order obligations); or

(ii) a notice under section 205 (1); or

(iii) 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

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(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 (1) (Territory courts may take evidence and submissions from participating States) or section 32 (1) (Territory courts may take evidence and submissions from another place).

(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;

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(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 self-incrimination 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

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(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 director-general must ensure that a sound or audiovisual record is made of each hearing for an inquiry in relation to an offender.

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(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 director-general; 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 a proceeding, see the *Evidence Act 2011*, s 157.

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.

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212A Board hearing—outstanding warrants

(1) This section applies if a warrant is issued under section 206 (2) for the arrest of an offender, because—

(a) the offender failed to appear before the board in accordance with a notice under section 63 (Notice of inquiry—breach of intensive correction order obligations); or

(b) a judicial member of the board considers that an offender will not appear before the board in accordance with a notice under section 63.

(2) Any period for which the warrant is outstanding and the offender is not in custody does not count as part of the offender's term of imprisonment by intensive correction.

(3) In this section:

in custody means:

(a) remanded in custody under a territory law or a law of the Commonwealth or a State; or

(b) detained at a place under the *Mental Health Act 2015*.

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

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Chapter 10 Victim and offender information

213 Meaning of *registered victim*

In this Act:

***registered victim*—**

(a) in relation to an offence by an offender (other than a young offender)—means a victim of the offender about whom information is entered in the register kept under section 215; and

(b) in relation to an offence by a young offender—means a victim of the young offender about whom information is entered in the register kept under section 215A.

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.

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215 Victims register—offenders other than young offenders

(1) The director-general must maintain a register of victims of offenders.

(2) The director-general must enter in the register information about a victim of an offender that the victim, or someone acting for the victim, asks the director-general to enter in the register.

(3) As soon as practicable after entering the victim's information in the register, the director-general 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 director-general may give the information to a person who has parental responsibility for the victim under the *Children and Young People Act 2008*.

(5) Subsection (4) does not limit the cases in which the director-general may give information to a person acting for a victim.

(6) In this section:

offender does not include a young offender.

215A Victims register—young offenders

(1) The director-general must maintain a register of victims of young offenders.

(2) The director-general must enter in the register information about a victim of a young offender that the victim, or someone acting for the victim, asks the director-general to enter in the register.

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(3) As soon as practicable after entering the victim's information in the register, the director-general must give the victim information, orally or in writing, about the rights of registered victims under section 216A to information about young offenders who are sentenced.

(4) If the victim is a child under 15 years old, the director-general may give the information to a person who has parental responsibility for the victim under the *Children and Young People Act 2008*.

(5) Subsection (4) does not limit the cases in which the director-general may give information to a person acting for a victim.

(6) In this section:

director-general means the director-general responsible for the *Children and Young People Act 2008*.

216 Disclosures to registered victims—offenders other than young offenders

(1) If an offender has been sentenced, the director-general may disclose information about the offender to a registered victim of the offender if satisfied the disclosure is appropriate in the circumstances.

Examples—disclosures

1 any non-association order or place restriction order that applies to the offender

2 if the offender is under an intensive correction order—the place where the offender may do community service work or attend a rehabilitation program

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—

- the correctional centre where the offender is detained;
- the offender's classification in detention;
- the transfer of the offender between correctional centres, including NSW correctional centres;
- the offender's parole eligibility date;

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- any unescorted leave given to the offender under the *Corrections Management Act 2007*;
- 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 director-general may give the information to a person who has parental responsibility for the victim under the *Children and Young People Act 2008*.

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 director-general may give information to a person acting for a victim.

(4) In this section:

offender does not include a young offender.

216A Disclosures to registered victims—young offenders

(1) If a young offender has been sentenced, the director-general may disclose information about the young offender to a registered victim of the young offender if satisfied the disclosure is appropriate in the circumstances.

Examples—disclosures

1 any non-association order or place restriction order that applies to the young offender

2 if the young offender is under a good behaviour order—the place where the young offender may do community service work or attend a rehabilitation program

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3 if the young offender is to be released from imprisonment—when and where the young offender will be released

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) However, the director-general must not disclose identifying information for the young offender unless the offence was a personal violence offence and the director-general believes that the victim, or a family member of the victim, may come into contact with the young offender.

Examples

1 the victim and young offender live in the same neighbourhood and may see each other at the local shopping centre

2 the victim and young offender may be enrolled at the same school

(3) If the victim is a child under 15 years old, the director-general may give the information to a person who has parental responsibility for the victim under the *Children and Young People Act 2008*.

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

(4) Subsection (3) does not limit the cases in which the director-general may give information to a person acting for a victim.

(5) In this section:

director-general means the director-general responsible for the *Children and Young People Act 2008*.

family violence offence—see the *Family Violence Act 2016*, dictionary.

personal violence offence means—

(a) an offence that involves causing harm, or threatening to cause harm, to anyone; or

(b) a family violence offence.

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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.

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.

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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.

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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.

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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.

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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

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(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.

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221 Interstate transfer—corresponding courts and interstate laws

(1) The Minister may 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.

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(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.

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(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

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(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).

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(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).

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(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.

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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 director-general 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.

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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;

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(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.

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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

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(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

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(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.

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(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.

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(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.

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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).

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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.

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(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

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(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.

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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.

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(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

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(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.

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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.

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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).

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(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.

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(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.

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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.

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(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;

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(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.

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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.

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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.

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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.

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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) an intensive correction order;

(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) an intensive correction order;

(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.

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(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.

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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.

(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.

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Part 12.3 Transfer of community-based sentences—administration

269 Community-based sentence transfer—appointment of local authority

The director-general 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.

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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;

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(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.

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(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

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(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

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(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.

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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;

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(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.

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(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.

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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.

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(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.

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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

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(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.

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(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.

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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.

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(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 director-general;

(c) the director of public prosecutions.

(2) The notice must—

(a) include invitations for the offender and the director-general 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.

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(3) For this section, the head of service 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 director-general 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 2008*, division 1.3.2; 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

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(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.

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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;

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(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).

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(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.

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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 director-general 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 director-general may also give notice of the Executive's decision to any other entity the director-general 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

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(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 director-general may give the information to a person who has parental responsibility for the victim under the *Children and Young People Act 2008*, division 1.3.2.

(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.

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(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 2007* 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).

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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 director-general 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 director-general under subsection (2);

(d) the offender must comply with any direction given to the offender by the director-general under this Act or the *Corrections Management Act 2007* 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 director-general for approval for a change in the offender's contact details, the director-general 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.

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(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—director-general directions

(1) For this part, the director-general may give directions, orally or in writing, to the offender.

(2) To remove any doubt, this section does not limit section 321 (Director-general directions—general).

302A Release on licence—alcohol and drug tests

(1) The director-general may direct an offender, orally or in writing, to give a test sample.

(2) The provisions of the *Corrections Management Act 2007* relating to alcohol and drug tests apply, with any necessary changes, in relation to a direction under this section and any sample given under the direction.

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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

303A Corrections officers to report breach of release on licence obligations

(1) This section applies if a corrections officer believes on reasonable grounds that an offender has breached any of the offender's release on licence 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.

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*.

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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.

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(3) The board may conduct the inquiry—

(a) on its own initiative; or

(b) on application by the offender or the director-general.

(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 director-general;

(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 director-general 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;

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(c) give the director-general 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).

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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 director-general;

(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.

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(3) The notice must include—

(a) the board's reasons for the decision; and

(b) the date when the decision takes effect.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

(4) The director-general may also give notice of the board's decision to any other entity the director-general 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 director-general'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 director-general'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 director-general's custody as soon as practicable.

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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.

314A Prerogative of mercy

The prerogative of mercy is not affected by—

- this Act
- the *Children and Young People Act 2008*
- the *Corrections Management Act 2007*
- the *Crimes (Sentencing) Act 2005*.

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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*

(1) ***Community service work*** includes any of the following prescribed by regulation:

(a) work;

(b) community service programs.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see Legislation Act, s 48).

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(2) If an offender who is subject to a community service order attends a program for therapy or education in accordance with the directions of the director-general, the attendance at the program is taken to be ***community service work***.

Note The number of hours of attendance at a program for therapy or education which may count toward the performance of a community service condition is limited under—

(a) if the condition forms part of an intensive correction order—s 48A; or

(b) if the condition forms part of a good behaviour order—s 93A.

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 director-general; or

(b) the conduct was intended (whether by itself or with other conduct) to cause injury, loss or damage.

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318 Community service work not to displace employees

The director-general must not direct or allow an offender to do community service work if the director-general 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 2007* 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—work health and safety

(1) The director-general must ensure, as far as practicable, that the conditions for doing community service work comply with requirements under the *Work Health and Safety Act 2011* in relation to work by workers.

