

2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Corrections Management Bill 2006

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2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Corrections Management Bill 2006

A Bill for

An Act relating to correctional services, and for other purposes

1 **Preamble**

2 1 The inherent dignity of all human beings, whatever their personal or
3 social status, is one of the fundamental values of a just and
4 democratic society.

5 2 The criminal justice system should respect and protect all human
6 rights in accordance with the *Human Rights Act 2004* and
7 international law.

8 3 Sentences are imposed on offenders as punishment, not for
9 punishment.

10 4 The management of imprisoned offenders, and people remanded or
11 otherwise detained in lawful custody, should contribute to the
12 maintenance of a safe, just and democratic society, particularly as
13 follows:

14 (a) by ensuring justice, security and good order at correctional
15 centres;

16 (b) by ensuring that harm suffered by victims of offenders, and
17 their need for protection, are considered appropriately in
18 making decisions about the management of offenders;

19 (c) by promoting the rehabilitation of imprisoned offenders and
20 their reintegration into society;

21 (d) by ensuring that imprisoned offenders and people remanded or
22 otherwise detained in lawful custody are treated in a decent,
23 humane and just way.

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

1 Chapter 1 Preliminary

2 1 Name of Act

3 This Act is the *Corrections Management Act 2006*.

4 2 Commencement

5 This Act commences on a day fixed by the Minister by written
6 notice.

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

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see Legislation
11 Act, s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see Legislation Act, s 79).

15 3 Dictionary

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

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

20 For example, the signpost definition '*detainee*—see section 6.' means
21 that the term '*detainee*' is defined in that section and the definition
22 applies to this Act.

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

1 **4 Notes**

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

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

5 **5 Offences against Act—application of Criminal Code etc**

6 Other legislation applies in relation to offences against this Act.

7 *Note 1 Criminal Code*

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

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

14 *Note 2 Penalty units*

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

17 **6 Application of Act—*detainees***

18 (1) This Act applies to each of the following (each of whom is a
19 *detainee*):

20 (a) an offender while the offender is required to be imprisoned
21 under full-time detention because of a committal order for the
22 *Crimes (Sentence Administration) Act 2005*, part 3.1;

23 (b) an offender under a sentence of imprisonment while the
24 offender is required to perform periodic detention in a
25 detention period under the *Crimes (Sentence Administration)*
26 *Act 2005*, part 5.3;

27 (c) a person while the person is remanded in custody because of an
28 order for remand for the *Crimes (Sentence Administration)*
29 *Act 2005*, part 3.2;

1 (d) anyone else while the person is required to be held in custody
2 or detention under a territory law or a law of the
3 Commonwealth, a State or another Territory.

4 **Examples—par (d)**

5 1 a person held on a warrant issued under the *Royal Commissions*
6 *Act 1991*, section 35 (Apprehension of witnesses failing to appear)

7 2 a person in immigration detention under the *Migration Act 1958*
8 (Cwlth)

9 3 an interstate detainee on leave in the ACT held in custody overnight

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

13 *Note 2* For the application of the Act to offenders in full-time
14 imprisonment, or people remanded or otherwise in custody,
15 immediately before the commencement of this Act, see s 501
16 (Application of Act to transitional detainees).

17 (2) However, the application of this Act is subject to the *Crimes*
18 *(Sentence Administration) Act 2005*, part 4.3 (Full-time detention in
19 NSW).

20 (3) Also, to remove any doubt, this Act does not apply to a person
21 detained under the *Children and Young People Act 1999*, unless that
22 Act provides otherwise.

1 **Chapter 2 Objects and principles**

2 **7 Main objects of Act**

3 The main objects of this Act are to promote public safety and the
4 maintenance of a just society, particularly by—

5 (a) ensuring the secure detention of detainees at correctional
6 centres; and

7 (b) ensuring justice, security and good order at correctional
8 centres; and

9 (c) ensuring that detainees are treated in a decent, humane and just
10 way; and

11 (d) promoting the rehabilitation of offenders and their
12 reintegration into society.

13 **8 Management of correctional services**

14 Correctional services must be managed so as to achieve the main
15 objects of this Act, particularly by—

16 (a) ensuring that public safety is the paramount consideration in
17 decision-making about the management of detainees; and

18 (b) ensuring respect for the humanity of everyone involved in
19 correctional services, including detainees, corrections officers
20 and other people who work at or visit correctional centres; and

21 (c) ensuring behaviour by corrections officers that recognises and
22 respects the inherent dignity of detainees as individuals; and

23 (d) ensuring that harm suffered by victims, and their need for
24 protection, are considered appropriately in decision-making
25 about the management of detainees.

-
- 1 **9** **Treatment of detainees generally**
- 2 Functions under this Act in relation to a detainee must be exercised
- 3 as follows:
- 4 (a) to respect and protect the detainee’s human rights;
- 5 (b) to ensure the detainee’s decent, humane and just treatment;
- 6 (c) to preclude torture or cruel, inhuman or degrading treatment;
- 7 (d) to ensure the detainee is not subject to further punishment (in
- 8 addition to deprivation of liberty) only because of the
- 9 conditions of detention;
- 10 (e) to ensure the detainee’s conditions in detention comply with
- 11 section 12 (Correctional centres—minimum living conditions);
- 12 (f) if the detainee is an offender—to promote, as far as practicable,
- 13 the detainee’s rehabilitation and reintegration into society.
- 14 **10** **Treatment of remandees**
- 15 (1) Functions under this Act in relation to a detainee who is a remandee
- 16 must also be exercised to recognise and respect that—
- 17 (a) the remandee must be presumed innocent of any offence for
- 18 which the remandee is remanded; and
- 19 (b) the detention is not imposed as punishment of the remandee.
- 20 (2) Subsection (1) does not apply if the remandee—
- 21 (a) has been convicted or found guilty of the offence for which the
- 22 remandee is detained; or

1 (b) is under a sentence of imprisonment in relation to another
2 offence.

3 **Examples—par (a)**

4 1 a convicted person remanded in custody for sentencing

5 2 a paroled offender remanded in custody during an adjournment of a
6 hearing by the sentence administration board

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

10 **11 Treatment of certain detainees**

11 (1) This section applies to a person (other than a sentenced offender or
12 remandee) while the person is required to be held in custody or
13 detention under a territory law or a law of the Commonwealth, a
14 State or another Territory.

15 (2) Functions under this Act in relation to the person must be exercised
16 to recognise and respect the purpose for which the person is held in
17 custody or detention.

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

20 **12 Correctional centres—minimum living conditions**

21 (1) To protect the human rights of detainees at correctional centres, the
22 chief executive must ensure, as far as practicable, that conditions at
23 correctional centres meet at least the following minimum standards:

24 (a) detainees must have access to sufficient food and drink to
25 avoid hunger and poor nourishment;

26 (b) detainees must have access to sufficient suitable clothing that
27 does not degrade or humiliate detainees;

28 (c) detainees must have access to suitable facilities for personal
29 hygiene;

-
- 1 (d) detainees must have suitable accommodation and bedding for
2 sleeping in reasonable privacy and comfort;
- 3 (e) detainees must have reasonable access to the open air and
4 exercise;
- 5 (f) detainees must have reasonable access to telephone, mail and
6 other facilities for communicating with people in the
7 community;
- 8 (g) detainees must have reasonable opportunities to receive visits
9 from family members, accredited people and others;
- 10 *Note* **Family member** and **accredited person** are defined in the
11 dictionary.
- 12 (h) detainees must have reasonable opportunities to communicate
13 with their lawyers;
- 14 (i) detainees must have reasonable access to news and education
15 services and facilities to maintain contact with society;
- 16 (j) detainees must have access to suitable health services and
17 health facilities;
- 18 (k) detainees must have reasonable opportunities for religious,
19 spiritual and cultural observances.
- 20 **Example—par (k)**
21 observances and practices relating to religious or spiritual beliefs, including
22 indigenous spiritual beliefs
- 23 *Note* An example is part of the Act, is not exhaustive and may extend,
24 but does not limit, the meaning of the provision in which it
25 appears (see Legislation Act, s 126 and s 132).
- 26 (2) Chapter 6 (Living conditions at correctional centres) applies in
27 relation to correctional centres.

1 **Chapter 3 Administration**

2 **Part 3.1 Administration—general**

3 **13 Ministerial directions to chief executive**

- 4 (1) The Minister may give written directions to the chief executive
5 about the exercise of functions under this Act.

6 **Example of direction**

7 a direction to make corrections policies or operating procedures to ensure that
8 functions are exercised in accordance with a particular decision of the Supreme
9 Court or a particular finding of a board of inquiry or royal commission

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

- 13 (2) The chief executive must comply with a direction under this section.

- 14 (3) A direction is a notifiable instrument.

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

16 **14 Corrections policies and operating procedures**

- 17 (1) The chief executive may make corrections policies and operating
18 procedures, consistent with this Act, to facilitate the effective and
19 efficient management of correctional services.

- 20 (2) Each corrections policy or operating procedure is a notifiable
21 instrument.

22 *Note 1* A notifiable instrument must be notified under the Legislation Act.

23 *Note 2* The amendment or repeal of a corrections policy or operating procedure
24 is also a notifiable instrument. See the Legislation Act, section 46
25 (Power to make instrument includes power to amend or repeal).

- 1 (3) Each corrections policy or operating procedure—
2 (a) must be available for inspection by anyone at each correctional
3 centre; and
4 (b) may be made available for inspection at any other place
5 decided by the chief executive.

6 **15 Exclusions from notified corrections policies and**
7 **operating procedures**

- 8 (1) The chief executive may exclude from a corrections policy or
9 operating procedure notified or available for inspection in
10 accordance with section 14 any matter that the chief executive
11 believes, on reasonable grounds, would be likely to disclose—
12 (a) information that may endanger public safety or undermine
13 justice, security or good order at a correctional centre; or
14 (b) anything prescribed by regulation.
15 (2) If subsection (1) applies to a corrections policy or operating
16 procedure—
17 (a) the policy or procedure must contain a statement about the
18 effect of this section; and
19 (b) the excluded matter must be available for inspection, on
20 request, by any of the following:
21 (i) a judge or magistrate;
22 (ii) a member of the Legislative Assembly;
23 (iii) an official visitor;
24 (iv) the human rights commissioner;
25 (v) the public advocate;
26 (vi) the ombudsman;

1 (vii) anyone else prescribed by regulation.

2 *Note* Territory laws apply to a delegate of a person in the exercise of a
3 delegation as if the delegate were the person who appointed the delegate
4 (see Legislation Act, s 239 (2)).

5 **16 Chief executive directions**

- 6 (1) The chief executive may give directions in relation to a detainee.
- 7 (2) Without limiting subsection (1), the chief executive may give a
8 direction that the chief executive considers necessary and reasonable
9 in relation to any of the following:
- 10 (a) the welfare or safety of the detainee or anyone else;
- 11 (b) security or good order at a correctional centre;
- 12 (c) ensuring compliance with any requirement under this Act or
13 another territory law.
- 14 (3) A direction may be given orally or in writing and may apply to a
15 particular detainee or 2 or more detainees.
- 16 (4) A direction by the chief executive under this Act, or anything done
17 under the direction, is not invalid because of a defect or irregularity
18 in or in relation to the direction.

19 **17 Chief executive delegations**

- 20 (1) The chief executive may delegate any of the chief executive's
21 functions under this Act to a corrections officer.

- 1 (2) This section does not limit the chief executive's power to delegate a
2 function under any other territory law.

3 **Examples of delegation**

- 4 1 a delegation for directions to be given to detainees at a correctional centre by
5 the corrections officer in charge of the centre
6 2 a delegation for functions under chapter 10 (Discipline) to be exercised by a
7 corrections officer at a correctional centre

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

11 *Note 2* For the making of delegations and the exercise of delegated functions,
12 see the Legislation Act, pt 19.4.

13 *Note 3* The *Public Sector Management Act 1994*, s 36 also provides for a chief
14 executive to delegate, and sub-delegate, powers given to the chief
15 executive under a territory law.

16 **18 Chief police officer delegations**

- 17 (1) The chief police officer may delegate any of the chief police
18 officer's functions under this Act to a police officer.

- 19 (2) This section does not limit the chief police officer's power to
20 delegate a function under any other territory law.

21 **Example of delegation**

22 a delegation for giving directions under section 30 (Detention in police cells).

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

26 *Note 2* For the making of delegations and the exercise of delegated functions,
27 see the Legislation Act, pt 19.4.

1 **Part 3.2** **Corrections officers**

2 **19** **Corrections officers—appointment**

- 3 (1) The chief executive may appoint a public servant, or anyone else, as
4 a corrections officer for this Act.

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

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

10 *Note 3* A reference to an Act includes a reference to the statutory instruments
11 made or in force under the Act, including any regulation and corrections
12 policy and operating procedure (see Legislation Act, s 104).

- 13 (2) The chief executive may make an appointment under this section
14 only if satisfied that the appointee has appropriate qualifications or
15 experience to exercise the functions of a corrections officer.

16 **20** **Corrections officers—functions**

- 17 (1) A corrections officer—
18 (a) has the functions given to the officer under this Act or any
19 other territory law; and
20 (b) is subject to the directions of the chief executive in the exercise
21 of the functions.
22 (2) The functions of a corrections officer may be limited by—
23 (a) the instrument appointing the officer; or
24 (b) written notice given to the officer by the chief executive; or
25 (c) a regulation.