(2) In particular, the director-general 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.

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(3) A regulation may provide for the application of the *Work Health and Safety Act 2011* in relation to community service work, including modifications of the Act in its application in relation to an offender doing community service work.

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Chapter 14A Sentence administration—young offenders

Part 14A.1 General

320A Purpose—ch 14A

(1) The purpose of this chapter is to set out particular provisions that apply to administration of sentences of young offenders.

(2) Except as provided in this chapter or otherwise in this Act, this Act applies to young offenders in the same way as it applies to other offenders.

Note See dict, def ***offender*** (it includes a young offender).

320B Youth justice principles to be considered

(1) An entity exercising a function under this Act in relation to a CYP young offender must consider the youth justice principles when dealing with the offender.

(2) In this section:

CYP young offender means—

(a) a young offender serving a sentence of imprisonment at a detention place; or

(b) a young offender serving a sentence (other than a sentence of imprisonment)—

(i) who is under 18 years old; or

(ii) who is over 18 years old but for whom the CYP director-general is responsible in accordance with a decision under section 320F (Young offenders—administration of sentences other than imprisonment).

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youth justice principles—see the *Children and Young People Act 2008*, section 94.

320C Young offenders and remandees—references to correctional centre and Corrections Management Act

(1) A reference in part 4.2 (Serving full-time detention) to a correctional centre or an ACT correctional centre is, in relation to a CYP young offender, a reference to a detention place under the *Children and Young People Act 2008*.

(2) A reference in this Act to the *Corrections Management Act 2007* is, in relation to a young offender in detention under the *Children and Young People Act 2008* or a young remandee, a reference to the *Children and Young People Act 2008*.

(3) In this section:

CYP young offender means a young offender required under the *Crimes (Sentencing) Act 2005*, section 133H to serve his or her sentence of imprisonment at a detention place.

320D Young offenders and remandees—references to director-general

(1) A reference in this Act to the director-general is, in relation to a function to be exercised in relation to a CYP young offender or a young remandee, a reference to the director-general responsible for the *Children and Young People Act 2008*.

(2) In this section:

CYP young offender—see section 320B (2).

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320E Young remandees—remand to be at detention place

(1) This section applies (instead of section 18 (1)) to a young remandee.

(2) The director-general must—

(a) keep the young remandee in custody under full time detention under this Act and the *Children and Young People Act 2008* under the order for remand; and

(b) return the young remandee to the remanding authority as ordered by the remanding authority.

320F Young offenders—administration of sentences other than imprisonment

(1) This section applies to a young offender who is serving a sentence (other than a sentence of imprisonment) and becomes an adult.

(2) The director-general responsible for this Act and the director-general responsible for the *Children and Young People Act 2008* must decide which of them is to be the administering director-general for the person.

(3) If the administering director-general is the director-general responsible for this Act, the person is dealt with under this Act in the same way as an adult offender.

(4) If the administering director-general is the director-general responsible for the *Children and Young People Act 2008*, the person continues to be dealt with under this Act as a young offender.

320G Young offenders—breach of good behaviour obligations

(1) If an authorised person believes on reasonable grounds that a young offender has breached any of the young offender's good behaviour obligations, the authorised person may report the belief to the sentencing court.

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(2) The report must be—

(a) in writing; and

(b) accompanied by a copy of a written record in support of the authorised person's belief.

(3) In this section:

authorised person means an authorised person under the *Children and Young People Act 2008*.

young offender does not include a young offender for whom the director-general responsible for this Act is responsible in accordance with a decision under section 320F.

Note Section 102 (Corrections officers to report breach of good behaviour obligations) applies to these young offenders (see s 102 (4)).

320H Sentencing court to deal with breaches

(1) This section applies if—

(a) a court imposed a sentence on a person as a young offender; and

(b) the person is required to be dealt with by a court for a breach in relation to the sentence.

(2) The breach must be dealt with by the court that imposed the sentence, whether or not the person is still under 18 years old.

320I Young offenders—transfer

Chapter 11 (Transfer of prisoners) does not apply to a young offender who is subject to an ACT sentence of imprisonment unless the young offender is imprisoned in a correctional centre.

320J Young offenders—transfer of community-based sentences

Chapter 12 (Transfer of community-based sentences) does not apply to a young offender who is under 18 years old (see section 262 (1)).

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Part 14A.2 Young offenders—accommodation orders

320K Accommodation orders—contraventions

A young offender in relation to whom an accommodation order is in force contravenes the order if the young offender contravenes the reasonable lawful directions of—

(a) if the order is to live at a place—the person in charge of the place; or

(b) if the order is to live with a person—the person.

320L Accommodation orders—resentencing for breach

(1) This section applies if a young offender breaches an accommodation order, or a condition of an accommodation order, in force for the young offender.

(2) The court may resentence the young offender for the offence in relation to which the accommodation order was made.

(3) In resentencing the young offender, the court must take into account the following (in addition to any other matters the court considers should be taken into account):

(a) the fact that the accommodation order was made;

(b) anything done under the order;

(c) any other order made for the offence for which the accommodation order was made, and anything done under that other order.

(4) In resentencing the young offender, the court must not impose a penalty that, when taken together with a penalty previously imposed for the offence for which the accommodation order was made, is greater than the maximum penalty the court could have imposed for that offence.

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Chapter 15 Miscellaneous

321 Director-general directions—general

(1) For this Act, the director-general may give a direction to a person who is in the director-general's custody under this Act.

(2) Without limiting subsection (1), the director-general may give a direction that the director-general 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.

321AA Director-general to give information—detainees etc subject to forensic mental health orders

(1) This section applies if a forensic mental health order is in force in relation to a detainee, a person released on parole, a person released on licence or a person serving a community-based sentence.

(2) The director-general must tell the director-general responsible for the *Mental Health Act 2015* in writing if the person stops being a detainee, a person released on parole, a person released on licence or a person serving a community-based sentence.

(3) In this section:

community-based sentence—see section 264.

detainee—see the *Corrections Management Act 2007*, section 6.

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321A Evidentiary certificates

(1) A certificate that appears to be signed by or for the director-general, and states any matter relevant to anything done or not done under this Act in relation to person, is evidence of the matter.

(2) Without limiting subsection (1), a certificate under subsection (1) may state any of the following:

(a) that a stated person was, or was not subject to full-time detention on a stated day;

(b) that a stated person was or was not in the director-general's custody on a stated day;

(c) that a stated offender subject to full-time detention did not comply with a stated obligation of the detention;

(d) that a stated offender subject to an intensive correction order did not comply with a stated obligation of the order;

(e) that a stated offender's release from imprisonment on a stated day was authorised by a parole order;

(f) that a stated offender released from imprisonment on parole did not comply with a stated condition of the parole;

(g) that a stated offender's release from imprisonment on a stated day was authorised by a licence;

(h) that a stated offender released from imprisonment on licence did not comply with a stated condition of the release;

(i) that the director-general gave a stated direction to a stated person on a stated day;

(j) that a stated person did not comply with a stated direction by the director-general on a stated day;

(k) that a stated decision was made by the board on a stated date;

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(l) that a stated person did, or did not, occupy a position under this Act on a stated day;

(m) that a stated instrument under this Act was, or was not, in force on a stated day;

(n) that a stated instrument is a copy of an instrument made, given, issued or received under this Act.

(3) A certificate that appears to be signed by or for the director-general, and states any matter prescribed by regulation for this section, is evidence of the stated matter.

(4) A certificate mentioned in subsection (1) or (2) may state a matter by reference to a date or period.

(5) A certificate of the results of the analysis of a substance under this Act, signed by an analyst, is evidence of the facts stated in the certificate.

(6) A court must accept a certificate or other document mentioned in this section as proof of the matters stated in it if there is no evidence to the contrary.

(7) However, the following certificates must not be admitted in evidence by a court unless the court is satisfied that reasonable efforts have been made to serve a copy of the certificate on the person concerned:

(a) a certificate about a matter mentioned in subsection (2) (c), (d) or (f) or (h) to (j);

(b) a certificate mentioned in subsection (5).

(8) The director-general may appoint analysts for this Act.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

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

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

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

(10) In this section:

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

322 Criminology or penology research

(1) In this section:

approved researcher—a person is an ***approved researcher*** if the director-general 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 director-general 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 director-general's custody under this Act or the *Corrections Management Act 2007*.

(2) A person may apply to the director-general for approval to conduct research that involves the person obtaining access to—

(a) information or facilities administered by the director-general; or

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(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 2007*.

(3) In deciding whether to approve the conduct of research by the person, the director-general may have regard to any recommendation made by an ethics committee established by the director-general.

(4) If the director-general approves the conduct of research by the person, the director-general 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 director-general 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.

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(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 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 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.

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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.

Note 3 A reference to an instrument includes a reference to a provision of an instrument (see Legislation Act, s 14 (2)).

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

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Chapter 20 Transitional—Crimes (Sentencing and Restorative Justice) Amendment Act 2016

900 Meaning of *commencement day*—ch 20

In this chapter:

commencement day means the day the *Crimes (Sentencing and Restorative Justice) Amendment Act 2016*, section 4 commences.

901 Application of amendments—periodic detention

(1) This section applies to an offender who, immediately before the commencement day, is serving a sentence by periodic detention.

(2) Subject to subsection (3), this Act, the *Crimes (Sentencing) Act 2005* and legislation mentioned in the *Crimes (Sentencing and Restorative Justice) Amendment Act 2016*, schedule 1 (Consequential amendments), as in force immediately before the commencement day, continue to apply to the offender as if the amendments made by the *Crimes (Sentencing and Restorative Justice) Amendment Act 2016* had not been made.

(3) The following sections of this Act, as in force immediately before the commencement day, no longer apply to the offender:

(a) section 68 (Board powers—breach of periodic detention obligations);

(b) section 69 (Board powers—repeated failures to perform periodic detention);

(c) section 70 (Cancellation of periodic detention on further conviction etc).

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902 Referral of periodic detention in certain circumstances

(1) The board must refer an offender serving a sentence by periodic detention for re-sentencing by the sentencing court if—

(a) the board decides that the offender has breached any of the offender's periodic detention obligations; or

(b) after the offender was sentenced to serve periodic detention, the offender commits, and is 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 outside Australia that, if it had been committed in Australia, would be punishable by imprisonment.

(2) If the board refers the offender for re-sentencing under subsection (1), the sentencing court must re-sentence the offender for the offence in relation to which the periodic detention order was made.

(3) In re-sentencing the offender, the court—

(a) must take into account the following (in addition to any other matters the court considers should be taken into account):

(i) the fact that the offender was sentenced to periodic detention;

(ii) anything done under the periodic detention; and

(b) must not—

(i) impose a penalty that, when taken together with a penalty previously imposed for the offence for which the periodic detention was ordered, is greater than the maximum penalty the court could have imposed for the offence; or

(ii) re-sentence the offender to periodic detention.

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903 Transitional regulations

(1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Crimes (Sentencing and Restorative Justice) Amendment Act 2016*.

(2) A regulation may modify this chapter (including 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 chapter.

(3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.

904 Expiry—ch 20

This chapter expires 3 years after the commencement day.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

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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:

- bankrupt or personally insolvent
- breach
- detention place
- director-general (see s 163)
- director of public prosecutions
- document
- entity
- Executive
- fail
- found guilty
- function
- head of service
- judge
- lawyer
- legal practitioner
- magistrate
- may (see s 146)
- Minister (see s 162)
- must (see s 146)
- NSW correctional centre
- police officer
- public servant
- State
- under.

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accommodation order—see the *Crimes (Sentencing) Act 2005*, section 133Y.

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 intensive correction order—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.

administrative fee, for chapter 6A (Court imposed fines)—see section 116A.

application, for parole—see section 117.

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

at, in relation to a correctional centre, includes in the correctional centre.

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 (1) (Combination sentences—offences punishable by imprisonment) and section 30 (1) (Combination sentences—offences punishable by fine).

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

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

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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 85.

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 intensive correction order—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—see the *Corrections Management Act 2007*, dictionary.

corrections officer—see the *Corrections Management Act 2007*, dictionary.

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.

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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.

CYP director-general means the director-general responsible for the *Children and Young People Act 2008*.

default, for chapter 6A (Court imposed fines)—see section 116A.

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

default notice, for chapter 6A (Court imposed fines)—see section 116A.

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.

drug—see the *Corrections Management Act 2007*, section 132.

earnings redirection order, for chapter 6A (Court imposed fines)—see section 116Y (2).

enforcement officer, for chapter 6A (Court imposed fines)—see section 116A.

engage in conduct means—

(a) do an act; or

(b) omit to do an act.

escort officer—see the *Corrections Management Act 2007*, dictionary.

examination hearing, for chapter 6A (Court imposed fines)—see section 116A.

examination notice, for chapter 6A (Court imposed fines)—see section 116P.

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examination warrant, for chapter 6A (Court imposed fines)—see section 116R.

fine, for chapter 6A (Court imposed fines)—see section 116A.

fine defaulter, for chapter 6A (Court imposed fines)—see section 116A.

fine enforcement order, for chapter 6A (Court imposed fines)—see section 116A.

frisk search—see the *Corrections Management Act 2007*, dictionary.

full-time detainee, for chapter 4 (Full-time detention)—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.

intensive correction assessment, for chapter 5 (Intensive correction orders)—see section 40.

intensive correction order—see the *Crimes (Sentencing) Act 2005*, section 11.

interested person—

(a) for an offender's good behaviour order—see section 84; and

(b) for an offender's intensive correction order—see section 40.

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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.

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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 at a NSW correctional centre (see s 36 (2) (b)).

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, and includes a young offender; 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.

outstanding fine, in relation to a person, for chapter 6A (Court imposed fines)—see section 116A.

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

parole obligations, of an offender—see section 117.

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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.

penalty notice, for chapter 6A (Court imposed fines)—see section 116A.

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 2007*, 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.

property seizure order, for chapter 6A (Court imposed fines)—see section 116ZA.

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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, means—

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

(b) for this Act—see section 213.

registrar, for chapter 6A (Court imposed fines)—see section 116A.

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

rehabilitation program condition—

(a) of a good behaviour order for an offender, for this Act generally—see the *Crimes (Sentencing) Act 2005*, section 93; and

(b) of an intensive correction order for an offender, for chapter 5—see the *Crimes (Sentencing) Act 2005*, section 80G.

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.

reminder notice, for chapter 6A (Court imposed fines)—see section 116A.

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

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—

(a) for part 7.6 (Interstate transfer of parole orders)—see section 162; and

(b) for part 11.1 (Interstate transfer of prisoners)—see section 218.

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.

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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.

territory entity, for chapter 6A (Court imposed fines)—see the *Auditor-General Act 1996*, dictionary.

test sample—see the *Corrections Management Act 2007*, 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, means—

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

(b) for this Act—see section 214.

voluntary community work order, for chapter 6A (Court imposed fines)—see section 116ZE.

young fine defaulter, for chapter 6A (Court imposed fines)—see section 116A.

young offender means a person who—

(a) has been convicted or found guilty of an offence by a court; and

(b) was under 18 years old when the offence was committed.

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young remandee means a remandee—

(a) who is under 18 years old; or

(b) who is over 18 years old but under 21 years old and is on remand in relation to an offence alleged to have been committed when he or she was under 18 years old.

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Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act
AF = Approved form
am = amended
amdt = amendment
AR = Assembly resolution
ch = chapter
CN = Commencement notice
def = definition
DI = Disallowable instrument
dict = dictionary
disallowed = disallowed by the Legislative Assembly
div = division
exp = expires/expired
Gaz = gazette
hdg = heading
IA = Interpretation Act 1967
ins = inserted/added
LA = Legislation Act 2001
LR = legislation register
LRA = Legislation (Republication) Act 1996
mod = modified/modification
NI = Notifiable instrument
o = order
om = omitted/repealed
ord = ordinance
orig = original
par = paragraph/subparagraph
pres = present
prev = previous
(prev...) = previously
pt = part
r = rule/subrule
reloc = relocated
renum = renumbered
R[X] = Republication No
RI = reissue
s = section/subsection
sch = schedule
sdiv = subdivision
SL = Subordinate law
sub = substituted
underlining = whole or part not commenced or to be expired

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3 Legislation history

Crimes (Sentence Administration) Act 2005 A2005-59

notified LR 2 December 2005
s 1, s 2 commenced 2 December 2005 (LA s 75 (1))
remainder commenced 2 June 2006 (s 2 and see Crimes (Sentencing) Act 2005 A2005-58, s 2 and LA s 79)

as amended by

Sentencing Legislation Amendment Act 2006 A2006-23 sch 1 pt 1.12

notified LR 18 May 2006
s 1, s 2 commenced 18 May 2006 (LA s 75 (1))
sch 1 pt 1.12 commenced 2 June 2006 (s 2 (1) and see Crimes (Sentence Administration) Act 2005 A2005-59 s 2, Crimes (Sentencing) Act 2005 A2005-58, s 2 and LA s 79)

as modified by

Crimes (Sentence Administration) Regulation 2006 SL2006-23 sch 1 (as am by SL2006-26 s 5, SL2007-13 ss 5-8, SL2007-34 s 5)

taken to have been notified LR 18 May 2006 (A2006-23, s 5 (3) (a))
s 1 taken to have commenced 18 May 2006 (LA s 75 (1))
sch 1 commenced 2 June 2006 (A2006-23 s 5 (3) (b) and see Crimes (Sentence Administration) Act 2005 A2005-59 s 2, Crimes (Sentencing) Act 2005 A2005-58, s 2 and LA s 79)

Crimes (Sentence Administration) Amendment Regulation 2006 (No 1) SL2006-26 s 5

notified LR 1 June 2006
s 1, s 2 commenced 1 June 2006 (LA s 75 (1))
s 5 commenced 2 June 2006 (s 2 and see Crimes (Sentencing) Act 2005 A2005-58, s 2 and LA s 79)

Note This regulation only amends the Crimes (Sentence Administration) Regulation 2006 SL2006-23.