- 1 **21 Doctors—health service appointments**
- 2 (1) The chief executive must appoint a doctor for each correctional
3 centre.
- 4 (2) The doctor’s functions are—
- 5 (a) to provide health services to detainees; and
- 6 (b) to protect the health of detainees (including preventing the
7 spread of disease at correctional centres).
- 8 (3) A doctor appointed for a correctional centre must be available to
9 provide health services at the centre at least once each week.
- 10 (4) The doctor may give written directions to the chief executive for
11 subsection (2) (b).
- 12 (5) The chief executive must ensure that each direction under
13 subsection (4) is complied with unless the chief executive believes,
14 on reasonable grounds, that compliance would undermine security
15 or good order at the correctional centre.
- 16 **22 Health professionals—non-therapeutic functions**
- 17 (1) The chief executive must appoint a health professional to exercise
18 non-therapeutic functions at each correctional centre.
- 19 *Note Health professional* includes a doctor and nurse registered under the
20 *Health Professionals Act 2004.*
- 21 (2) In this section:
- 22 *non-therapeutic function* does not include a health service or other
23 function mentioned in section 21.
- 24 **23 Identity cards**
- 25 (1) This section applies in relation to a person appointed under any of
26 the following:
- 27 (a) section 19 (Corrections officers—appointment);
-

Section 23

- 1 (b) section 21 (Doctors—health service appointments);
2 (c) section 22 (Health professionals—non-therapeutic functions).
- 3 (2) The chief executive must give each person an identity card stating
4 the person’s name and the position to which the person is appointed.
- 5 (3) The identity card must show—
6 (a) a recent photograph of the person; and
7 (b) the card’s date of issue and expiry; and
8 (c) anything else prescribed by regulation.
- 9 (4) A person commits an offence if the person—
10 (a) stops being a person to whom this section applies; and
11 (b) does not return the person’s identity card to the chief executive
12 no later than 7 days after the day the person stops being a
13 corrections officer.
- 14 Maximum penalty: 1 penalty unit.
- 15 (5) An offence against this section is a strict liability offence.

1 **Part 3.3** **Correctional centres**

2 **24** **Correctional centres—declaration**

- 3 (1) The Minister may declare a place to be a correctional centre.
4 (2) A declaration is a notifiable instrument.

5 **Examples of declarations**

- 6 1 the declaration of a place, including a buffer zone surrounding a secure
7 perimeter, to be a correctional centre
8 2 a declaration of a place to be a correctional centre for full-time detention, or
9 for a stated time and purpose, eg a temporary correctional centre for
10 remandees

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

14 *Note 2* A notifiable instrument must be notified under the Legislation Act.

15 *Note 3* The power to make an instrument includes power to make different
16 provisions in relation to different matters or different classes of matters,
17 and provisions that apply differently by reference to stated exceptions or
18 factors (see Legislation Act, s 48).

19 **25** **Correctional centres—arrangements with NSW**

- 20 (1) The Chief Minister may make arrangements with the Governor of
21 New South Wales in relation to keeping full-time detainees at a
22 NSW correctional centre.
23 (2) The arrangements may include provision for—
24 (a) the exercise by NSW officers of functions in relation to
25 full-time detainees kept at a NSW correctional centre; and
26 (b) reports by NSW officers about the exercise of those functions.

1 (3) In this section:

2 ***NSW officer*** means an officer or other person having authority
3 under the *Crimes (Administration of Sentences) Act 1999* (NSW) to
4 exercise a function in relation to a full-time detainee.

5 *Note* The *Crimes (Sentence Administration) Act 2005*, pt 4.3 (Full-time
6 detention in NSW) provides for the removal of full-time detainees to
7 NSW correctional centres.

1 **Part 3.4** **Administration—special**
2 **provisions**

3 **26 Declaration of emergency**

4 (1) This section applies if the chief executive believes, on reasonable
5 grounds, that an emergency (including an imminent emergency)
6 exists in relation to a correctional centre that threatens or is likely to
7 threaten—

8 (a) security or good order at the centre; or

9 (b) the safety of anyone at the centre or elsewhere.

10 (2) The chief executive may declare that an emergency exists in relation
11 to the correctional centre for a stated period of not more than—

12 (a) 3 days; or

13 (b) if another period is prescribed by regulation—the period
14 prescribed.

15 (3) To remove any doubt, the chief executive may make declarations for
16 2 or more consecutive periods in relation to the same emergency.

17 (4) A declaration commences when it is made, unless it provides for a
18 later commencement.

19 (5) A declaration—

20 (a) is a notifiable instrument; and

21 (b) must be notified under the Legislation Act no later than the day
22 after the day it is made.

- 1 **27 Emergency powers**
- 2 (1) While an emergency is declared under section 26 in relation to a
- 3 correctional centre, the chief executive may do 1 or more of the
- 4 following:
- 5 (a) restrict any work or activity at the centre;
- 6 (b) restrict access in, or to or from, the centre or any part of the
- 7 centre;
- 8 (c) restrict communications between a detainee and anyone else;
- 9 (d) authorise a police officer or public servant to exercise any
- 10 function exercisable by a corrections officer under this Act in
- 11 accordance with any direction by the chief executive.
- 12 (2) The chief executive must ensure that action taken under this section
- 13 is necessary and reasonable in the circumstances.
- 14 **28 Arrangements with police**
- 15 (1) The chief executive may make arrangements with the chief police
- 16 officer for police assistance in relation to the administration of the
- 17 following Acts:
- 18 (a) the *Crimes (Sentencing) Act 2005*;
- 19 (b) the *Crimes (Sentence Administration) Act 2005*;
- 20 (c) this Act.
- 21 (2) Subject to any arrangement under this section, the chief police
- 22 officer must comply, as far as practicable, with any request by the
- 23 chief executive for police assistance mentioned in subsection (1).
- 24 (3) A police officer providing assistance under this section may exercise
- 25 any function exercisable by a corrections officer under an Act
- 26 mentioned in subsection (1) in accordance with any direction by the
- 27 chief executive.

1 Chapter 4 Detention in police and court 2 cells etc

3 29 Definitions—ch 4

4 In this chapter:

5 *court cell* means a cell (however described) for the detention of a
6 person at a court.

7 *police cell* means a cell (however described) for the detention of a
8 person at a police station.

9 30 Detention in police cells

- 10 (1) A person lawfully required to be in police custody may, for the
11 purposes of the custody, be detained at a police cell.
- 12 (2) However, a person lawfully required to be in police custody may not
13 be detained continuously at a police cell for a period longer than
14 36 hours.
- 15 (3) If a person is lawfully required to remain in police custody for a
16 period longer than 36 hours, the chief police officer may direct that
17 the person be transferred to the custody of the chief executive for
18 the purposes of the police custody.
- 19 (4) The direction by the chief police officer—
- 20 (a) authorises the chief executive to have custody of the person
21 under the direction; and
- 22 (b) requires the chief executive to do the following:
- 23 (i) take the person into custody;
- 24 (ii) arrange for the person's admission to a correctional
25 centre;

- 1 (iii) keep the person in custody under full-time detention
2 under the direction;
- 3 (iv) provide for police access to the person;
- 4 (v) return the person to the custody of the chief police officer
5 as required by the direction.
- 6 (5) To remove any doubt, the person is also taken to remain in police
7 custody while in custody under subsection (4).

8 **31 Detention in police cells—search powers etc**

- 9 (1) The chief police officer may direct a police officer to conduct a
10 scanning search, frisk search, ordinary search or strip search of a
11 person detained at a police cell.
- 12 (2) For this section, part 9.4 (Searches) and part 9.5 (Seizing property)
13 apply as if the direction, search or seizure occurred under the
14 relevant part in relation to a detainee at a correctional centre.

15 **32 Other police powers not limited**

16 To remove any doubt, section 30 and section 31 are additional to,
17 and do not limit, any other provision relating to a police function
18 under a territory law or a law of the Commonwealth, a State or
19 another Territory.

20 **33 Detention in court cells**

- 21 (1) This section applies to a person who is—
- 22 (a) in the chief executive's custody but not admitted as a detainee
23 at a correctional centre; and
- 24 (b) required to attend a court.
- 25 (2) The chief executive may direct that the person be detained at a court
26 cell in the custody of a corrections officer for the purposes of the
27 person's attendance at the court.

- 1 (3) However, the person may not be detained continuously at a court
2 cell for a period longer than 36 hours.
- 3 (4) If the person is required to remain in detention for a period longer
4 than 36 hours for the court attendance, the chief executive must—
- 5 (a) arrange for the person's admission to a correctional centre; and
6 (b) keep the person in custody under full-time detention for the
7 attendance; and
8 (c) take the person to the court as required by the court.
- 9 (5) The person is taken to be a detainee for all purposes under this Act
10 while detained at the court cell.

11 **34 Detainees accommodated away from correctional centre**

- 12 (1) This section applies if the chief executive believes, on reasonable
13 grounds, that circumstances exist in relation to a correctional centre
14 that make it necessary or prudent for a detainee admitted at the
15 centre to be accommodated temporarily away from the centre.

16 **Examples**

- 17 1 where a correctional centre cannot properly accommodate any more
18 detainees
19 2 where there is an outbreak of disease or violent behaviour at a correctional
20 centre
21 3 where a detainee is being transferred to or from a correctional centre or other
22 place and needs accommodation in transit

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

- 26 (2) The chief executive may declare that this section applies in relation
27 to the correctional centre for a stated period.

- 28 (3) A declaration is a notifiable instrument.

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

- 1 (4) The chief executive may direct that, while a declaration is in force in
2 relation to a correctional centre, a detainee at the centre be
3 detained—
- 4 (a) at a police cell in the custody of a police officer; or
5 (b) at a court cell in the custody of a corrections officer.
- 6 (5) The period of detention at a police cell or court cell is not limited by
7 section 30 or section 33.
- 8 (6) To remove any doubt, the detainee remains a detainee for all
9 purposes under this Act while detained under this section.

Chapter 5 Escorting detainees

35 Escort officer functions etc

- (1) This section applies if, under a law in force in the ACT, a person required to be held in the chief executive's custody is to be escorted anywhere by an escort officer.
- (2) To remove any doubt—
- (a) the escort officer is authorised to have custody of the person for the purpose of escorting the person; and
 - (b) the person is also taken to be in the chief executive's custody; and
 - (c) a corrections officer acting as the escort officer may, for the purpose of escorting the person, exercise any function under this Act that the officer may exercise in relation to a detainee admitted at a correctional centre.

Examples of functions—par (c)

- 1 functions given to the officer under section 20 (Corrections officers—functions) or delegated to the officer by the chief executive (for example, giving directions to detainees)
- 2 the officer's functions under part 9.4 (Searches) or part 9.7 (Use of force)

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).

36 Escorting arrested person to court etc

- (1) This section applies if a person arrested by a police officer—
- (a) has not been released on bail; and
 - (b) is in police custody; and

- 1 (c) is required by law to be brought before a court or tribunal.
- 2 (2) A police officer may request an escort officer to bring the person
3 before the court or tribunal.
- 4 (3) The escort officer must bring the person before the court or tribunal
5 and, for that purpose, may—
- 6 (a) take the person into custody; and
- 7 (b) arrange for the person to be detained under this Act until the
8 person is brought before the court or tribunal.

9 **37 Custody etc during proceedings**

10 Subject to any order or direction of a court, an escort officer who is
11 required to bring a person before a court must, as far as
12 practicable—

- 13 (a) ensure the safe custody and welfare of the person for the
14 purposes of the proceeding; and
- 15 (b) ensure that the person does not obstruct or hinder the
16 proceeding.

17 **38 Executing warrants of imprisonment or remand etc**

- 18 (1) The chief executive may make escort officers available to attend on
19 a court or tribunal—
- 20 (a) to take a person into custody; or
- 21 (b) to arrange for a person to be kept in custody; or
- 22 (c) to transfer or otherwise deal with a person.
- 23 (2) An order or direction of the court addressed to all escort officers—
- 24 (a) is taken to be addressed to each escort officers; and
- 25 (b) may be executed by any escort officers.

1 **39 Other powers not limited**

2 To remove any doubt, this chapter is additional to, and does not
3 limit, any other provision relating to the escorting of detainees under
4 a territory law or a law of the Commonwealth, a State or another
5 territory.

6 **Examples of other provisions**

7 1 The *Crimes Sentence (Administration) Act 2005*, part 3.3 (Committal—
8 miscellaneous)—

- 9 • section 20 (Directions to escort officers)
10 • section 21 (Orders to bring offender or remandee before court etc).

11 2 A law of a State relating to the escort of prisoners through the ACT.

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

1 **Chapter 6 Living conditions at**
2 **correctional centres**

3 *Note to ch 6*

4 Anything expressed in this chapter to be an entitlement for ch 10 (Discipline) is
5 not affected by anything that happens under that chapter. See s 153 (Meaning of
6 *privilege*) and s 187 (Privileges and entitlements—impact of discipline).

7 **40 Food and drink**

- 8 (1) The chief executive must ensure that—
- 9 (a) sufficient nutritional food and drink are provided for detainees
10 to avoid hunger and poor nourishment; and
- 11 (b) meals are provided for detainees at times consistent with the
12 cultural norms of Australia; and
- 13 (c) clean drinking water is provided to meet the needs of
14 detainees.
- 15 (2) The chief executive must also ensure, as far as practicable, that
16 allowance is made for the religious, spiritual and cultural needs of
17 detainees in relation to the provision of food and drink.
- 18 (3) If a doctor, other than a doctor appointed under section 22 (Health
19 professionals—non-therapeutic functions), prescribes a particular
20 diet for a detainee, the chief executive must ensure that reasonable
21 steps are taken to provide the detainee with the diet.
- 22 (4) For chapter 10 (Discipline), subsections (1), (2) and (3) are taken to
23 provide an entitlement for each detainee in relation to food and
24 drink.

- 1 (5) Without limiting section 14 (Corrections policies and operating
2 procedures), a corrections policy or operating procedure may
3 include provision for any of the following:
- 4 (a) the nutritional standards to be met by food and drink for
5 detainees;
- 6 (b) the provision of nutritional advice about food and drink
7 provided to detainees;
- 8 (c) the appointment of a nutritionist.
- 9 (6) For chapter 10 (Discipline), a detainee's entitlement in relation to
10 food and drink includes anything expressed to be an entitlement in a
11 corrections policy or operating procedure made for subsection (5).

12 **41 Clothing**

- 13 (1) The chief executive must ensure that—
- 14 (a) sufficient, suitable clothing is provided for detainees; and
- 15 (b) any particular clothing, including a uniform, issued to
16 detainees is not likely to degrade or humiliate detainees.
- 17 (2) The chief executive must also ensure, as far as practicable, that
18 clothing provided for detainees is clean and hygienic.
- 19 (3) For chapter 10 (Discipline), this section is taken to provide an
20 entitlement for each detainee in relation to clothing.