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Crimes (Sentence Administration) Amendment Regulation 2007 (No 1) SL2007-13 ss 5-8

notified LR 31 May 2007
s 1, s 2 commenced 31 may 2007 (LA s 75 (1))
ss 5-8 commenced 1 June 2007 (s 2)

Note This regulation only amends the Crimes (Sentence Administration) Regulation 2006 SL2006-23.

as amended by

Corrections Management Act 2007 A2007-15 sch 1 pt 1.3

notified LR 18 June 2007
s 1, s 2 commenced 18 June 2007 (LA s 75 (1))
s 230 commenced 1 August 2007 (LA s 75AA)
sch 1 pt 1.3 commenced 1 August 2007 (s 2 and CN2007-6)

as modified by

Crimes (Sentence Administration) Amendment Regulation 2007 (No 2) SL2007-34 s 5

notified LR 19 October 2007
s 1, s 2 commenced 19 October 2007 (LA s 75 (1))
s 5 commenced 20 October 2007 (s 2)

Note This regulation only amends the Crimes (Sentence Administration) Regulation 2006 SL2006-23.

as amended by

Justice and Community Safety Legislation Amendment Act 2008 A2008-7 sch 1 pt 1.7

notified LR 16 April 2008
s 1, s 2 commenced 16 April 2008 (LA s 75 (1))
sch 1 pt 1.7 commenced 7 May 2008 (s 2)

Children and Young People Act 2008 A2008-19 sch 1 pt 1.4

notified LR 17 July 2008
s 1, s 2 commenced 17 July 2008 (LA s 75 (1))
sch 1 pt 1.4 commenced 27 February 2009 (s 2 and CN2008-17 (and see CN2008-13))

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

Children and Young People (Consequential Amendments) Act 2008 A2008-20 sch 1 pt 1.3, sch 3 pt 3.9, sch 4 pt 4.11

notified LR 17 July 2008
s 1, s 2 commenced 17 July 2008 (LA s 75 (1))
s 3 commenced 18 July 2008 (s 2 (1))
sch 1 pt 1.3, sch 4 pt 4.11 commenced 27 February 2009 (s 2 (5) and see Children and Young People Act 2008 A2008-19, s 2 and CN2008-17 (and see CN2008-13))
sch 3 pt 3.9 commenced 27 October 2008 (s 2 (4) and see Children and Young People Act 2008 A2008-19, s 2 and CN2008-13)

Statute Law Amendment Act 2008 A2008-28 sch 3 pt 3.20

notified LR 12 August 2008
s 1, s 2 commenced 12 August 2008 (LA s 75 (1))
sch 3 pt 3.20 commenced 26 August 2008 (s 2)

Justice and Community Safety Legislation Amendment Act 2009 A2009-7 sch 1 pt 1.3

notified LR 5 March 2009
s 1, s 2 commenced 5 March 2009 (LA s 75 (1))
sch 1 pt 1.3 commenced 6 March 2009 (s 2 (3))

Crimes Legislation Amendment Act 2009 A2009-24 sch 1 pt 1.4

notified LR 3 September 2009
s 1, s 2 commenced 3 September 2009 (LA s 75 (1))
sch 1 pt 1.4 commenced 4 September 2009 (s 2)

Work Safety Legislation Amendment Act 2009 A2009-28 sch 2 pt 2.4

notified LR 9 September 2009
s 1, s 2 commenced 9 September 2009 (LA s 75 (1))
sch 2 pt 2.4 commenced 1 October 2009 (s 2 and see Work Safety Act 2008 A2008-51, s 2 (1) (b) and CN2009-11)

Crimes (Sentence Administration) Amendment Act 2010 A2010-21

notified LR 30 June 2010
s 1, s 2 commenced 30 June 2010 (LA s 75 (1))
remainder commenced 1 July 2010 (s 2)

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Justice and Community Safety Legislation Amendment Act 2010 (No 2) A2010-30 sch 1 pt 1.6

notified LR 31 August 2010
s 1, s 2 commenced 31 August 2010 (LA s 75 (1))
s 3 commenced 1 September 2010 (s 2 (1))
sch 1 pt 1.6 commenced 28 September 2010 (s 2 (2))

Justice and Community Safety Legislation Amendment Act 2010 (No 3) A2010-40 sch 2 pt 2.6

notified LR 5 October 2010
s 1, s 2 commenced 5 October 2010 (LA s 75 (1))
s 3 commenced 6 October 2010 (s 2 (1))
sch 2 pt 2.6 commenced 2 November 2010 (s 2 (2))

Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.44

notified LR 30 June 2011
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))
sch 1 pt 1.44 commenced 1 July 2011 (s 2 (1))

Justice and Community Safety Legislation Amendment Act 2011 (No 2) A2011-27 sch 1 pt 1.4

notified LR 30 August 2011
s 1, s 2 taken to have commenced 29 July 2008 (LA s 75 (2))
sch 1 pt 1.4 commenced 13 September 2011 (s 2 (1))

Evidence (Consequential Amendments) Act 2011 A2011-48 sch 1 pt 1.14

notified LR 22 November 2011
s 1, s 2 commenced 22 November 2011 (LA s 75 (1))
sch 1 pt 1.14 commenced 1 March 2012 (s 2 (1) and see Evidence Act 2011 A2011-12, s 2 and CN2012-4)

Justice and Community Safety Legislation Amendment Act 2011 (No 3) A2011-49 sch 1 pt 1.2

notified LR 22 November 2011
s 1, s 2 commenced 22 November 2011 (LA s 75 (1))
sch 1 pt 1.2 commenced 23 November 2011 (s 2 (1))

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Work Health and Safety (Consequential Amendments) Act 2011
A2011-55 sch 1 pt 1.5
notified LR 14 December 2011
s 1, s 2 commenced 14 December 2011 (LA s 75 (1))
sch 1 pt 1.5 commenced 1 January 2012 (s 2 and see Work Health and Safety Act 2011 A2011-35, s 2 and CN2011-12)

Corrections and Sentencing Legislation Amendment Act 2011
A2011-57 pt 3
notified LR 14 December 2011
s 1, s 2 commenced 14 December 2011 (LA s 75 (1))
pt 3 commenced 15 December 2011 (s 2)

Justice and Community Safety Legislation Amendment Act 2012
A2012-13 sch 1 pt 1.4
notified LR 11 April 2012
s 1, s 2 commenced 11 April 2012 (LA s 75 (1))
sch 1 pt 1.4 commenced 12 April 2012 (s 2 (1))

Corrections and Sentencing Legislation Amendment Act 2012
A2012-34 pt 3
notified LR 15 June 2012
s 1, s 2 commenced 15 June 2012 (LA s 75 (1))
pt 3 commenced 16 June 2012 (s 2 (1))

Statute Law Amendment Act 2013 (No 2) A2013-44 sch 3 pt 3.4
notified LR 11 November 2013
s 1, s 2 commenced 11 November 2013 (LA s 75 (1))
sch 3 pt 3.4 commenced 25 November 2013 (s 2)

Corrections and Sentencing Legislation Amendment Act 2014
A2014-6 pt 4
notified LR 27 March 2014
s 1, s 2 commenced 27 March 2014 (LA s 75 (1))
pt 4 commenced 28 March 2014 (s 2)

Mental Health (Treatment and Care) Amendment Act 2014 A2014-51 sch 1 pt 1.5 (as am by A2015-38 amdt 2.54)
notified LR 12 November 2014
s 1, s 2 commenced 12 November 2014 (LA s 75 (1))
sch 1 pt 1.5 commenced 1 March 2016 (s 2 (as am by A2015-38 amdt 2.54))

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Crimes (Sentencing) Amendment Act 2014 A2014-58 sch 1 pt 1.2
notified LR 4 December 2014
s 1, s 2 commenced 4 December 2014 (LA s 75 (1))
sch 1 pt 1.2 commenced 5 December 2014 (s 2)

Crimes Legislation Amendment Act 2015 A2015-3 pt 5
notified LR 2 March 2015
s 1, s 2 commenced 2 March 2015 (LA s 75 (1))
pt 5 commenced 3 March 2015 (s 2 (1))

Statute Law Amendment Act 2015 A2015-15 sch 3 pt 3.3
notified LR 27 May 2015
s 1, s 2 commenced 27 May 2015 (LA s 75 (1))
sch 3 pt 3.3 commenced 10 June 2015 (s 2)

Mental Health Act 2015 A2015-38 sch 2 pt 2.2, sch 2 pt 2.4 div 2.4.8
notified LR 7 October 2015
s 1, s 2 commenced 7 October 2015 (LA s 75 (1))
sch 2 pt 2.2 (amdt 2.54) commenced 8 October 2015 (s 2 (2))
sch 2 pt 2.4 div 2.4.8 commenced 1 March 2016 (s 2 (1) and see Mental Health (Treatment and Care) Amendment Act 2014 A2014-51, s 2 (as am by A2015-38 amdt 2.54))

Note Sch 2 pt 2.2 (amdt 2.54) only amends the Mental Health (Treatment and Care) Amendment Act 2014 A2014-51

Statute Law Amendment Act 2015 (No 2) A2015-50 sch 3 pt 3.12
notified LR 25 November 2015
s 1, s 2 commenced 25 November 2015 (LA s 75 (1))
sch 3 pt 3.12 commenced 9 December 2015 (s 2)

Crimes (Sentencing and Restorative Justice) Amendment Act 2016 A2016-4 pt 3
notified LR 24 February 2016
s 1, s 2 commenced 24 February 2016 (LA s 75 (1))
pt 3 commenced 2 March 2016 (s 2 (1))

Victims of Crime (Financial Assistance) Act 2016 A2016-12 sch 3 pt 3.3
notified LR 16 March 2016
s 1, s 2 commenced 16 March 2016 (LA s 75 (1))
sch 3 pt 3.3 commenced 1 July 2016 (s 2 (1) (a))

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Family Violence Act 2016 A2016-42 sch 3 pt 3.7 (as am by A2017-10 s 7)

notified LR 18 August 2016
s 1, s 2 commenced 18 August 2016 (LA s 75 (1))
sch 3 pt 3.7 commenced 1 May 2017 (s 2 (2) as am by A2017-10 s 7)

Crimes (Serious and Organised Crime) Legislation Amendment Act 2016 A2016-48 pt 6

notified LR 23 August 2016
s 1, s 2 commenced 23 August 2016 (LA s 75 (1))
pt 6 commenced 24 August 2016 (s 2 (1))

Public Sector Management Amendment Act 2016 A2016-52 sch 1 pt 1.18

notified LR 25 August 2016
s 1, s 2 commenced 25 August 2016 (LA s 75 (1))
sch 1 pt 1.18 commenced 1 September 2016 (s 2)

Crimes Legislation Amendment Act 2017 A2017-6 pt 2

notified LR 20 February 2017
s 1, s 2 commenced 20 February 2017 (LA s 75 (1))
pt 2 commenced 21 February 2017 (s 2)

Crimes Legislation Amendment Act 2017 (No 2) A2017-9 pt 3

notified LR 5 April 2017
s 1, s 2 commenced 5 April 2017 (LA s 75 (1))
pt 3 commenced 6 April 2017 (s 2)

Family and Personal Violence Legislation Amendment Act 2017 A2017-10 s 7

notified LR 6 April 2017
s 1, s 2 commenced 6 April 2017 (LA s 75 (1))
s 7 commenced 30 April 2017 (s 2 (1))

Note This Act only amends the Family Violence Act 2016 A2016-42.

Courts and Other Justice Legislation Amendment Act 2018 A2018-9 pt 7

notified LR 29 March 2018
s 1, s 2 commenced 29 March 2018 (LA s 75 (1))
pt 7 commenced 26 April 2018 (s 2)

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Sentencing Legislation Amendment Act 2018 A2018-43 pt 2

notified LR 8 November 2018

s 1, s 2 commenced 8 November 2018 (LA s 75 (1))

pt 2 commenced 9 November 2018 (s 2)

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4 Amendment history

Commencement
s 2 om LA s 89 (4)

Main object of Act
s 6 am A2006-23 amdt 1.169

Treatment of sentenced offenders
s 7 am A2006-23 amdt 1.169; A2016-4 s 51

Treatment of remandees
s 8 am A2006-23 amdt 1.169

Treatment of other people in custody
s 9 am A2006-23 amdt 1.169; A2007-15 amdt 1.11

Application—pt 3.1
s 10 am A2006-23 amdt 1.137, amdt 1.138; A2007-15 amdt 1.12; A2010-21 s 4
note 2 exp 2 June 2011 (s 352 (2))
am A2016-4 s 52; pars renum R37 LA

Effect of committal order
s 11 am A2011-22 amdt 1.141

Warrant for imprisonment
s 12 am A2011-22 amdt 1.141, amdt 1.142

Custody of sentenced offender
s 13 am A2006-23 amdt 1.169; A2011-22 amdt 1.141

Imprisonment not affected by want of proper warrant
s 14 am A2006-23 amdt 1.169

Application—pt 3.2
s 15 am A2006-23 amdt 1.139
note exp 2 June 2011 (s 352 (2))

Effect of remand order
s 16 am A2011-22 amdt 1.141

Warrant for remand
s 17 am A2011-22 amdt 1.141, amdt 1.142; A2012-13 amdt 1.19

Custody of remandee
s 18 am A2006-23 amdt 1.169; A2008-19 amdt 1.21; A2011-22 amdt 1.141; A2012-13 amdt 1.20

Remand not affected by want of proper warrant
s 19 am A2006-23 amdt 1.169

Directions to escort officers
s 20 am A2011-22 amdt 1.141

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Orders to bring offender or remandee before court etc
s 21 am A2011-22 amdt 1.141, amdt 1.142

Application—ch 4
s 22 am A2011-22 amdt 1.142

Definitions—ch 4
s 23 def ***recommitted*** am A2011-22 amdt 1.142; A2016-4 s 53

Full-time detention obligations
s 24 am A2006-23 amdt 1.169; A2011-22 amdt 1.142

Full-time detention—director-general directions
s 25 hdg am A2011-22 amdt 1.141
s 25 am A2011-22 amdt 1.141

Full-time detention in ACT or NSW
s 26 am A2006-23 amdt 1.140, amdt 1.141; A2009-7 amdt 1.5; A2011-22 amdt 1.141

Guidelines—allocation of detainees to correctional centres
s 27 am A2011-22 amdt 1.141

Work and activities by full-time detainee
s 28 am A2011-22 amdt 1.141

Custody of full-time detainee—lawful absence from correctional centre
s 29 am A2011-22 amdt 1.141, amdt 1.142

Early release of offender
s 31 am A2011-22 amdt 1.141

Application—pt 4.3
s 34 am A2011-22 amdt 1.141

Full-time detention in NSW
s 36 am A2006-23 amdt 1.169, amdt 1.170; A2007-15 amdt 1.13, amdt 1.14

Full-time detention—return from NSW
s 37 am A2006-23 amdt 1.170; A2011-22 amdt 1.141, amdt 1.142

Intensive correction orders
ch 5 hdg sub A2016-4 s 54

Preliminary
pt 5.1 hdg sub A2016-4 s 54

Application—ch 5
s 39 am A2010-21 s 5; A2014-58 amdt 1.2
sub A2016-4 s 54

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Definitions—ch 5

s 40 sub A2016-4 s 54
def ***additional condition*** sub A2016-4 s 54
def ***community service condition*** ins A2016-4 s 54
def ***core condition*** sub A2016-4 s 54
def ***detention period*** om A2016-4 s 54
def ***finishing time*** om A2016-4 s 54
def ***intensive correction*** ins A2016-4 s 54
def ***intensive correction assessment*** ins A2016-4 s 54
def ***intensive correction order*** ins A2016-4 s 54
def ***interested person*** ins A2016-4 s 54
def ***periodic detention*** om A2016-4 s 54
def ***periodic detention obligations*** om A2016-4 s 54
def ***periodic detention period*** om A2016-4 s 54
def ***rehabilitation program condition*** insA2016-4 s 54
def ***reporting day*** om A2016-4 s 54
def ***reporting place*** om A2016-4 s 54
def ***reporting time*** om A2016-4 s 54