21 **42 Personal hygiene**

- 22 (1) The chief executive must ensure that—
- 23 (a) toilet facilities and washing or showering facilities are
24 available to detainees; and
- 25 (b) the facilities are clean, hygienic and private enough to ensure
26 the dignity and self-respect of detainees.

- 1 (2) For chapter 10 (Discipline), this section is taken to provide an
2 entitlement for each detainee in relation to personal hygiene.

3 **43 Sleeping areas**

- 4 (1) The chief executive must ensure that—
5 (a) detainees have sleeping places, with bed and bedding, suitable
6 for reasonable privacy and comfort; and
7 (b) sleeping places, including beds and bedding, are clean and
8 hygienic.
9 (2) For chapter 10 (Discipline), this section is taken to provide an
10 entitlement for each detainee in relation to sleeping areas.

11 **44 Treatment of convicted and non-convicted detainees**

- 12 (1) Without limiting section 14 (Corrections policies and operating
13 procedures), the chief executive must make a corrections policy or
14 operating procedure providing for different treatment of convicted
15 detainees and non-convicted detainees.

16 **Example**

17 a corrections policy or operating procedure, in accordance with the following
18 rules of the United Nations *Standard Minimum Rules for the Treatment of*
19 *Prisoners*, for non-convicted detainees to be able to—

- 20 • procure food at own expense (r 87)
21 • be offered work but not be obliged to work (r 89)
22 • procure reading and writing material at own expense (r 90)
23 • visit and be treated by own doctor at own expense (r 91)

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

- 27 (2) The chief executive must also ensure that convicted detainees are
28 accommodated separately from non-convicted detainees.

- 1 (3) For chapter 10 (Discipline)—
- 2 (a) a detainee's entitlement in relation to treatment in detention
- 3 includes anything expressed to be an entitlement in a
- 4 corrections policy or operating procedure made for
- 5 subsection (1); and
- 6 (b) subsection (2) is taken to provide an entitlement for each
- 7 detainee in relation to accommodation.
- 8 (4) However, the chief executive may give directions for different
- 9 accommodation of a non-convicted detainee if the chief executive
- 10 suspects, on reasonable grounds, that is necessary to ensure the
- 11 safety of the detainee or anyone else.

12 **Example**

13 Remandee J has served various sentences for violence offences, has an aggressive

14 personality and enjoys bullying other people. The chief executive suspects that

15 other remandees detained with J are highly vulnerable in comparison with J. The

16 chief executive decides that J should be accommodated with convicted offenders.

17 *Note* An example is part of the Act, is not exhaustive and may extend, but

18 does not limit, the meaning of the provision in which it appears (see

19 Legislation Act, s 126 and s 132).

- 20 (5) In this section:

21 *convicted detainee* means a detainee whose detention is because of

22 the detainee's conviction of an offence.

23 **45 Access to open air and exercise**

- 24 (1) The chief executive must ensure, as far as practicable, that
- 25 detainees—
- 26 (a) have access to the open air for at least 1 hour each day; and
- 27 (b) can exercise for at least 1 hour each day.
- 28 (2) The standards under subsection (1) may both be satisfied during the
- 29 same hour on any day.

- 1 (3) For chapter 10 (Discipline), this section is taken to provide an
2 entitlement for each detainee in relation to access to the open air and
3 exercise.
- 4 **46 Communication with family and others**
- 5 (1) The chief executive must ensure, as far as practicable, that adequate
6 opportunities are provided for detainees to be able to remain in
7 contact with family members, friends, associates and others by
8 telephone calls, mail and visits.
- 9 (2) For subsection (1), the chief executive must have regard, in addition
10 to any other relevant matter, to whether the detainee's detention is
11 for a reason other than the conviction of an offence.
- 12 (3) The chief executive must also ensure that the overall treatment of a
13 detainee, including any segregation or disciplinary action, does not
14 unreasonably deprive the detainee generally of all communication
15 with other people.
- 16 (4) In particular, the chief executive must ensure that the overall
17 treatment of a detainee does not deprive the detainee generally of all
18 communication with any of the following:
- 19 (a) the courts;
- 20 (b) accredited people;
- 21 (c) a doctor of the detainee's choice for health services;
- 22 (d) family members;
- 23 (e) other people with whom the detainee may communicate under
24 this Act.
- 25 (5) For chapter 10 (Discipline), subsections (1) to (4) are taken to
26 provide an entitlement for each detainee in relation to
27 communication generally with other people.

- 1 (6) However, this section is subject to the following:
2 (a) section 47 (Telephone calls);
3 (b) section 48 (Mail);
4 (c) section 49 (Visits by family members etc);
5 (d) section 50 (Contact with accredited people).

6 **47 Telephone calls**

- 7 (1) The chief executive must ensure that each correctional centre has
8 telephone facilities for detainees to make and receive telephone
9 calls.
10 (2) A detainee may make at least—
11 (a) 1 telephone call on admission to a correctional centre; and
12 (b) 1 telephone call each week to a family member.
13 *Note Family member* is defined in the dictionary.
14 (3) A detainee may also make and receive further telephone calls for
15 necessary contact with a family member, friend or someone else.
16 (4) A detainee who makes a telephone call mentioned in subsection (2)
17 or (3) must pay for the call if the chief executive believes, on
18 reasonable grounds, that is appropriate.

19 **Example**

20 if the detainee can afford to pay for the call

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

- 24 (5) For chapter 10 (Discipline), subsections (2) and (3) are taken to
25 provide entitlements for each detainee in relation to telephone calls.

- 1 (6) However, the chief executive may give directions denying or
2 limiting the use of a telephone by a detainee for a call mentioned in
3 subsection (2) or (3) if the chief executive suspects, on reasonable
4 grounds, that the call may—
- 5 (a) undermine security or good order at a correctional centre; or
6 (b) revictimise a victim; or
7 (c) circumvent any process for investigating complaints or
8 reviewing decisions under this Act; or
9 (d) have the purpose of causing community distress.
- 10 **Example—par (d)**
11 Mr F was imprisoned for intentionally inflicting grievous bodily harm against his
12 former wife. He had been convicted previously of domestic violence offences.
13 He believes he has a right to assault his former wife and advocates the matter is
14 private. Mr F believes that organisations that support victims of domestic
15 violence are a social evil. He begins to use telephone calls to his brother to
16 organise him into inciting violence against organisations advocating women’s
17 rights. Following complaints from the organisations, the chief executive denies
18 phone calls between Mr F and his brother.
- 19 (7) Also, subsections (2) and (3) are subject to—
- 20 (a) section 102 (Monitoring telephone calls etc); and
21 (b) any operating procedure mentioned in subsection (8).
- 22 (8) An operating procedure may include provision regulating the
23 following in relation to detainees’ telephone calls:
- 24 (a) the times for making or receiving calls;
25 (b) the frequency and length of calls;
26 (c) arrangements for payment for the cost of calls made.

1 **48****Mail**

- 2 (1) The chief executive must ensure, as far as practicable, that detainees
3 can send and receive as much mail as they wish.
- 4 (2) However, a detainee may send mail to, and receive mail from, a
5 person only if the person is nominated by the detainee by written
6 notice given to the chief executive.
- 7 (3) A detainee who sends mail must pay for the cost of any writing and
8 other material, and postage, for the mail if the chief executive
9 believes, on reasonable grounds, that is appropriate.
- 10 **Example**
11 if the detainee can afford to pay for the material and postage
- 12 *Note* An example is part of the Act, is not exhaustive and may extend, but
13 does not limit, the meaning of the provision in which it appears (see
14 Legislation Act, s 126 and s 132).
- 15 (4) For chapter 10 (Discipline), subsection (2) is taken to provide an
16 entitlement for each detainee in relation to mail.
- 17 (5) However, the chief executive may give directions denying or
18 limiting the sending or receiving of an item of mail by a detainee if
19 the chief executive suspects, on reasonable grounds, that it may—
- 20 (a) undermine security or good order at a correctional centre; or
21 (b) revictimise a victim; or
22 (c) circumvent any process for investigating complaints or
23 reviewing decisions under this Act; or

1 (d) have the purpose of causing community distress.

2 **Example—par (d)**

3 AW was convicted of murdering her parents with a view to obtaining an
4 inheritance. The W family are well known in the community and family
5 members had actively campaigned for a higher sentence for AW. AW
6 began writing inflammatory letters to her relatives and friends of her
7 parents. Having received complaints about the letters from family
8 members, the chief executive denies AW from sending further letters to
9 family members who had complained about the letters.

10 (6) Also, subsections (1) and (2) are subject to—

11 (a) section 103 (Monitoring ordinary mail); and

12 (b) section 104 (Monitoring protected mail); and

13 (c) any operating procedure mentioned in subsection (7).

14 (7) An operating procedure may include provision regulating the
15 following in relation to detainees' mail:

16 (a) the way mail is sent or received;

17 (b) the provision of writing and other material for sending mail;

18 (c) arrangements for payment for the cost of the material and
19 postage.

20 **49 Visits by family members etc**

21 (1) The chief executive must ensure that each correctional centre has
22 suitable facilities for detainees to receive visits from family
23 members and other people.

24 **Example of non-family member visitor**

25 a person who is a long-term friend or a friend who normally lives with the
26 detainee

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

- 1 (2) A detainee may have at least 1 visit, of at least 30 minutes, each
2 week by a family member.

3 *Note* **Family member** is defined in the dictionary.

- 4 (3) For chapter 10 (Discipline), subsection (2) is taken to provide an
5 entitlement for each detainee in relation to visits by family
6 members.

- 7 (4) However, the chief executive may give directions denying or
8 limiting a visit mentioned in subsection (1) if the chief executive
9 suspects, on reasonable grounds, that the visit may—

- 10 (a) undermine security or good order at a correctional centre; or
11 (b) revictimise a victim; or
12 (c) circumvent any process for investigating complaints or
13 reviewing decisions under this Act; or
14 (d) have the purpose of causing community distress.

15 **Example—par (d)**

16 Mr J is convicted of numerous serious sexual offences against young girls. He
17 begins to write letters to various public figures, including journalists, stating that
18 his crimes were motivated by a love for the children and that he intends to change
19 his name to that of one of his victims. He makes arrangements for a visit by a
20 journalist for a story about why he wants to change his name. The chief executive
21 may deny the visit on the ground that it may cause community distress.

- 22 (5) Also, this section is subject to section 142 (Visiting conditions).

23 **50 Contact with accredited people**

- 24 (1) The chief executive must ensure that a detainee has adequate
25 opportunities for contact with an accredited person, whether by
26 telephone or mail or by a visit by an accredited person.

27 *Note* **Accredited person** is defined in the dictionary.

Section 51

- 1 (2) For chapter 10 (Discipline), subsection (1) is taken to provide an
2 entitlement for each detainee in relation to contact with an
3 accredited person.
- 4 (3) However, the chief executive may give directions denying or
5 limiting a detainee's contact with an accredited person if the chief
6 executive suspects, on reasonable grounds, that the contact may—
- 7 (a) undermine security or good order at a correctional centre; or
8 (b) circumvent any process for investigating complaints or
9 reviewing decisions under this Act.
- 10 (4) Also, this section is subject to section 142 (Visiting conditions).
- 11 **51 News and educational services**
- 12 (1) The chief executive must ensure, as far as practicable, that detainees
13 have reasonable access to—
- 14 (a) newspapers, radio and television broadcasts and other mass
15 media (including the internet) for news and information; and
16 (b) a library or library service.
- 17 (2) The chief executive may, as part of a detainee's case management
18 plan, approve a detainee participating in academic, vocational or
19 cultural education or training if satisfied it would benefit the
20 detainee in any of the following ways:
- 21 (a) by providing the detainee with suitable vocational skills;
22 (b) by promoting the detainee's rehabilitation or reintegration into
23 society;
24 (c) by contributing satisfactorily to the detainee's personal
25 development.
- 26 (3) For chapter 10 (Discipline), participation in education or training
27 approved under subsection (2) is taken to be an entitlement for the
28 detainee.

-
- 1 **52 Health care**
- 2 (1) The chief executive must ensure that—
- 3 (a) detainees have a standard of health care equivalent to that
- 4 available to other people in the ACT; and
- 5 (b) arrangements are made to ensure the provision of appropriate
- 6 health services for detainees; and
- 7 (c) conditions in detention promote the health and wellbeing of
- 8 detainees; and
- 9 (d) as far as practicable, detainees are not exposed to risks of
- 10 infection.
- 11 (2) In particular, the chief executive must ensure that detainees have
- 12 access to—
- 13 (a) regular health checks; and
- 14 (b) timely treatment where necessary, particularly in urgent
- 15 circumstances; and
- 16 (c) hospital care where necessary; and
- 17 (d) as far as practicable—
- 18 (i) specialist health services from health professionals; and
- 19 (ii) necessary health care programs, including rehabilitation
- 20 programs.
- 21 (3) For chapter 10 (Discipline), subsections (1) and (2) are taken to
- 22 provide an entitlement for each detainee in relation to health care.
- 23 (4) A regulation may make provision in relation to health services for
- 24 detainees, including provision about the following:
- 25 (a) the appointment of health professionals for this Act;
- 26 (b) the provision of health service clinics for detainees;

- 1 (c) appointments for detainees with health professionals;
- 2 (d) rehabilitation for detainees who suffer personal injury arising
- 3 out of or in the course of their detention;
- 4 (e) security arrangements for detainees visiting health
- 5 professionals or health facilities, particularly outside
- 6 correctional centres.
- 7 (5) For chapter 10 (Discipline), a detainee's entitlement in relation to
- 8 health care includes anything expressed to be an entitlement in a
- 9 regulation made for subsection (4).

10 **53 Transfers to health facilities**

- 11 (1) The chief executive may direct that a detainee be transferred to a
- 12 health facility at a correctional centre, or outside a correctional
- 13 centre, if the chief executive believes, on reasonable grounds, that is
- 14 necessary or desirable for the detainee to receive health services at
- 15 the facility.

16 *Note* **Health facility** is defined in the dictionary.