Serving intensive correction

pt 5.2 hdg sub A2016-4 s 54

Intensive correction order obligations

s 41 am A2012-34 s 35
sub A2016-4 s 54

Periodic detention—effect on sentence of imprisonment

s 41A ins A2011-57 s 8
om A2016-4 s 54

Intensive correction order—core conditions

s 42 am A2006-23 amdt 1.169
sub A2016-4 s 54
am A2016-48 s 25, s 26

Intensive correction order—alcohol and drug tests

s 43 am A2006-23 amdt 1.169; A2011-22 amdt 1.141
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s 44 hdg am A2011-22 amdt 1.141
s 44 am A2011-22 amdt 1.141
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s 45 am A2006-23 amdt 1.169; A2011-22 amdt 1.141
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s 46 sub A2006-23 amdt 1.142
am A2006-23 amdt 1.169; A2011-22 amdt 1.141
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s 47 am A2011-22 amdt 1.142
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s 48 sub A2016-4 s 54

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s 48A ins A2018-43 s 4

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s 49 am A2011-22 amdt 1.141
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s 50 am A2011-22 amdt 1.141
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s 51 am A2011-22 amdt 1.141
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s 52 am A2011-22 amdt 1.141
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s 55 am A2011-22 amdt 1.141; A2012-34 s 36
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pt 5.5 hdg ins A2016-4 s 54

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s 56 am A2011-22 amdt 1.141; A2011-57 s 9
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s 58 am A2011-22 amdt 1.141
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s 59 am A2011-22 amdt 1.141
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s 60 am A2011-22 amdt 1.141
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s 61 am A2007-15 amdt 1.15; A2011-22 amdt 1.141
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s 63 am A2011-22 amdt 1.141, amdt 1.142
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s 64 sub A2016-4 s 54

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s 66 am A2011-22 amdt 1.141
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s 69 hdg sub A2012-34 s 38
s 69 am A2008-7 amdt 1.46; A2011-22 amdt 1.141; A2012-34 s 39; ss renum R26 LA
sub A2016-4 s 54

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s 70 am A2008-7 amdt 1.47; A2012-34 s 40
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s 71 hdg am A2011-22 amdt 1.141
s 71 am A2011-22 amdt 1.141, amdt 1.142; A2015-50 amdt 3.84
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s 75 am A2007-15 amdt 1.16, amdt 1.17; ss renum R3 LA; A2011-22 amdt 1.141; A2011-57 s 10
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s 77 am A2011-22 amdt 1.141; A2015-50 amdt 3.84
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s 82 am A2011-22 amdt 1.142; A2011-57 s 11
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s 82A ins A2007-15 amdt 1.18
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s 86 am A2006-23 amdt 1.169; A2011-22 amdt 1.141, amdt 1.142; A2016-4 s 55

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s 91 am A2011-22 amdt 1.141, amdt 1.142

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s 92 am A2011-22 amdt 1.141; A2014-6 s 11, s 12; A2015-38 amdt 2.74

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s 93A ins A2018-43 s 9

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s 94 hdg sub A2016-4 s 60
s 94 am A2011-22 amdt 1.141

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s 95 hdg sub A2016-4 s 61
s 95 am A2006-23 amdt 1.169; A2008-19 amdt 1.22; A2009-24 amdt 1.8, amdt 1.9; A2011-22 amdt 1.141

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s 96 am A2006-23 amdt 1.144, amdt 1.169; A2008-19 amdt 1.23; A2009-24 amdt 1.10, amdt 1.11; A2011-22 amdt 1.141

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s 100 am A2011-22 amdt 1.141

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s 101 am A2011-22 amdt 1.141, amdt 1.142

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s 102 am A2008-19 amdt 1.24; A2009-24 amdt 1.12; A2011-22 amdt 1.141

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am A2011-22 amdt 1.141
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am A2011-22 amdt 1.141
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s 116T ins A2010-21 s 6
am A2011-22 amdt 1.141

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s 116W hdg am A2011-22 amdt 1.141
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s 116X ins A2010-21 s 6
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s 123 am A2008-20 amdt 3.18; A2011-22 amdt 1.141

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s 153 am A2006-23 amdt 1.148; A2011-22 amdt 1.141

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s 154 am A2011-22 amdt 1.141

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s 156 am A2011-22 amdt 1.141

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s 157 am A2011-22 amdt 1.141; A2015-50 amdt 3.84

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s 167 am A2011-22 amdt 1.141

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s 204 am A2011-22 amdt 1.141; A2016-4 s 72

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s 205 am A2011-22 amdt 1.141

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s 292 am A2008-20 amdt 3.20; A2011-22 amdt 1.141; A2016-52 amdt 1.58

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s 303A ins A2011-57 s 13

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s 306 am A2011-22 amdt 1.141

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s 320 hdg sub A2009-28 amdt 2.8; A2011-55 amdt 1.7
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s 320J ins A2008-19 amdt 1.30

Young offenders—accommodation orders
pt 14A.2 hdg ins A2008-19 amdt 1.30

Accommodation orders—contraventions
s 320K ins A2008-19 amdt 1.30

Accommodation orders—resentencing for breach
s 320L ins A2008-19 amdt 1.30

Director-general directions—general
s 321 hdg am A2011-22 amdt 1.141
s 321 am A2011-22 amdt 1.141, amdt 1.142

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Director-general to give information—detainees etc subject to forensic mental health orders

s 321AA ins A2014-51 amdt 1.36
am A2015-38 amdt 2.75, amdt 2.76

Evidentiary certificates

s 321A ins A2006-23 amdt 1.152
am A2011-22 amdt 1.141, amdt 1.142; A2016-4 s 78, s 79

Criminology or penology research

s 322 am A2006-23 amdt 1.169; A2011-22 amdt 1.141, amdt 1.142

Determination of fees

s 323 am A2013-44 amdt 3.46

Approved forms

s 324 am A2013-44 amdt 3.46

Regulation-making power

s 325 am A2013-44 amdt 3.47

Transitional—general

ch 16 hdg sub A2006-23 amdt 1.153
exp 2 June 2011 (s 352 (1))

Preliminary

pt 16.1 hdg exp 2 June 2011 (s 352 (1))

Purpose—ch 16

s 326 am A2006-23 amdt 1.171
exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Application of Act to offenders and other people in custody

s 327 exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Definitions—ch 16

s 328 exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))
def ***consequential amendments Act*** am A2006-23 amdt 1.154
exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Transitional—detention

pt 16.2 hdg exp 2 June 2011 (s 352 (1)

Relationship with Corrections Management Act—pt 16.2

s 329 am A2006-23 amdt 1.169
exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Full-time imprisonment—sentenced offenders

s 330 am A2006-23 amdt 1.155, amdt 1.170, amdt 1.171
exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

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Full-time imprisonment—remandees

s 331 am A2006-23 amdt 1.156
exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Full-time imprisonment—other detainees

s 331A ins A2006-23 amdt 1.157
exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Application of Act to transitional warrants under Removal of Prisoners Act (repealed)

s 331B ins A2006-23 amdt 1.157
exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Home detention orders—Rehabilitation of Offenders (Interim) Act

s 332 am A2006-23 amdt 1.171
exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

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

s 333 exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Periodic detention orders—Periodic Detention Act, s 4

s 334 am A2006-23 amdt 1.171
exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Conditional release—Periodic Detention Act, s 32

s 335 exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Transitional—non-detention

pt 16.3 hdg exp 2 June 2011 (s 352 (1)

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

s 336 am A2006-23 amdt 1.171
exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

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

s 337 am A2006-23 amdt 1.171
exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

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

s 338 am A2006-23 amdt 1.171
exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

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

s 339 am A2006-23 amdt 1.171
exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

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

s 340 am A2006-23 amdt 1.171
exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Transitional—unfinished requests for transfer of prisoners and sentences

pt 16.4 hdg exp 2 June 2011 (s 352 (1))

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Prisoners (Interstate Transfer) Act—unfinished requests

s 341 exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

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

s 342 exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Transitional—parole orders

pt 16.5 hdg exp 2 June 2011 (s 352 (1))

Parole orders before commencement day

s 343 exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Unfinished parole orders proceedings on commencement day

s 344 exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Parole Orders (Transfer) Act—unfinished requests for registration

s 345 exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

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

s 346 exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Transitional—other provisions

pt 16.6 hdg sub A2006-23 amdt 1.158
exp 2 June 2011 (s 352 (1))

Sentence administration proceedings—started before commencement day

s 347 exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Sentence administration proceedings—started on or after commencement day

s 348 am A2006-23 amdt 1.171
exp 2 June 2011 (s 352 (1))