- 17 (2) The chief executive must have regard to the advice of a doctor
- 18 appointed under section 21 (Doctors—health service appointments)
- 19 when considering whether to make a direction under subsection (1).
- 20 (3) The chief executive may direct an escort officer to escort the
- 21 detainee to or from the health facility, or while at the facility.
- 22 (4) The detainee may be discharged from the health facility only if—
- 23 (a) the health professional in charge of the detainee's care
- 24 approves the discharge; or

- 1 (b) the chief executive directs that the detainee be removed from
2 the facility.

3 **Example of direction for removal of detainee from health facility**

4 where the detainee is a danger to the safety of people at the facility

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

- 8 (5) The chief executive may give a direction for ensuring that a detainee
9 discharged from a health facility under this section is returned to a
10 correctional centre stated in the direction.

- 11 (6) For chapter 10 (Discipline), this section is taken to provide an
12 entitlement for each detainee in relation to health care.

13 **54 Religious, spiritual and cultural needs**

- 14 (1) The chief executive must ensure, as far as practicable, that provision
15 is made at correctional centres for the religious, spiritual and
16 cultural needs of detainees.

17 **Examples of religious, spiritual or cultural needs**

18 1 observances and practices relating to religious or spiritual beliefs, including
19 indigenous spiritual beliefs

20 2 observances or practices arising because a person belongs to a particular
21 culture

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

- 25 (2) In particular, the chief executive must ensure, as far as practicable,
26 that detainees have reasonable access to—

27 (a) ministers of religion and other people with standing in a
28 particular culture whom detainees wish to see for religious,
29 spiritual or cultural purposes; and

30 (b) religious services at the correctional centre; and

- 1 (c) books and other articles associated with their religious,
2 spiritual or cultural practices.
- 3 (3) However, the chief executive may give directions denying or
4 limiting a detainee's access under subsection (1) or (2) if the chief
5 executive suspects, on reasonable grounds, that it may—
- 6 (a) undermine security or good order at a correctional centre; or
7 (b) revictimise a victim; or
8 (c) circumvent any process for investigating complaints or
9 reviewing decisions under this Act; or
10 (d) cause community distress.
- 11 (4) A detainee must not be required to receive a visit from anyone
12 representing a particular religion, spiritual belief or culture, or attend
13 any related service or practice, if the detainee does not wish to do
14 so.
- 15 (5) For chapter 10 (Discipline), subsections (1) and (2) are taken to
16 provide an entitlement for each detainee in relation to religious
17 observance.
- 18 (6) In this section:
- 19 ***minister of religion*** means—
- 20 (a) a person registered under the *Marriage Act 1961* (Cwlth),
21 part 4.1 (Authorised celebrants); or
22 (b) a person prescribed by regulation.

Chapter 7 Inspection of correctional centres

55 Independent inspections

(1) This section applies to each of the following:

- (a) a judge;
- (b) a magistrate;
- (c) a member of the Legislative Assembly;
- (d) the human rights commissioner;
- (e) the ombudsman.

(2) A person mentioned in subsection (1) may, at any reasonable time, enter and inspect—

- (a) a correctional centre; or
- (b) a place outside a correctional centre where a detainee is, or has been, directed to work or participate in an activity.

Example of time that would not be reasonable

a time that would hinder a search at a correctional centre

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

56 Official visitors—appointment

(1) The Minister must appoint at least 1 official visitor.

(2) The Minister may appoint a person as an official visitor only if satisfied the person has suitable qualifications or experience to exercise the functions of an official visitor.

- 1 (3) The Minister must not appoint a public employee as an official
2 visitor.
- 3 (4) An appointment of an official visitor must be for not longer than
4 3 years.
- 5 (5) The conditions of appointment of an official visitor are the
6 conditions agreed between the Minister and the member, subject to
7 any determination under the *Remuneration Tribunal Act 1995*.
- 8 *Note 1* For the making of appointments (including acting appointments), see
9 the Legislation Act, pt 19.3.
- 10 *Note 2* Certain Ministerial appointments require consultation with an Assembly
11 committee and are disallowable (see Legislation Act, div 19.3.3).
- 12 *Note 3* A person may be reappointed to a position if the person is eligible to be
13 appointed to the position (see Legislation Act, s 208 and dict, pt 1, def
14 *appoint*).

15 **57 Official visitors—functions**

- 16 (1) An official visitor's functions are—
- 17 (a) to inspect correctional centres and places outside correctional
18 centres where detainees are, or have been, directed to work or
19 participate in an activity; and
- 20 (b) to exercise any other function given to an official visitor under
21 this Act or another territory law.
- 22 (2) For subsection (1), an official visitor—
- 23 (a) must visit each correctional centre in accordance with the
24 conditions of the official visitor's appointment; and
- 25 (b) may visit a place outside a correctional centre where a detainee
26 is, or has been, directed to work or participate in an activity;
27 and

- 1 (c) may, at any reasonable time, enter a correctional centre or a
2 place mentioned in paragraph (b).

3 **Example of time that would not be reasonable**

4 a time that would hinder a search at a correctional centre

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

- 8 (3) If an official visitor believes, on reasonable grounds, that the
9 detention of a detainee (including any aspect of the treatment, living
10 conditions, work or activities of the detainee) is not in accordance
11 with this Act, the official visitor must report that belief to the
12 Minister in writing.

- 13 (4) A corrections officer must give an official visitor any reasonable
14 help the official visitor asks for to exercise the official visitor's
15 functions.

16 **58 Complaints to official visitors**

- 17 (1) A detainee may complain to an official visitor about any aspect of
18 the detainee's detention or treatment in detention, including—

19 (a) the operation of a correctional centre where the detainee is
20 detained; or

21 (b) conditions, or work or activities provided, at a place where the
22 detainee is, or has been, directed to work or participate in an
23 activity.

- 24 (2) The chief executive must ensure that an official visitor is told as
25 soon as practicable about any detainee who has told a corrections
26 officer that the detainee wants to see an official visitor.

- 27 (3) A detainee is not required to explain to the chief executive or a
28 corrections officer why the detainee may want to see an official
29 visitor.

- 1 **59 Investigation etc by official visitors**
- 2 (1) An official visitor must investigate each complaint made under
- 3 section 58 unless the official visitor believes, on reasonable grounds,
- 4 that the complaint is frivolous or vexatious.
- 5 (2) An official visitor may—
- 6 (a) make a recommendation about the complaint to the chief
- 7 executive; or
- 8 (b) if the official visitor considers it is appropriate, give the
- 9 Minister a report about any complaint or investigation.
- 10 (3) As soon as practicable after the end of each quarter, an official
- 11 visitor must give the Minister a written report for the quarter
- 12 summarising—
- 13 (a) the number and kinds of complaints received by the official
- 14 visitor; and
- 15 (b) the number and kinds of complaints investigated by the official
- 16 visitor; and
- 17 (c) the outcomes of investigations of complaints.
- 18 *Note* For the meaning of *quarter*, see the Legislation Act, dict, pt 1.
- 19 (4) The quarterly report may include comments by the official visitor
- 20 about anything in relation to a complaint or investigation to which
- 21 the report applies.

22 **60 Official visitors—ending appointments**

- 23 (1) The Minister may end the appointment of an official visitor—
- 24 (a) if the official visitor contravenes a territory law; or
- 25 (b) for misbehaviour; or
- 26 (c) if the official visitor becomes bankrupt or executes a personal
- 27 insolvency agreement; or

- 1 (d) if the official visitor is convicted or found guilty, in the ACT,
2 of an offence punishable by imprisonment for at least 1 year;
3 or
4 (e) if the official visitor is convicted or found guilty, outside the
5 ACT, in Australia or elsewhere, of an offence that, if it had
6 been committed in the ACT, would be punishable by
7 imprisonment for at least 1 year; or
8 (f) if the official visitor fails to visit a correctional centre in
9 accordance with the conditions of the official visitor's
10 appointment without the Minister's approval; or
11 (g) for physical or mental incapacity, if the incapacity substantially
12 affects the exercise of the official visitor's functions.

- 13 (2) An official visitor's appointment ends if the person becomes a
14 public employee.

15 *Note 1* A public employee must not be appointed as an official visitor
16 (see s 56 (3)).

17 *Note 2* A person's appointment also ends if the person resigns (see Legislation
18 Act, s 210).

19 **61 Relationship with other inspection laws**

- 20 (1) This Act must be construed and administered in a way that is
21 consistent with an inspection law unless the contrary intention
22 appears from this Act or that law.
23 (2) This Act is taken to be consistent with an inspection law to the
24 extent that it is capable of operating concurrently with that law.
25 (3) The chief executive may make arrangements with a person
26 responsible for the exercise of functions under an inspection law to
27 ensure, as far as practicable, the safety of an inspector (however
28 described) or anyone else affected by the exercise of the function in
29 relation to a detainee or correctional centre.

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- 1 (4) A person exercising a function under an inspection law in relation to
2 a detainee or correctional centre must exercise the function in
3 accordance with any direction by the chief executive in relation to—
4 (a) the safety of anyone at the correctional centre; or
5 (b) security or good order at a correctional centre.
- 6 (5) In this section:
- 7 ***inspection law*** means an Act that provides for the entry and
8 inspection of premises, or the search of people or premises.
- 9 **Examples of inspection laws**
- 10 • *Crimes Act 1900*
11 • *Emergencies Act 2004*
12 • *Food Act 2001*
13 • *Public Health Act 1997*
- 14 *Note* An example is part of the Act, is not exhaustive and may extend, but
15 does not limit, the meaning of the provision in which it appears (see
16 Legislation Act, s 126 and s 132).

1 **Chapter 8** **Admission to correctional**
2 **centres**

3 **62** **Meaning of *admission* to correctional centre**

4 In this Act:

5 *admission*, of a detainee to a correctional centre, means—

- 6 (a) admission of the detainee to the centre for detention; and
7 (b) for a detainee reporting to the centre to perform periodic
8 detention—includes the first, but not the second or subsequent,
9 time the detainee reports to the centre to perform periodic
10 detention.

11 **63** **Authority for detention**

12 (1) A person must not be admitted to, or detained at, a correctional
13 centre unless the detention is—

- 14 (a) authorised by a warrant under the *Crimes (Sentence*
15 *Administration) Act 2005*, section 12 (Warrant for
16 imprisonment); or
17 (b) authorised by a warrant under the *Crimes (Sentence*
18 *Administration) Act 2005*, section 17 (Warrant for remand); or

- 1 (c) otherwise authorised, whether by a warrant or other authority
2 (however named), under a territory law or a law of the
3 Commonwealth, a State or another Territory.

4 **Examples—par (c)**

- 5 1 an accused person who is refused bail by an authorised person under
6 the *Bail Act 1992*
7 2 a person held on a warrant issued under the *Royal Commissions*
8 *Act 1991*, section 35 (Apprehension of witnesses failing to appear)
9 3 a person in immigration detention under the Migration Act 1958
10 (Cwlth)
11 4 an interstate detainee on leave in the ACT held in custody overnight

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

- 15 (2) Before the person is admitted to the correctional centre, the chief
16 executive must be given the warrant or evidence of other authority
17 for the detention.
18 (3) The validity of a person's detention at a correctional centre is not
19 affected by a defect or irregularity in or in relation to the warrant or
20 the evidence of other authority for the detention.

21 **64 Identification of detainees**

- 22 (1) For the identification of a detainee admitted to a correctional centre,
23 the chief executive may direct that all or any of the following be
24 taken of, or from, the detainee:
25 (a) prints of the detainee's hands, fingers, feet or toes;
26 (b) a photograph or video recording;
27 (c) a measurement;
28 (d) a cast or impression;
29 (e) a buccal swab or saliva sample;

- 1 (f) a blood sample;
- 2 (g) anything else prescribed by regulation.
- 3 (2) Anything taken of, or from, a detainee under subsection (1) must be
4 destroyed if—
- 5 (a) the detainee is found not guilty of any offence to which the
6 detention relates, other than on the ground of unsoundness of
7 mind; or
- 8 (b) proceedings for any offence to which the detention relates are
9 discontinued or dismissed.
- 10 (3) However, subsection (2) does not apply if, for any part of the period
11 of detention in relation to an offence, the detainee was also being
12 detained for another offence—
- 13 (a) of which the detainee has been convicted; or
- 14 (b) for which a proceeding (including any appeal proceeding) is
15 still pending.
- 16 (4) A blood sample under this section may only be taken by a health
17 professional appointed under section 22 (Health professionals—
18 non-therapeutic functions).
- 19 *Note* The *Crimes (Forensic Procedures) Act 2000* includes provision for
20 carrying out forensic procedures on people in custody. See particularly
21 pt 2.7 (Carrying out of certain forensic procedures after conviction of
22 serious offenders).

23 **65 Information about entitlements and obligations**

- 24 (1) As soon as practicable after a detainee is admitted to a correctional
25 centre, the chief executive must ensure that reasonable steps are
26 taken to explain the following to the detainee:
- 27 (a) the detainee's entitlements and obligations under this Act;
- 28 (b) the case management plan arrangements;

- 1 (c) the role of official visitors;
2 (d) the procedures for seeking information and making complaints;
3 (e) if the detainee is a national of a foreign country—the right to
4 have a diplomatic or consular representative of the country told
5 about the detention;
6 (f) anything else prescribed by regulation;
7 (g) anything else the chief executive considers necessary or
8 desirable.

Examples—par (g)

- 9
10 1 corrections policies and operating procedures relevant to the detainee
11 2 the scope and effect of the chief executive's directions
12 3 for a transgender or intersex detainee—the effect of section 78 in
13 relation to choice of sexual identity
14 4 the health services, work and activities available to detainees
15 5 for an offender—the role of the sentence administration board

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

- 19 (2) The explanation under subsection (1)—
20 (a) may be in general terms; and
21 (b) as far as practicable, must be in language the detainee can
22 readily understand.

Example—par (a)

23 a written statement or checklist used by corrections officers to give
24 detainees a general summary of the things mentioned in subsection (1)
25

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

- 1 (3) The chief executive must arrange for the assistance of an interpreter
2 in complying with subsection (1) or (2) if the chief executive
3 believes, on reasonable grounds, that the detainee is unable, because
4 of inadequate knowledge of the English language or a disability, to
5 communicate with reasonable fluency in English.
- 6 (4) Without limiting subsection (3), the assistance of the interpreter may
7 be provided by telephone.
- 8 (5) The chief executive must also ensure that copies of the following are
9 available for inspection by detainees at each correctional centre:
- 10 (a) this Act;
- 11 (b) corrections policies and operating procedures available under
12 section 14.
- 13 (6) The chief executive must tell a diplomatic or consular representative
14 of a foreign country about the detention of a national of that country,
15 if asked by the detainee.

16 **66 Initial assessment**

- 17 (1) The chief executive must ensure that—
- 18 (a) each detainee admitted to a correctional centre is assessed as
19 soon as practicable to identify any immediate physical or
20 mental health, or safety or security, risks and needs; and
- 21 (b) any risks and needs identified by the assessment are addressed.
- 22 (2) In particular, the chief executive must ensure that any ongoing risks
23 and needs are addressed in the detainee's case management plan.

24 **67 Health assessment**

- 25 (1) The assessment under section 66 of a detainee's physical and mental
26 health needs and risks must be made within 24 hours after the
27 detainee's admission.

- 1 (2) The health assessment must involve—
- 2 (a) an initial assessment by a nurse and a review of the nurse’s
- 3 assessment by a doctor appointed under section 21 (Doctors—
- 4 health service appointments); or
- 5 (b) an assessment by a doctor appointed under section 21
- 6 (Doctors—health service appointments).
- 7 (3) The health assessment must include an assessment of the detainee’s
- 8 risk of self-harm.
- 9 *Note 1* The detainee’s case management plan must also address the detainee’s
- 10 health condition, any risk of self-harm and any treatment regime
- 11 (see s 77).
- 12 *Note 2* The *Mental Health (Treatment and Care) Act 1994* also includes
- 13 provision for assessment orders, and emergency detention and care,
- 14 under that Act.

15 **68 Alcohol and drug tests on admission**

- 16 (1) For an assessment under section 66, the chief executive may direct
- 17 the detainee, orally or in writing, to provide a test sample.
- 18 (2) Division 9.6.2 (Alcohol and drug testing—detainees) applies in
- 19 relation to the direction and any sample given under the direction.

20 **69 Strip search on admission**

- 21 (1) For an assessment under section 66, the chief executive may direct
- 22 the detainee, orally or in writing, to submit to a strip search.
- 23 (2) Part 9.4 (Searches) and part 9.5 (Seizing property) apply in relation
- 24 to the direction and any strip search conducted under the direction.

25 **70 Property of detainees**

- 26 (1) The chief executive may allow a detainee’s property to be brought
- 27 into a correctional centre.

- 1 (2) However, the chief executive may give directions imposing
2 conditions in relation to the detainee's property brought into a
3 correctional centre, including conditions in relation to—
- 4 (a) the nature, amount and location of property that may be held
5 by a detainee at the centre; and
- 6 (b) the use of the property.
- 7 (3) The chief executive must ensure that the register of detainees
8 includes details of the property each detainee has at a correctional
9 centre.
- 10 (4) Without limiting section 14 (Corrections policies and operating
11 procedures), a corrections policy or operating procedure may make
12 provision in relation to detainee's property, including provision in
13 relation to the following:
- 14 (a) the taking and storage of the property;
- 15 (b) access to, and use of, the property;
- 16 (c) transfer of the property;
- 17 (d) compensation for loss or damage;
- 18 (e) return of the property to the detainee.
- 19 (5) In this section:
- 20 *detainee's property* does not include a prohibited thing.
- 21 *Note* Pt 9.5 (Seizing property) provides generally for the seizure, forfeiture
22 and return of property.

23 71 Security classification

24 The chief executive must arrange a security classification for a
25 detainee as soon as practicable after the detainee's admission to a
26 correctional centre.

1 **72 Case management plan**

2 The chief executive must arrange for a case management plan to be
3 prepared for a detainee as soon as practicable after the detainee's
4 admission to a correctional centre.

5 **73 Entries in register of detainees**

6 The chief executive must ensure that details of each detainee
7 admitted to a correctional centre are entered in the register of
8 detainees on the detainee's admission to the centre.

9 *Note* The chief executive must keep a register of detainees at a correctional
10 centre (see s 75).

1 **Chapter 9 Management and security**

2 **Part 9.1 Management and security—**
3 **general**

4 **74 Compliance with chief executive’s directions**

5 A detainee must comply with any direction given under this Act to
6 the detainee by the chief executive.

7 *Note* Under s 17, the chief executive may delegate any of the chief
8 executive’s functions, including the giving of directions, to a corrections
9 officer.

10 **75 Register of detainees**

11 (1) The chief executive must keep a register containing details of each
12 detainee at a correctional centre.

13 (2) The register must include details of the following for each detainee:

14 (a) full name;

15 (b) authority for detention;

16 (c) period of authorised detention;

17 (d) for a detainee under a sentence of imprisonment—

18 (i) the sentence, including any periodic detention period or
19 other element of a combination sentence; and

20 (ii) any nonparole period;

21 (e) current place of detention;

22 (f) security classification;

23 (g) case management plan;

Section 76

- 1 (h) sex, including that chosen under section 78 (Transgender and
2 intersex detainees—sexual identity);
- 3 (i) any known condition of the detainee that requires, or is likely
4 to require, a health service;
- 5 (j) anything taken under section 64 (Identification of detainees);
- 6 (k) anything else the chief executive considers necessary or
7 appropriate for the proper management of the detainee.
- 8 **Examples—par (i)**
- 9 1 nutritional or health needs
- 10 2 need for spectacles, contact lens, crutches, prosthesis or other artificial
11 aids
- 12 3 language or literacy difficulties
- 13 *Note* An example is part of the Act, is not exhaustive and may extend,
14 but does not limit, the meaning of the provision in which it
15 appears (see Legislation Act, s 126 and s 132).
- 16 (3) The register must be available for inspection under chapter 7
17 (Inspection of correctional centres).
- 18 (4) In this section:
- 19 *combination sentence*—see the *Crimes (Sentencing) Act 2005*,
20 dictionary.
- 21 **76 Health reports**
- 22 (1) For this Act, the chief executive may ask a relevant chief executive
23 for a written report about a detainee’s health.
- 24 (2) The relevant chief executive must comply with the request as soon
25 as practicable.
- 26 (3) The relevant chief executive’s report must include personal health
27 information about the detainee that is in a health record—
- 28 (a) in the relevant chief executive’s custody; or

- 1 (b) to which the relevant chief executive has access through any
2 arrangement with another chief executive.
- 3 (4) The chief executive must ensure that a doctor appointed under
4 section 21 (Doctors—health service appointments) assesses the
5 report from a relevant chief executive and includes a statement of
6 the detainee’s condition (the *health schedule*) in the detainee’s case
7 management plan.
- 8 (5) The health schedule must include a summary of—
- 9 (a) the detainee’s condition and health risks, including any
10 likelihood of the condition resulting in a medical emergency or
11 the onset of significant health problems and any associated
12 symptoms; and
- 13 (b) a treatment regime for the detainee

14 **Examples—s (5)**

- 15 1 Detainee D has diabetes. The health schedule for D explains the type of
16 diabetes, the treatment required, any likely medical emergency or significant
17 health problem and the associated symptoms, such as hypoglycaemia.
- 18 2 Detainee P has epilepsy. The health schedule for P explains the type of
19 epilepsy, the treatment required, the symptoms and consequences of any
20 failure to maintain the treatment regime.

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

- 24 (6) Without limiting section 14 (Corrections policies and operating
25 procedures), a corrections policy or operating procedure may
26 include provision in relation to the health schedule, including
27 provision in relation to any of the following:
- 28 (a) the content of the schedule and, in particular, any statement
29 about the detainee’s health risks and treatment regime;
- 30 (b) the people who may access the health schedule and the
31 circumstances for access.

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- 1 (7) The chief executive must ensure that the relevant chief executive's
2 report and the health schedule is available only to people authorised
3 by the chief executive.
- 4 (8) In this section:
- 5 *health record*—see the *Health Records (Privacy and Access)*
6 *Act 1997*, dictionary.
- 7 *personal health information*—see the *Health Records (Privacy and*
8 *Access) Act 1997*, dictionary.
- 9 *relevant chief executive* means a chief executive whose
10 administrative unit is responsible for any provision of the following
11 Acts:
- 12 (a) the *Children and Young People Act 1999*;
- 13 (b) the *Disability Services Act 1991*;
- 14 (c) the *Health Act 1993*;
- 15 (d) the *Mental Health (Treatment and Care) Act 1994*.
- 16 *Note* Compliance with a request under this section does not involve a
17 contravention of a privacy principle under the *Health Records (Privacy*
18 *and Access) Act 1997* (see that Act, s 5 (The privacy principles)).

19 **77 Case management plans—scope etc**

- 20 (1) The chief executive—
- 21 (a) must maintain an individual management plan for each
22 detainee, other than a remandee; and
- 23 (b) may maintain an individual management plan for a detainee
24 who is a remandee.
- 25 (2) A case management plan for a detainee must—
- 26 (a) outline work and activities for the detainee; and

- 1 (b) be based on an assessment of the needs, capacities and
2 disposition of the detainee; and
- 3 (c) be consistent with the resources available to the chief executive
4 to manage the detainee; and
- 5 (d) if the detainee is an offender—outline how the detainee is to be
6 prepared for lawful release and reintegration into society at the
7 earliest possible time.
- 8 (3) A case management plan may deal with any matter relating to a
9 detainee, including the following:
- 10 (a) provision for the safe, secure and humane treatment of the
11 detainee;
- 12 (b) for a detainee at risk of self-harm—an outline of the risk and
13 strategies for managing the risk;
- 14 (c) the welfare of the detainee, including the detainee’s
15 participation in work or activities, and other constructive use of
16 time in detention;
- 17 (d) details of any academic, vocational or cultural education or
18 training for the detainee approved under section 51 (News and
19 educational services);
- 20 (e) the detainee’s health condition and risks, and any associated
21 treatment regime;
- 22 (f) for a detainee with a physical, mental or educational
23 disability—strategies for extra assistance to minimise any
24 disadvantage suffered by the detainee because of the disability,
25 particularly in relation to suitability for work and release from
26 detention;
- 27 (g) for a detainee serving a sentence of imprisonment by full-time
28 detention—requirements for the detainee to be—
- 29 (i) told the detainee’s release date under the sentence; and

- 1 (ii) given necessary assistance in applying for parole;
2 (h) anything else prescribed by regulation or directed by the chief
3 executive.

4 **78 Transgender and intersex detainees—sexual identity**

- 5 (1) This section applies to a transgender or intersex detainee.
6 (2) For this Act, the sex of the detainee is taken to be—
7 (a) the sex chosen under subsection (3); or
8 (b) if subsection (4) applies—the sex chosen with approval under
9 subsection (4).
10 (3) On admission to a correctional centre—
11 (a) the detainee may tell the chief executive the sex the detainee
12 chooses to be identified with; or
13 (b) if the detainee fails to make a choice under paragraph (a)—the
14 chief executive may choose the sex the detainee is to be
15 identified with having regard to the report obtained under
16 subsection (5).
17 *Note* *Fail* includes refuse, see the Legislation Act, dict, pt 1.
18 (4) The chief executive may, on application by the detainee, approve a
19 change in the sex the detainee chooses to be identified with, having
20 regard to the report obtained under subsection (5).
21 (5) Before making a decision under subsection (3) or (4), the chief
22 executive must obtain a report by a doctor appointed under
23 section 22 (Health professionals—non-therapeutic functions) about
24 the detainee’s sexual identity.
25 (6) The chief executive must—
26 (a) give the detainee written notice of a decision by the chief
27 executive under subsection (3) or (4); and

- 1 (b) must ensure that the detainee's sex chosen under this section is
2 entered in the register of detainees.

3 **Examples of effect of this section**

4 The conduct of searches of the detainee, and the allocation of accommodation and
5 sanitary facilities for the detainee, would be on the basis that the detainee was a
6 person of the chosen sex.

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

10 **79 Security classification—basis etc**

- 11 (1) The chief executive must—
12 (a) give each detainee a security classification; and
13 (b) review the classification at least annually or otherwise as
14 prescribed by regulation.
- 15 (2) When deciding a detainee's security classification, the chief
16 executive must consider the following:
17 (a) the reason for the detention, including the nature of any
18 offence for which the detainee is detained;
19 (b) the risks posed by the detainee if the detainee were to escape;
20 (c) the risk of the detainee escaping;
21 (d) the risks posed by the detainee while at a correctional centre;
22 (e) the risks to the detainee of being accommodated with particular
23 detainees or in particular areas at a correctional centre;
24 (f) any matter prescribed by regulation.
- 25 (3) The chief executive may consider anything else the chief executive
26 considers relevant.

- 1 (4) The security measures to which a detainee is subject under a
2 security classification must be the minimum necessary to ensure
3 secure detention of the detainee.

4 **80 Prohibited things**

- 5 (1) The chief executive may declare a thing to be a prohibited thing.
6 (2) A declaration is a notifiable instrument.

7 **Examples of prohibited things**

- 8 1 a weapon or something crafted as a weapon
9 2 an explosive
10 3 alcohol
11 4 a controlled drug under the Criminal Code
12 5 a mobile phone

13 *Note 1* The power to make an instrument includes power to make different
14 provisions in relation to different matters or different classes of matters,
15 and provisions that apply differently by reference to stated exceptions or
16 factors (see Legislation Act, s 48.)

17 *Note 2* A notifiable instrument must be notified under the Legislation Act.

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

21 **81 Possession of prohibited things**

- 22 (1) A detainee commits an offence if the detainee possesses a prohibited
23 thing.

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

- 26 (2) Subsection (1) does not apply if the chief executive approves the
27 detainee's possession of the thing.

1 **82 Work by detainees**

2 A regulation may make provision in relation to work by detainees,
3 including provision in relation to any of the following:

- 4 (a) the kind of work that may be done by detainees;
- 5 (b) the places where detainees may work, including places outside
6 a correctional centre;
- 7 (c) any payment or other return to which detainees are entitled for
8 work done;
- 9 (d) accounting for any payment or other return credited to
10 detainees for work done.