Sentence administration board—transitional members etc

s 348A ins A2006-23 amdt 1.159
exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Official visitors—transitional

s 348B ins A2006-23 amdt 1.159
exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Transitional regulations—ch 16

s 349 hdg sub A2006-23 amdt 1.160
s 349 am A2006-23 amdt 1.161
exp 2 June 2008 (s 349 (4) (LA s 88 declaration applies))

Construction of outdated references

s 350 sub A2006-23 amdt 1.162
exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

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Application of Legislation Act, s 88—ch 16
s 351 ins A2006-23 amdt 1.162
exp 2 June 2011 (s 352 (1) (LA s 88 declaration applies))

Expiry of ch 16
s 352 ins A2006-23 amdt 1.162
exp 2 June 2011 (s 352 (1))

Transitional—interim custody arrangements
ch 17 hdg ins A2006-23 amdt 1.163
exp 18 December 2009 (s 612)

Purpose—ch 17
s 600 ins A2006-23 amdt 1.163
exp 18 December 2009 (s 612)

Relationship with ch 16
s 601 ins A2006-23 amdt 1.163
exp 18 December 2009 (s 612)

No application to home detention
s 602 ins A2006-23 amdt 1.163
exp 18 December 2009 (s 612)

Definitions—ch 17
s 603 ins A2006-23 amdt 1.163
exp 18 December 2009 (s 612 (LA s 88 declaration applies))
def ***Corrections Management Act 2007*** ins A2006-23 amdt 1.163
def ***custody*** ins A2006-23 amdt 1.163
def ***interim custody period*** ins A2006-23 amdt 1.163
mod SL2006-23 mod 1.1A (mod exp 1 August 2007 (see SL2006-23 s 5 (2))
am A2007-15 amdt 1.19
def ***new sentencing law*** ins A2006-23 amdt 1.163
def ***old custody law*** ins A2006-23 amdt 1.163

Application of new sentencing law—interim custody period
s 604 ins A2006-23 amdt 1.163
exp 18 December 2009 (s 612 (LA s 88 declaration applies))

Old custody law continues
s 605 ins A2006-23 amdt 1.163
exp 18 December 2009 (s 612 (LA s 88 declaration applies))

Application of old custody law—periodic detention
s 606 ins A2006-23 amdt 1.163
exp 18 December 2009 (s 612 (LA s 88 declaration applies))

Application of old custody law—remand
s 607 ins A2006-23 amdt 1.163
exp 18 December 2009 (s 612 (LA s 88 declaration applies))

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Reference to full-time detention in NSW

s 607A ins as mod SL2006-23 mod 1.1 (as ins by SL2006-26 s 5; as am by SL2007-13 s 6) (mod exp 1 August 2007 (see SL2006-23 s 5 (2))
exp 1 August 2007 (s 607A (2))
ins A2007-15 amdt 1.20
exp 18 December 2009 (s 612 (LA s 88 declaration applies))

References in territory laws to Corrections Management Act 2007 etc in relation to interim custody period

s 607B ins as mod SL2006-23 mod 1.1 (as ins by SL2006-26 s 5; as am by SL2007-13 s 7) (mod exp 1 August 2007 (see SL2006-23 s 5 (2))
exp 1 August 2007 (s 607B (3))
ins A2007-15 amdt 1.20
exp 18 December 2009 (s 612 (LA s 88 declaration applies))

Additional powers of courts etc

s 608 ins A2006-23 amdt 1.163
exp 18 December 2009 (s 612 (LA s 88 declaration applies))

Additional powers of sentence administration board

s 609 ins A2006-23 amdt 1.163
exp 18 December 2009 (s 612 (LA s 88 declaration applies))

Additional powers of chief executive

s 610 ins A2006-23 amdt 1.163
exp 18 December 2009 (s 612 (LA s 88 declaration applies))

Remandees—clothing

s 610A ins as mod SL2006-23 sch 2 mod 1.1 (as ins by SL2007-34 s 5) (mod exp 18 December 2007 (see SL2006-23 s 6 (2) (LA s 88 declaration applies))

Transitional regulations—ch 17

s 611 ins A2006-23 amdt 1.163
exp 18 December 2009 (s 612)

Expiry—ch 17

s 612 ins A2006-23 amdt 1.163
mod SL2006-23 mod 1.2 (as ins by SL2007-13 s 8) (mod exp 1 August 2007 (see SL2006-23 s 5 (2))
sub A2007-15 amdt 1.21
exp 18 December 2009 (s 612)

Transitional—Children and Young People Act 2008

ch 18 hdg ins A2008-20 amdt 1.3
exp 27 February 2014 (s 713 (1) (LA s 88 declaration applies))

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Meaning of *commencement day*—ch 18
s 700 ins A2008-20 amdt 1.3
exp 27 February 2014 (s 713 (1) (LA s 88 declaration applies))

Application of amendments—general
s 701 ins A2008-20 amdt 1.3
exp 27 February 2014 (s 713 (1) (LA s 88 declaration applies))

Conditional discharge orders
s 702 ins A2008-20 amdt 1.3
exp 27 February 2014 (s 713 (1) (LA s 88 declaration applies))

Fines
s 703 ins A2008-20 amdt 1.3
exp 27 February 2014 (s 713 (1) (LA s 88 declaration applies))

Reparation or compensation orders
s 704 ins A2008-20 amdt 1.3
exp 27 February 2014 (s 713 (1) (LA s 88 declaration applies))

Probation orders
s 705 ins A2008-20 amdt 1.3
exp 27 February 2014 (s 713 (1) (LA s 88 declaration applies))

Community service orders
s 706 ins A2008-20 amdt 1.3
exp 27 February 2014 (s 713 (1) (LA s 88 declaration applies))

Attendance centre orders
s 707 ins A2008-20 amdt 1.3
exp 27 February 2014 (s 713 (1) (LA s 88 declaration applies))

Residential orders
s 708 ins A2008-20 amdt 1.3
exp 27 February 2014 (s 713 (1) (LA s 88 declaration applies))

Applications for revocation etc
s 709 ins A2008-20 amdt 1.3
exp 27 February 2014 (s 713 (1) (LA s 88 declaration applies))

Committal orders
s 710 ins A2008-20 amdt 1.3
exp 27 February 2014 (s 713 (1) (LA s 88 declaration applies))

Orders referring to mental health tribunal following conviction
s 711 ins A2008-20 amdt 1.3
exp 27 February 2014 (s 713 (1) (LA s 88 declaration applies))

Transitional regulations
s 712 ins A2008-20 amdt 1.3
exp 27 February 2014 (s 713 (1))

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Expiry—ch 18
s 713 ins A2008-20 amdt 1.3
exp 27 February 2014 (s 713 (1) (LA s 88 declaration applies))

Transitional—Crimes (Sentence Administration) Amendment Act 2010
ch 19 hdg ins A2010-21 s 7
exp 1 July 2012 (s 802)

Application of amendments
s 800 ins A2010-21 s 7
exp 1 July 2012 (s 802)

Transitional regulations
s 801 ins A2010-21 s 7
exp 1 July 2012 (s 802)

Expiry—ch 19
s 802 ins A2010-21 s 7
exp 1 July 2012 (s 802)

Transitional—Crimes (Sentencing and Restorative Justice) Amendment Act 2016
ch 20 hdg ins A2016-4 s 80
exp 2 March 2019 (s 904)

Meaning of *commencement day*—ch 20
s 900 ins A2016-4 s 80
exp 2 March 2019 (s 904)

Application of amendments—periodic detention
s 901 ins A2016-4 s 80
exp 2 March 2019 (s 904)

Referral of periodic detention in certain circumstances
s 902 ins A2016-4 s 80
exp 2 March 2019 (s 904)

Transitional regulations
s 903 ins A2016-4 s 80
exp 2 March 2019 (s 904)

Expiry—ch 20
s 904 ins A2016-4 s 80
exp 2 March 2019 (s 904)

Delegation
ch 21 hdg ins A2017-6 s 4
exp 21 February 2017 (s 1001)

Delegation
s 1000 ins A2017-6 s 4
exp 21 February 2017 (s 1001)

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Expiry—ch 21

s 1001 ins A2017-6 s 4
exp 21 February 2017 (s 1001)