11 **83 Trust accounts for detainees**

- 12 (1) The chief executive must ensure that money belonging to a detainee
13 is held for the detainee in a trust account.
- 14 (2) The chief executive may deduct amounts from the amount held in
15 trust for a detainee the amount for payment of any financial penalty
16 or reparation that must be paid as disciplinary action against the
17 detainee.
- 18 (3) A regulation may make provision in relation to the operation or
19 maintenance of trust accounts.

20 **84 Prohibited areas**

- 21 (1) The chief executive may define an area at a correctional centre
22 where detainees are prohibited (a *prohibited area*).
- 23 (2) The chief executive must take reasonable steps to bring each
24 prohibited area to the attention of detainees, corrections officers and
25 other people who work at or visit the centre.

- 1 (3) Without limiting subsection (1), the chief executive must ensure that
2 notices or signs are prominently displayed at or near each prohibited
3 area indicating that it is an area where detainees are prohibited.

4 **85 Nonsmoking areas**

- 5 (1) The chief executive may define an area at a correctional centre as an
6 area in which smoking is prohibited (a *nonsmoking area*).
- 7 (2) The chief executive must take reasonable steps to bring each
8 non-smoking area to the attention of detainees, corrections officers
9 and other people who work at or visit the centre.
- 10 (3) Without limiting subsection (1), the chief executive must ensure that
11 notices or signs are prominently displayed at or near each
12 nonsmoking area indicating that smoking is prohibited in the area.
- 13 (4) The *Smoking (Prohibition in Enclosed Public Places) Act 2003* does
14 not apply to a correctional centre.

15 **86 Management and security—corrections policies and**
16 **operating procedures**

- 17 (1) Without limiting section 14 (Corrections policies and operating
18 procedures), a corrections policy or operating procedure may
19 include provision for any other matter in relation to the management
20 or security of detainees.
- 21 (2) The chief executive must ensure that a corrections policy or
22 operating procedure makes provision in relation to each the
23 following:
- 24 (a) a detainee giving birth;
- 25 (b) a marriage of a detainee;
- 26 (c) the death of a detainee.

1 **Part 9.2** **Segregation**

2 **87** **Meaning of *segregation***

3 In this Act:

4 *segregation*, of a detainee—

- 5 (a) means the restriction or denial of the detainee’s opportunity—
- 6 (i) to go into, or be in, a particular part of a correctional
7 centre; or
- 8 (ii) to associate with other detainees; and
- 9 (b) includes separate confinement.

10 **88** **Segregation under pt 9.2—purpose**

11 To remove any doubt, segregation under this part must not be used
12 for punishment or disciplinary purposes.

13 **89** **Segregation—safety and security**

- 14 (1) The chief executive may direct that a detainee be segregated from
15 other detainees if the chief executive believes, on reasonable
16 grounds, that the segregation is necessary or prudent to protect—
- 17 (a) the safety of anyone else at a correctional centre; or
- 18 (b) security or good order at a correctional centre.
- 19 (2) When making a direction under this section, the chief executive
20 must also have regard to any relevant, known cultural consideration
21 and the likely impact of segregation on the health and wellbeing of
22 the detainee.

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- 1 (3) The chief executive must give the detainee prompt notice of the
2 direction, why it was given, when it takes effect and the provisions
3 for its duration and review under this part.
- 4 (4) The chief executive must revoke the direction if the chief executive
5 believes, on reasonable grounds, that the protection mentioned in
6 subsection (1) is no longer necessary or prudent.
- 7 (5) The chief executive—
- 8 (a) may review the direction at any time, on the chief executive's
9 own initiative or on request by the detainee; and
- 10 (b) must review the direction before any transfer of the detainee to
11 another correctional centre; and
- 12 (c) must review the direction at least once every 21 days while it
13 remains in force.
- 14 (6) After reviewing the direction, the chief executive may—
- 15 (a) confirm the direction; or
- 16 (b) make a further direction under subsection (1); or
- 17 (c) revoke the direction under subsection (4).
- 18 (7) To remove any doubt, the chief executive may make more than
19 1 further direction under this section.
- 20 (8) Subject to this section and section 93 (Segregated detainees
21 removed to NSW), a direction ends at the end of—
- 22 (a) 28 days after the day it is given; or
- 23 (b) if subsection (6) (b) applies—90 days after the day the further
24 direction, or latest further direction, is given.

- 1 **90 Segregation—protective custody**
- 2 (1) The chief executive may direct that a detainee be segregated from
- 3 other detainees if the chief executive believes, on reasonable
- 4 grounds, that the segregation is necessary or prudent to protect the
- 5 safety of the detainee.
- 6 (2) The chief executive may give the direction at any time, on the chief
- 7 executive’s own initiative or on request by the detainee.
- 8 (3) The chief executive must give the detainee prompt notice of the
- 9 direction, why it was given, when it takes effect and the provisions
- 10 for its duration and review under this part.
- 11 (4) The chief executive must revoke the direction if the chief executive
- 12 believes, on reasonable grounds, that the protection mentioned in
- 13 subsection (1) is no longer necessary or prudent.
- 14 (5) The chief executive—
- 15 (a) may review the direction at any time, on the chief executive’s
- 16 own initiative or on request by the detainee; and
- 17 (b) must review the direction before any transfer of the detainee to
- 18 another correctional centre; and
- 19 (c) must review the direction at least once every 21 days while it
- 20 remains in force.
- 21 (6) After reviewing the direction, the chief executive may—
- 22 (a) confirm the direction; or
- 23 (b) make a further direction under subsection (1); or
- 24 (c) revoke the direction under subsection (4).
- 25 (7) To remove any doubt, the chief executive may make more than
- 26 1 further direction under this section.

- 1 (8) Subject to this section and section 93 (Segregated detainees
2 removed to NSW), a direction ends—
3 (a) 28 days after the day it is given; or
4 (b) if subsection (6) (b) applies—90 days after the day the further
5 direction, or latest further direction, is given.

6 **91 Segregation—health**

- 7 (1) The chief executive may direct that a detainee be segregated from
8 other detainees if the chief executive believes, on reasonable
9 grounds, that the segregation is necessary or prudent—
10 (a) to assess the detainee’s physical or mental health; or
11 (b) to protect anyone (including the detainee) from harm because
12 of the detainee’s physical or mental health; or
13 (c) to prevent the spread of disease.
14 (2) The chief executive must give the detainee prompt notice of the
15 direction, why it was given, when it takes effect and the provisions
16 for its duration and review under this part.
17 (3) The chief executive must revoke the direction if the chief executive
18 believes, on reasonable grounds, that the direction is no longer
19 necessary or prudent.
20 (4) The chief executive—
21 (a) may review the direction at any time, on the chief executive’s
22 own initiative or on request by the detainee; and
23 (b) must review the direction on request by a doctor appointed
24 under section 21 (Doctors—health service appointments); and
25 (c) must review the direction before any transfer of the detainee to
26 another correctional centre; and

- 1 (d) must review the direction at least once every 21 days while it
2 remains in force.
- 3 (5) After reviewing the direction, the chief executive may—
- 4 (a) confirm the direction; or
- 5 (b) make a further direction under subsection (1); or
- 6 (c) revoke the direction under subsection (3).
- 7 (6) To remove any doubt, the chief executive may make more than
8 1 further direction under this section.
- 9 (7) When acting under subsection (1), (3) or (4), the chief executive
10 must have regard to any advice given by a doctor appointed under
11 section 21 (Doctors—health service appointments) in relation to the
12 segregation of the detainee.

13 **92 Interstate segregated detainees transferred to ACT**

- 14 (1) This part applies if—
- 15 (a) an interstate segregation direction applies to a detainee; and
- 16 (b) the detainee is transferred (however described) into custody at
17 a correctional centre in the ACT.
- 18 (2) Despite the transfer, the interstate direction—
- 19 (a) continues to apply in relation to the detainee—
- 20 (i) as if it were a direction under this part; and
- 21 (ii) with any necessary changes, and any change prescribed
22 by regulation; and
- 23 (b) subject to this part, ends 3 days after the day the detainee is
24 taken into custody at the correctional centre in the ACT.

- 1 (3) In this section:
- 2 *interstate segregation direction* means a direction or order
- 3 (however described) that—
- 4 (a) corresponds substantially to a direction under this part; and
- 5 (b) is in force under a law of the Commonwealth, a State or
- 6 another Territory that is declared by regulation to be a
- 7 corresponding law for this section.

8 **93 Segregated detainees removed to NSW**

- 9 (1) This section applies if both of the following apply to a detainee:
- 10 (a) a direction under the *Crimes (Sentence Administration)*
- 11 *Act 2005*, section 26 (Full-time detention in ACT or NSW) that
- 12 the detainee be removed to a NSW correctional centre;
- 13 (b) a direction (the *ACT direction*)—
- 14 (i) under this part; or
- 15 (ii) under chapter 10 (Discipline) for investigative
- 16 segregation.
- 17 (2) Despite the detainee's removal to a NSW correctional centre, the
- 18 ACT direction—
- 19 (a) continues to apply in relation to the detainee, with any
- 20 necessary changes, and any change prescribed by regulation;
- 21 and
- 22 (b) subject to this part, ends 3 days after the day the detainee is
- 23 taken into custody at the NSW correctional centre.

24 **94 Segregation not to affect minimum living conditions**

- 25 (1) The segregation of a detainee under this part does not affect the
- 26 standards applying to the detainee under section 12 (Correctional
- 27 centres—minimum living conditions).

- 1 (2) However, subsection (1) does not prevent the application of the
2 standards in a way that is necessary and reasonable for the purpose
3 of the segregation.

4 **95 Application for review of segregation directions**

- 5 (1) A detainee may apply to an adjudicator for a review of the chief
6 executive's directions under any of the following sections:
7 (a) section 89 (Segregation—safety and security);
8 (b) section 90 (Segregation—protective custody);
9 (c) section 91 (Segregation—health).
10 (2) The application must be made no later than 7 days after the day the
11 chief executive gives the detainee notice of the direction.

12 *Note* If a form is approved under s 227 for an application under this section,
13 the form must be used.

- 14 (3) Subject to any decision by the adjudicator under section 96, the
15 application does not affect the segregation of the detainee under the
16 direction under review.

17 **96 Review of segregation directions**

- 18 (1) On application under section 95, an adjudicator may—
19 (a) conduct an inquiry to review the chief executive's direction; or
20 (b) refuse to review the chief executive's direction.
21 (2) Chapter 11 (Disciplinary inquiries) applies, with any changes
22 prescribed by regulation, in relation to the inquiry as if it were an
23 inquiry under that chapter.
24 (3) After completing an inquiry under this section, the adjudicator
25 may—
26 (a) confirm the direction under review; or

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- 1 (b) give any direction the chief executive may make under the
2 section authorising the direction under review, either by—
3 (i) amending the direction under review; or
4 (ii) setting aside the direction under review and making a
5 direction in substitution for the direction set aside.
- 6 (4) The adjudicator must give the detainee prompt written notice of the
7 adjudicator's decision under this section.
- 8 (5) If the adjudicator refuses to review the chief executive's direction,
9 the notice must include the reasons for the refusal.
- 10 *Note* Under the *Administrative Decisions (Judicial Review) Act 1989*, a
11 person aggrieved by an administrative decision made under an
12 enactment may apply to the Supreme Court for a review of the decision.
13 Subject to any order of the court, the making of the application does not
14 affect the operation of the decision or prevent its implementation (see
15 that Act, s 16).

16 **97 Other separation of detainees**

- 17 (1) The chief executive must provide separate accommodation for
18 males and females.
- 19 (2) Without limiting section 14 (Corrections policies and operating
20 procedures), the chief executive may make a corrections policy or
21 operating procedure in relation to the management of detainees,
22 including provision in relation to the separation of detainees in
23 relation to any of the following:
- 24 (a) the cultural background or vulnerability of detainees;
25 (b) accommodation or use of facilities;
26 (c) participation in work or other activities.

1 **Part 9.3** **Monitoring**

2 **98** **Monitoring—general considerations**

3 In exercising a function under this part, the chief executive must
4 ensure that the following are balanced appropriately:

- 5 (a) the need to protect the safety of detainees, corrections officers,
6 other people who work at or visit correctional centres, and the
7 community;
- 8 (b) the need for security and good order at correctional centres;
- 9 (c) the benefits of detainees maintaining contact with the
10 community outside correctional centres;
- 11 (d) the need to protect the privacy of detainees;
- 12 (e) the need to prevent intimidation and corruption at correctional
13 centres, and the commission of offences;
- 14 (f) the need to detect prohibited things entering, at, or leaving
15 correctional centres;
- 16 (g) anything else the chief executive considers relevant.

17 **99** **Monitoring at correctional centres**

18 The chief executive may arrange for any part of a correctional centre
19 to be monitored for any activity, including the movement of anyone
20 at the centre.

21 **Examples of monitoring**

22 direct viewing, closed-circuit television coverage and the use of other devices for
23 detecting movement

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

1 **100 Personal monitoring devices**

- 2 (1) The chief executive may, orally or in writing, direct a person at a
3 correctional centre to wear a device (a *personal monitoring device*)
4 that allows the person's location at the centre to be monitored.
- 5 (2) To remove any doubt, a direction under this section may be given to
6 any of the following:
- 7 (a) a detainee;
- 8 (b) a corrections officer;
- 9 (c) anyone working at or visiting a correctional centre.

10 **101 Interfering with personal monitoring devices**

- 11 (1) A person commits an offence if the person interferes with a personal
12 monitoring device.
- 13 Maximum penalty: 50 penalty units, imprisonment for 6 months or
14 both.
- 15 (2) It does not matter whether the interference is by the person directed
16 to wear the device or someone else.
- 17 (3) Subsection (1) does not apply if the interference is authorised by the
18 chief executive.
- 19 (4) In this section:
- 20 *interfere*, with a personal monitoring device, includes damage,
21 cause to malfunction, disable and remove but does not include the
22 effect of normal wear and tear associated with wearing the device.

23 **102 Monitoring telephone calls etc**

- 24 (1) This section applies in relation to an electronic communication with
25 a detainee, other than a protected electronic communication.

- 1 (2) The chief executive may do either or both of the following in
2 relation to the communication:
- 3 (a) monitor the communication;
- 4 (b) record the communication.
- 5 (3) The chief executive must tell the parties to the communication that
6 the communication might be monitored and recorded.
- 7 (4) If the communication reveals information about the commission of
8 an offence, the chief executive must give the information to the
9 chief police officer.
- 10 (5) In this section:
- 11 *electronic communication* means communication by—
- 12 (a) telephone, email or fax; or
- 13 (b) any other electronic means.
- 14 *protected electronic communication* means an electronic
15 communication between a detainee and any of the following:
- 16 (a) a lawyer representing the detainee;
- 17 (b) an official visitor;
- 18 (c) the human rights commissioner;
- 19 (d) the public advocate;
- 20 (e) the ombudsman;
- 21 (f) a person prescribed by regulation.

22 **103 Monitoring ordinary mail**

- 23 (1) The chief executive may open and search a detainee's ordinary mail.

- 1 (2) The chief executive may read a detainee's ordinary mail only if the
2 chief executive suspects, on reasonable grounds, that the mail
3 may—
- 4 (a) undermine security or good order at a correctional centre; or
5 (b) revictimise a victim; or
6 (c) circumvent any process for investigating complaints or
7 reviewing decisions under this Act.
- 8 (3) However, and without limiting section 14 (Corrections policies and
9 operating procedures), the chief executive may make a corrections
10 policy or operating procedure in relation to reading a random
11 selection of detainees' ordinary mail.
- 12 (4) In this section:
- 13 ***ordinary mail*** means mail other than protected mail.
- 14 ***protected mail*** means mail between a detainee and any of the
15 following:
- 16 (a) a lawyer representing the detainee;
17 (b) an official visitor;
18 (c) the human rights commissioner;
19 (d) the public advocate;
20 (e) the ombudsman;
21 (f) a person prescribed by regulation.
- 22 ***search*** includes search—
- 23 (a) with any device using electronic or other technology; and
24 (b) by physical means; and
25 (c) with the assistance of a corrections dog.

1 **104 Monitoring protected mail**

2 (1) The chief executive may open and search a detainee's protected
3 mail in the detainee's presence if the chief executive suspects, on
4 reasonable grounds, that the mail contains—

5 (a) something that may physically harm the addressee; or

6 (b) a prohibited thing.

7 (2) However, the chief executive must not read a detainee's protected
8 mail without the detainee's written consent.

9 (3) In this section:

10 *ordinary mail*—see section 103 (4).

11 *search*—see section 103 (4).

12 **105 Mail searches—consequences**

13 (1) Subject to section 126 (Seizing mail etc), a detainee's mail, once
14 searched, must be delivered to the addressee as soon as practicable.

15 (2) If a search of a detainee's mail reveals information about the
16 commission of an offence, the chief executive must give the
17 information to the chief police officer.

1 **Part 9.4 Searches**

2 **Division 9.4.1 Searches—general**

3 **106 Definitions—searches**

4 In this Act:

5 *body search*, of a detainee, means a search of the detainee's body,
6 including an examination of any orifice or cavity of the detainee's
7 body.

8 *frisk search* means—

9 (a) a search of a person conducted by quickly running the hands
10 over the person's outer garments; and

11 (b) an examination of anything worn or carried by the person that
12 is conveniently and voluntarily removed by the person.

13 *ordinary search* means a search of a person, or of articles in a
14 person's possession, that may include—

15 (a) requiring the person to remove the person's overcoat, coat or
16 jacket and any gloves, shoes or hat; and

17 (b) an examination of those items.

18 *scanning search* means a search of a person by electronic or other
19 means that does not require the person to remove the person's
20 clothing or to be touched by someone else.

21 **Examples of scanning searches**

22 1 passing a portable electronic or other device over a person

23 2 requiring a person to pass by or through an electronic or other device

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

1 *strip search*, of a detainee, means a search of the detainee, or of
2 articles in the detainee's possession, that may include—

3 (a) requiring the detainee to remove all of the detainee's clothing;
4 and

5 (b) an examination of the detainee's body (but not the detainee's
6 body orifices or cavities) and of that clothing.

7 **107 Intrusiveness of searches**

8 The person conducting a search of a person under this part must
9 ensure, as far as practicable, that—

10 (a) the search is the least intrusive kind of search that is reasonable
11 and necessary in the circumstances; and

12 (b) the search is conducted in the least intrusive way that is
13 reasonable and necessary in the circumstances.

14 **Example**

15 searching for a prohibited thing by a frisk search (rather than an ordinary search)
16 with the assistance of a corrections dog

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

20 **108 Searches of transgender and intersex detainees**

21 (1) This section applies if a transgender or intersex detainee is to be
22 subjected to a search under this part.

23 (2) To remove any doubt, the detainee's sex is taken to be that entered
24 for the detainee in the register of detainees.

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

- 1 **109 Register of strip and body searches**
- 2 (1) This section applies in relation to—
- 3 (a) a strip search of a detainee; and
- 4 (b) a body search of a detainee.
- 5 (2) The chief executive must keep a register containing the following
- 6 details in relation to each search:
- 7 (a) the name of the detainee searched;
- 8 (b) the reason for the search;
- 9 (c) when the search was conducted;
- 10 (d) the name of each person present at any time during the search;
- 11 (e) details of anything seized during the search;
- 12 (f) anything else prescribed by regulation.
- 13 (3) The register may contain anything else the chief executive considers
- 14 relevant.
- 15 (4) The register must be available for inspection under chapter 7
- 16 (Inspection of correctional centres).

17 **Division 9.4.2 Scanning, frisk and ordinary searches**

18 **110 Scanning, frisk and ordinary searches—directions**

- 19 (1) The chief executive may, at any time, direct a corrections officer to
- 20 conduct a scanning search, frisk search or ordinary search of a
- 21 detainee, another corrections officer or anyone else working at or
- 22 visiting a correctional centre if the chief executive believes, on
- 23 reasonable grounds, that it is prudent to conduct the search to
- 24 protect—
- 25 (a) the safety of anyone at a correctional centre; or

- 1 (b) security or good order at a correctional centre.
- 2 **Examples of other people working at correctional centre**
- 3 counsellors, psychologists, maintenance workers and volunteers
- 4 **Examples of searches**
- 5 1 searching a detainee returning to a correctional centre after performing
- 6 community service
- 7 2 searching a corrections officer reporting for work
- 8 3 searching a person engaged to provide an educational program at a
- 9 correctional centre when the person arrives at, or returns to, the centre
- 10 4 searching a detainee returning to the detainee's accommodation at a
- 11 correctional centre after working in another part of the centre
- 12 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 13 does not limit, the meaning of the provision in which it appears (see
- 14 Legislation Act, s 126 and s 132).
- 15 (2) Also, a corrections officer may conduct a scanning search, frisk
- 16 search or ordinary search of a detainee if the officer suspects, on
- 17 reasonable grounds, that the detainee is carrying—
- 18 (a) a prohibited thing; or
- 19 (b) anything else that creates, or is likely to create, a risk to—
- 20 (i) the personal safety of the detainee or anyone else; or
- 21 (ii) security or good order at a correctional centre.
- 22 *Note* Section 125 provides for the use of force to carry out searches under this
- 23 part.
- 24 **111 Scanning, frisk and ordinary searches—requirements**
- 25 (1) A corrections officer may conduct a scanning search, frisk search or
- 26 ordinary search of a person under section 110 only if—
- 27 (a) the person is of the same sex as the officer; or
- 28 (b) if that is not the case—another person of the same sex as the
- 29 person to be searched is present while the search is conducted.

- 1 (2) The other person mentioned in subsection (1) must not be a
2 detainee.

3 **Division 9.4.3 Strip searches**

4 **112 Strip searches—directions**

- 5 (1) The chief executive may direct a corrections officer to strip search a
6 detainee only if the chief executive suspects, on reasonable grounds,
7 that the detainee has something concealed on the detainee that—

- 8 (a) is a prohibited thing; or
9 (b) may be used by the detainee in a way that may involve—
10 (i) intimidating anyone else; or
11 (ii) an offence or disciplinary breach; or
12 (iii) a risk to the personal safety of anyone else; or
13 (iv) a risk to security or good order at a correctional centre.

14 *Note* Section 125 provides for the use of force to carry out searches under this
15 part.

- 16 (2) To remove any doubt, a strip search of a detainee may be conducted
17 immediately after any scanning search, frisk search or ordinary
18 search of the detainee.

19 **113 Strip searches—presence of corrections officers**

- 20 (1) A strip search of a detainee must be done—
21 (a) by a corrections officer of the same sex as the detainee; and
22 (b) in the presence of 1 or more other corrections officers each of
23 whom must be of the same sex as the detainee.

- 1 (2) However, the number of corrections officers present during the
2 search must be no more than necessary and reasonable to ensure the
3 search is carried out as safely and effectively as possible.
- 4 (3) The corrections officer conducting the search may direct another
5 corrections officer present to provide assistance that the conducting
6 officer believes, on reasonable grounds, is necessary and reasonable
7 for the search.
- 8 (4) A corrections officer may give directions to the detainee for the
9 conduct of the search in accordance with this section.

10 **Examples**

11 directions that the detainee raise 1 or both arms, raise any long hair or turn in a
12 particular direction

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

16 **114 Strip searches—general rules**

- 17 (1) A strip search must be conducted in a private area or an area that
18 provides reasonable privacy for the detainee being searched.
- 19 (2) The search must not be conducted—
- 20 (a) in the presence of someone of the opposite sex to the detainee;
21 or
- 22 (b) in the presence or sight of someone else whose presence is not
23 necessary for the search or the safety of everyone present.
- 24 (3) The search must not involve—
- 25 (a) the removal from the detainee of more clothes than is
26 necessary and reasonable to conduct the search; or
- 27 (b) the removal from the detainee of more clothes at any time than
28 is necessary and reasonable to conduct the search; or

- 1 (c) without limiting paragraph (b), both the upper and lower parts
2 of the person's body being uncovered at the same time.
- 3 (4) Subject to section 125 (Searches—use of force), the search must not
4 involve any touching of the detainee's body by a corrections officer.
- 5 (5) Each corrections officer present during the search must ensure, as
6 far as practicable, that—
- 7 (a) the search is done in a way that minimises embarrassment for
8 the detainee; and
- 9 (b) the search is done quickly; and
- 10 (c) the detainee is allowed to dress in private immediately after the
11 search is finished.
- 12 (6) If clothing from a detainee is seized during a strip search, the chief
13 executive must ensure that the detainee is left with, or given,
14 appropriate clothing to wear.

15 **Division 9.4.4 Body searches**

16 **115 Body searches—directions**

- 17 The chief executive may direct a doctor appointed under section 22
18 (Health professionals—non-therapeutic functions) to conduct a body
19 search of a detainee if the chief executive suspects, on reasonable
20 grounds, that the detainee—
- 21 (a) has ingested or inserted something in the detainee's body that
22 may jeopardise the detainee's health or wellbeing; or
- 23 (b) has a prohibited thing concealed in or on the detainee's body
24 that may be used in a way that may pose a risk to the security
25 or good order at a correctional centre; or
- 26 (c) has evidence of the commission of an offence or disciplinary
27 breach concealed in or on the detainee.

- 1 **116** **Body searches—presence of nurse and corrections**
2 **officers**
- 3 (1) A nurse appointed under section 22 (Health professionals—
4 non-therapeutic functions) must be present during the body search
5 of a detainee.
- 6 (2) If the doctor conducting the body search is not of the same sex as
7 the detainee, the nurse must be of the same sex as the detainee.
- 8 (3) The chief executive may direct 1 or more corrections officers to be
9 present during the search, each of whom must be of the same sex as
10 the detainee.
- 11 (4) However, the number of corrections officers present during the
12 search must be no more than is necessary and reasonable to ensure
13 the search is carried out as safely and effectively as possible.
- 14 (5) A body search must be conducted in a private area or an area that
15 provides reasonable privacy for the detainee being searched.
- 16 **117** **Body searches—assistance from corrections officer**
- 17 (1) This section applies if the doctor conducting a body search of a
18 detainee asks the chief executive for assistance that the doctor
19 believes, on reasonable grounds, is necessary and reasonable for the
20 search.
- 21 (2) The chief executive may direct a corrections officer (the *assistant*)
22 to assist in the conduct of the search.
- 23 (3) However, the assistant must be of the same sex as the detainee.
- 24 *Note* Section 125 provides for the use of force to assist at a body search.

- 1 **118 Body searches—rules about detainee’s clothing**
- 2 (1) A body search of a detainee must not involve—
- 3 (a) the removal of more clothes than is necessary and reasonable
- 4 to conduct the search; or
- 5 (b) the removal of more clothes at any time than is necessary and
- 6 reasonable to conduct the search; or
- 7 (c) without limiting paragraph (b), both the upper and lower parts
- 8 of the person’s body being uncovered at the same time.
- 9 (2) A detainee who has been body searched must be allowed to dress in
- 10 private immediately after the search is finished.
- 11 (3) If clothing from a detainee is seized during a body search, the chief
- 12 executive must ensure that the detainee is left with, or given,
- 13 appropriate clothing to wear.
- 14 **119 Body searches—rules about touching detainee**
- 15 The doctor conducting the body search of a detainee, and the nurse
- 16 present at the search, may, for the search, touch the detainee and
- 17 examine the detainee’s orifices and cavities, but only if the doctor or
- 18 nurse is of the same sex as the detainee.
- 19 **120 Body searches—seizing things**
- 20 (1) The doctor conducting a body search of a detainee may seize
- 21 anything discovered during the search if—
- 22 (a) seizing the thing would not be likely to cause injury to the
- 23 detainee; and
- 24 (b) the doctor believes, on reasonable grounds, that the thing may
- 25 be evidence of the commission of an offence or disciplinary
- 26 breach by the detainee.

- 1 (2) The doctor must give the thing seized to a corrections officer as
2 soon as practicable.