Dictionary

dict am A2009-7 amdt 1.8; A2010-30 amdt 1.22; A2011-22 amdt 1.137, amdt 1.138; A2014-6 s 15; A2016-52 amdt 1.59
def ***accommodation order*** ins A2008-19 amdt 1.31
def ***additional condition*** am A2016-4 s 81
def ***administrative fee*** ins A2013-44 amdt 3.48
def ***at*** ins A2006-23 amdt 1.164
def ***chief executive (CYP)*** ins A2008-19 amdt 1.31
om A2011-22 amdt 1.139
def ***combination sentence*** sub A2006-23 amdt 1.165
def ***community service condition*** am A2006-23 amdt 1.166
def ***core condition*** am A2016-4 s 82
def ***correctional centre*** sub A2007-15 amdt 1.22
def ***corrections officer*** sub A2007-15 amdt 1.22
def ***CYP director-general*** ins A2011-22 amdt 1.140
def ***default*** ins A2013-44 amdt 3.48
def ***default notice*** ins A2013-44 amdt 3.48
def ***detention period*** om A2016-4 s 83
def ***drug*** sub A2007-15 amdt 1.23
def ***earnings redirection order*** ins A2013-44 amdt 3.48
def ***enforcement officer*** ins A2013-44 amdt 3.48
def ***escort officer*** sub A2007-15 amdt 1.24
def ***examination hearing*** ins A2013-44 amdt 3.48
def ***examination notice*** ins A2013-44 amdt 3.48
def ***examination warrant*** ins A2013-44 amdt 3.48
def ***fine*** ins A2013-44 amdt 3.48
def ***fine defaulter*** ins A2013-44 amdt 3.48
def ***fine enforcement order*** ins A2013-44 amdt 3.48
def ***finishing time*** om A2016-4 s 83
def ***full-time detainee*** sub A2013-44 amdt 3.49
def ***intensive correction*** assessment ins A2018-43 s 12
def ***intensive correction order*** ins A2016-4 s 84
def ***interested person*** sub A2016-4 s 85
def ***nonparole period*** am A2006-23 amdt 1.167
def ***offender*** am A2008-19 amdt 1.32
def ***outstanding fine*** ins A2013-44 amdt 3.50
def ***penalty notice*** ins A2013-44 amdt 3.50
def ***periodic detention*** om A2016-4 s 86
def ***periodic detention obligations*** om A2016-4 s 86
def ***periodic detention period*** om A2016-4 s 86
def ***property seizure order*** ins A2013-44 amdt 3.50
def ***registered victim*** sub A2006-23 amdt 1.168
def ***registrar*** ins A2013-44 amdt 3.50
def ***rehabilitation program condition*** sub A2016-4 s 87

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def ***reminder notice*** ins A2013-44 amdt 3.50
def ***reporting day*** om A2016-4 s 88
def ***reporting place*** om A2016-4 s 88
def ***reporting time*** om A2016-4 s 88
def ***sentence of imprisonment*** sub A2015-15 amdt 3.22
def ***territory entity*** ins A2013-44 amdt 3.50
def ***test sample*** am A2006-23 amdt 1.169
def ***victim*** sub A2006-23 amdt 1.168
def ***victims register*** om A2008-19 amdt 1.33
def ***voluntary community work order*** ins A2013-44 amdt 3.50
def ***young fine defaulter*** ins A2013-44 amdt 3.50
def ***young offender*** ins A2008-19 amdt 1.34
def ***young remandee*** ins A2008-19 amdt 1.35

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5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 2 June 2006	2 June 2006– 31 May 2007	SL2006-26	new Act, amendments by A2006-23 and modifications by SL2006-23 as amended by SL2006-26
R2 1 June 2007	1 June 2007– 31 July 2007	SL2007-13	modifications by SL2006-23 as amended by SL2007-13
R3 1 Aug 2007	1 Aug 2007– 19 Oct 2007	A2007-15	amendments by A2007-15 and commenced expiry
R4 20 Oct 2007	20 Oct 2007– 18 Dec 2007	SL2007-34	modifications by SL2006-23 as amended by SL2007-34
R5 19 Dec 2007	19 Dec 2007– 6 May 2008	SL2007-34	commenced expiry
R6 7 May 2008	7 May 2008– 2 June 2008	A2008-7	amendments by A2008-7
R7 3 June 2008	3 June 2008– 25 Aug 2008	A2008-7	commenced expiry
R8 26 Aug 2008	26 Aug 2008– 26 Oct 2008	A2008-28	amendments by A2008-28

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Republication No and date	Effective	Last amendment made by	Republication for
R9 27 Oct 2008	27 Oct 2008– 26 Feb 2009	A2008-28	amendments by A2008-20
R10 27 Feb 2009	27 Feb 2009– 5 Mar 2009	A2008-28	amendments by A2008-19 and A2008-20
R11 6 Mar 2009	6 Mar 2009– 3 Sept 2009	A2009-7	amendments by A2009-7
R12 4 Sept 2009	4 Sept 2009– 30 Sept 2009	A2009-24	amendments by A2009-24
R13* 1 Oct 2009	1 Oct 2009– 18 Dec 2009	A2009-28	amendments by A2009-28
R14 19 Dec 2009	19 Dec 2009– 30 June 2010	A2009-28	commenced expiry
R15 1 July 2010	1 July 2010– 27 Sept 2010	A2010-21	amendments by A2010-21
R16 28 Sept 2010	28 Sept 2010– 1 Nov 2010	A2010-30	amendments by A2010-30
R17 2 Nov 2010	2 Nov 2010– 2 June 2011	A2010-40	amendments by A2010-40
R18 3 June 2011	3 June 2011– 30 June 2011	A2010-40	expiry of transitional provisions (ch 16)
R19 1 July 2011	1 July 2011– 12 Sept 2011	A2011-22	amendments by A2011-22
R20* 13 Sept 2011	13 Sept 2011– 22 Nov 2011	A2011-27	amendments by A2011-27
R21 23 Nov 2011	23 Nov 2011– 14 Dec 2011	A2011-49	amendments by A2011-49
R22 15 Dec 2011	15 Dec 2011– 31 Dec 2011	A2011-57	amendments by A2011-57
R23 1 Jan 2012	1 Jan 2012– 29 Feb 2012	A2011-57	amendments by A2011-55
R24 1 Mar 2012	1 Mar 2012– 11 Apr 2012	A2011-57	amendments by A2011-48

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5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R25 12 Apr 2012	12 Apr 2012– 15 June 2012	A2012-13	amendments by A2012-13
R26 16 June 2012	16 June 2012– 1 July 2012	A2012-34	amendments by A2012-34
R27 2 July 2012	2 July 2012– 24 Nov 2013	A2012-34	expiry of transitional provisions (ch 19)
R28 25 Nov 2013	25 Nov 2013– 27 Feb 2014	A2013-44	amendments by A2013-44
R29 28 Feb 2014	28 Feb 2014– 27 Mar 2014	A2013-44	expiry of transitional provisions (ch 18)
R30 28 Mar 2014	28 Mar 2014– 4 Dec 2014	A2014-6	amendments by A2014-6
R31 5 Dec 2014	5 Dec 2014- 2 Mar 2015	A2014-58	amendments by A2014-58
R32 3 Mar 2015	3 Mar 2015- 9 June 2015	A2015-3	amendments by A2015-3
R33 10 June 2015	10 June 2015- 7 Oct 2015	A2015-15	amendments by A2015-15
R34 8 Oct 2015	8 Oct 2015– 8 Dec 2015	A2015-15	updated endnotes as amended by A2015-38
R35 9 Dec 2015	9 Dec 2015– 29 Feb 2016	A2015-50	amendments by A2015-50
R36 1 Mar 2016	1 Mar 2016– 1 Mar 2016	A2015-50	amendments by A2014-51 and A2015-38
R37 2 Mar 2016	2 Mar 2016– 30 Jun 2016	A2016-4	amendments by A2016-4
R38 1 July 2016	1 July 2016– 23 Aug 2016	A2016-12	amendments by A2016-12
R39 24 Aug 2016	24 Aug 2016– 31 Aug 2016	A2016-48	amendments by A2016-48

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Republication No and date	Effective	Last amendment made by	Republication for
R40 1 Sept 2016	1 Sept 2016– 20 Feb 2017	A2016-52	amendments by A2016-52
R41 21 Feb 2017	21 Feb 2017– 21 Feb 2017	A2017-6	amendments by A2017-6
R42 22 Feb 2017	22 Feb 2017– 5 Apr 2017	A2017-6	expiry of provisions (ch 21)
R43 6 Apr 2017	6 Apr 2017– 30 Apr 2017	A2017-9	amendments by A2017-9
R44 1 May 2017	1 May 2017– 25 Apr 2018	A2017-10	amendments by A2016-42 as amended by A2017-10
R45 26 Apr 2018	26 Apr 2018– 8 Nov 2018	A2018-9	amendments by A2018-9

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6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see *Legislation Act 2001*, s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation 'exp' followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

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