3 **Division 9.4.5 Searches of premises and property**

4 **121 Searches—premises and property**

- 5 (1) The chief executive may, at any time, direct a corrections officer to
6 search—
7 (a) any part of a correctional centre; or
8 (b) anything at a correctional centre, including anything in the
9 possession of anyone at a correctional centre; or
10 (c) any vehicle used for transporting a detainee.

11 **Examples of searches under this section**

12 a search of any of the following for a prohibited thing:

- 13 • any area or building or part of a building (including a cell) at a correctional
14 centre
- 15 • any storage area, including an area used by detainees or corrections officers,
16 at a correctional centre
- 17 • any vehicle, machinery or equipment at a correctional centre

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

- 21 (2) However, this section does not authorise—
22 (a) a search of anyone at a correctional centre; or
23 (b) any clothing being worn by anyone at a correctional centre at
24 the time of the search.
- 25 (3) In this section:
26 *search* includes search—
27 (a) with any device using electronic or other technology; and

- 1 (b) by physical means; and
2 (c) with the assistance of a corrections dog.

3 **122 Searches of detainee cells—legally privileged material**

- 4 (1) This section applies if a detainee has legally privileged material at a
5 correctional centre.
- 6 (2) A corrections officer may search the detainee's cell under
7 section 121 in the absence of the detainee if—
- 8 (a) the detainee removes the legally privileged material from the
9 cell; or
- 10 (b) the legally privileged material is stored in accordance with a
11 corrections policy or operating procedure made for
12 subsection (3).
- 13 (3) Without limiting section 14 (Corrections policies and operating
14 procedures), a corrections policy or operating procedure may
15 include provision for the secure storage at a correctional centre of
16 legally privileged material for detainees.

17 **123 Searches of detainee cells—suspected legally privileged**
18 **material**

- 19 (1) If a corrections officer suspects, on reasonable grounds, that a
20 detainee's cell contains legally privileged material, the officer may
21 search the cell only if the detainee is present.
- 22 (2) A search under subsection (1) may include an examination of any
23 legally privileged material, and anything containing the material,
24 found in the cell.
- 25 (3) However, the officer may not read any legally privileged material
26 found in the cell unless the detainee is present and—
- 27 (a) the detainee consents to the officer reading the material; or

- 1 (b) the officer suspects, on reasonable grounds, that the material
2 contains information that—
- 3 (i) may threaten security or good order at a correctional
4 centre; or
- 5 (ii) relates to an offence or disciplinary breach.
- 6 (4) The officer need not comply with subsection (1) or (3) if the officer
7 believes, on reasonable grounds, that urgent circumstances exist and
8 that complying with the subsection would create a risk of injury to
9 the officer, the detainee or anyone else.
- 10 (5) The chief executive must ensure that a record of action under
11 subsection (4) is made and entered in the register of detainees.

12 **Division 9.4.6 Searches—miscellaneous**

13 **124 Searches—use of corrections dogs**

- 14 (1) The chief executive may direct a corrections officer to use a
15 corrections dog to assist the officer in conducting a search under this
16 part.
- 17 (2) Without limiting subsection (1), the chief executive may give the
18 direction if the chief executive believes, on reasonable grounds, that
19 the assistance of the dog would minimise the intrusiveness of the
20 search of a detainee by the officer.
- 21 (3) The corrections officer and corrections dog may enter, and remain at
22 any place, to assist in the conduct of a search under this part.

23 **125 Searches—use of force**

- 24 (1) A corrections officer may use force—
- 25 (a) to carry out a search under this part; or
- 26 (b) to assist at a body search under section 117 (Body searches—
27 assistance from corrections officer); or

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- 1 (c) to prevent the loss, destruction or contamination of anything
2 seized, or that may be seized, during the search.
- 3 (2) However, the corrections officer may use force only in accordance
4 with part 9.7 (Use of force).

1 **Part 9.5** **Seizing property**

2 **126** **Seizing mail etc**

3 (1) The chief executive may seize anything in a detainee's protected
4 mail if the chief executive believes, on reasonable grounds, that the
5 thing—

6 (a) may physically harm the addressee or anyone else; or

7 (b) is a prohibited thing.

8 (2) The chief executive may seize other mail of a detainee, or anything
9 in the mail, if the chief executive suspects, on reasonable grounds,
10 that the seizure is necessary to stop—

11 (a) any of the following entering or leaving a correctional centre:

12 (i) a prohibited thing;

13 (ii) anything that may pose a risk to security or good order at
14 a correctional centre;

15 (iii) anything that appears is being used, or is intended, for the
16 commission of an offence or disciplinary breach; or

17 (b) threatening or otherwise inappropriate correspondence leaving
18 a correctional centre; or

19 (c) a detainee obtaining or buying goods without the chief
20 executive's approval.

21 **Example of inappropriate correspondence—par (b)**

22 mail addressed to a person by someone convicted of a sexual offence
23 against the person

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

- 1 (3) The chief executive may seize a document only if the chief
2 executive believes, on reasonable grounds, that the document is not
3 legally privileged.

4 **127 Seizing property—general**

- 5 (1) The chief executive may seize—
- 6 (a) anything found at a correctional centre, whether or not in a
7 person's custody or possession, that the chief executive
8 suspects, on reasonable grounds, jeopardises or is likely to
9 jeopardise—
- 10 (i) security or good order at a correctional centre; or
- 11 (ii) the safety of anyone at a correctional centre; or
- 12 (b) anything found at a correctional centre, whether or not in a
13 person's possession, that the chief executive suspects, on
14 reasonable grounds, is being used, or is intended, for the
15 commission of an offence or a disciplinary breach; or
- 16 (c) a prohibited thing found on a detainee or in a detainee's
17 custody or possession, unless the detainee has the written
18 approval of the chief executive to possess the thing.
- 19 (2) To remove any doubt, this section extends to anything found in a
20 search under part 9.4 (Searches).
- 21 (3) The chief executive may seize a document only if the chief
22 executive believes, on reasonable grounds, that the document is not
23 legally privileged.

24 **128 Receipt for seizure**

- 25 (1) The chief executive must prepare a written receipt for a seizure
26 under section 126 or section 127.

- 1 (2) As soon as practicable after the seizure (but no later than 7 days
2 after the day of the seizure), the chief executive must give a copy of
3 the receipt to—
- 4 (a) the owner of the thing seized; or
- 5 (b) if the owner cannot be identified after reasonable inquiries
6 (given the thing's apparent value)—the person from whom the
7 thing was seized.
- 8 (3) The receipt must—
- 9 (a) identify the thing seized; and
- 10 (b) outline the grounds for the seizure; and
- 11 (c) include a statement about the effect of section 129; and
- 12 (d) include anything else prescribed by regulation.
- 13 (4) In this section:
- 14 *owner*, of a thing, includes a person entitled to possession of the
15 thing.

16 **129 Forfeiture of things seized**

- 17 (1) A thing seized under section 126 or section 127 is forfeited to the
18 Territory if the chief executive decides, on reasonable grounds—
- 19 (a) that—
- 20 (i) after making reasonable inquiries (given the thing's
21 apparent value), the owner of the thing cannot be found;
22 or
- 23 (ii) after making reasonable efforts (given the thing's
24 apparent value), the thing cannot be returned to the
25 owner; or

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- 1 (b) that—
- 2 (i) possession of the thing by a detainee is an offence or
3 disciplinary breach; or
- 4 (ii) it is necessary to keep the thing to stop it being used for
5 the commission of an offence or disciplinary breach; or
- 6 (iii) the thing is inherently unsafe.
- 7 (2) The chief executive may deal with a thing forfeited to the Territory
8 under this section, or dispose of it, as the chief executive considers
9 appropriate.
- 10 (3) However, subsection (2) is subject to any order under the *Crimes*
11 *Act 1900*, section 249 (Seizure of forfeited articles).

12 **Examples—s (2)**

- 13 1 giving a forfeited weapon to a police officer
- 14 2 keeping a forfeited electrical appliance and using it for the benefit of
15 detainees generally
- 16 3 dumping a forfeited thing of little value

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

20 *Note 2* The *Crimes Act 1900* also provides for articles forfeited under any law
21 in force in the ACT to be seized by a member of the police force, taken
22 before the Magistrates Court and for the court to order disposal of the
23 article by the public trustee (see that Act, s 249 and s 250).

24 *Note 3* The *Uncollected Goods Act 1996* provides generally for the disposal of
25 uncollected goods, including goods abandoned on premises controlled
26 by the Territory.

27 **130 Return of things seized but not forfeited**

- 28 (1) If a thing seized under section 126 or section 127 is not forfeited,
29 the chief executive must return it to its owner—
- 30 (a) no later than the end of 6 months after the day it was seized; or

- 1 (b) if a proceeding for an offence or disciplinary breach involving
2 the thing is started within the 6-month period—at the end of
3 the proceeding and any appeal from, or the review of, the
4 proceeding.
- 5 (2) However, if the thing was being retained as evidence of an offence
6 or disciplinary breach and the chief executive believes, on
7 reasonable grounds, that its retention as evidence is no longer
8 necessary, the chief executive must return it immediately.
- 9 (3) In this section:
10 *owner*—see section 128 (4).

1 **Part 9.6 Alcohol and drug testing**

2 **Division 9.6.1 General**

3 **131 Definitions—*drug* and *test sample***

4 In this Act:

5 ***drug***—

6 (a) means—

7 (i) a controlled drug under the Criminal Code, section 600;
8 or

9 (ii) a substance prescribed by regulation for this definition;
10 but

11 (b) does not include any of the following:

12 (i) a drug lawfully supplied, and taken as prescribed or
13 directed, by a health professional;

14 (ii) a drug lawfully supplied and self-administered;

15 (iii) a drug exempted under section 132.

16 ***test sample*** means a sample of breath, saliva, urine, hair, blood, or
17 anything else prescribed by regulation.

18 **132 When test sample *positive***

19 (1) A person is taken to provide a ***positive*** test sample for alcohol or a
20 drug if, when directed under this Act or the *Crimes (Sentence*
21 *Administration) Act 2005*, to provide a test sample—

22 (a) the person fails to provide a test sample in accordance with the
23 direction; or

24 *Note* ***Fail*** includes refuse, see the Legislation Act, dict, pt 1.

- 1 (b) the person provides an invalid test sample; or
- 2 (c) for a full-time detainee—the detainee provides a test sample
3 that shows the detainee has taken alcohol or a drug; or
- 4 (d) for a detainee under periodic detention—the detainee provides
5 a test sample that shows the detainee—
- 6 (i) has a blood alcohol concentration of the prescribed
7 concentration or more; or
- 8 (ii) has taken a drug.
- 9 (2) However, subsection (1) (a) does not apply if the person has a
10 reasonable excuse for failing to provide the test sample within a
11 reasonable time of the direction being given.
- 12 **Examples of reasonable excuse**
- 13 1 a medical condition that prevents the person from providing a test sample as
14 directed
- 15 2 prescribed medication that may affect test results
- 16 *Note* An example is part of the Act, is not exhaustive and may extend, but
17 does not limit, the meaning of the provision in which it appears (see
18 Legislation Act, s 126 and s 132).
- 19 (3) The chief executive may exempt a drug from the application of this
20 part.
- 21 (4) An exemption is a notifiable instrument.
- 22 *Note* A notifiable instrument must be notified under the Legislation Act.
- 23 (5) In this section:
- 24 ***invalid***—a test sample provided by a person is ***invalid*** if—
- 25 (a) the person tampers, or attempts to tamper, with the test sample;
26 or
- 27 (b) the person otherwise changes, or attempts to change, the results
28 of the test sample.

1 *prescribed concentration*, of alcohol, means—

2 (a) 0.02g of alcohol per 100mL of blood; or

3 (b) if a regulation prescribes another concentration—the
4 prescribed concentration.

5 **Division 9.6.2 Alcohol and drug testing—detainees**

6 **133 Alcohol and drug testing of detainees**

7 (1) The chief executive may direct a detainee to provide a stated kind of
8 test sample.

9 (2) The chief executive, or a doctor, or nurse, appointed under
10 section 22 (Health professionals—non-therapeutic functions), may
11 give a detainee a direction about the way a detainee must provide
12 the test sample.

13 (3) However—

14 (a) a direction under this section must be consistent with any
15 requirement prescribed by an operating procedure for this
16 section; and

17 (b) only a doctor, or nurse, appointed under section 22 (Health
18 professionals—non-therapeutic functions) may take a blood
19 sample.

20 (4) A doctor or nurse who takes a test sample from a detainee must give
21 the sample to a corrections officer.

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

1 **134 Effect of positive test sample from detainee**

- 2 (1) This section applies if—
- 3 (a) a detainee is directed under this Act or the *Crimes (Sentence*
4 *Administration) Act 2005* to provide a test sample; and
- 5 (b) the test sample provided by the detainee is positive.
- 6 (2) The chief executive may have regard to the positive test sample in
7 making any decision in relation to the management of the detainee
8 under this Act.

9 **Examples of decisions**

- 10 1 decisions under section 77 (Case management plans—scope etc) or
11 section 79 (Security classification—basis etc)
- 12 2 decisions under chapter 10 (Discipline)

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

16 *Note 2* The taking (in any way) of alcohol or a drug into the body is a
17 disciplinary breach (see s 151 (Meaning of *disciplinary breach*)). The
18 results of the analysis of a substance under this Act, signed by an
19 analyst, is evidence of the facts stated in the certificate (see s 225
20 (Evidentiary certificates)).

21 **Division 9.6.3 Alcohol and drug testing—corrections**
22 **officers etc**

23 **135 Alcohol and drug testing of corrections officers etc**

- 24 (1) A regulation may make provision in relation to alcohol and drug
25 testing of—
- 26 (a) corrections officers; and
- 27 (b) public servants and other people who work at or visit
28 correctional centres, whether as employees, contractors,
29 volunteers or otherwise.

- 1 (2) In particular, a regulation may make provision in relation to any of
2 the following:
- 3 (a) the circumstances for testing, including when and where tests
4 may be conducted;
- 5 (b) the conduct of the tests.

1 **Part 9.7 Use of force**

2 **136 Managing use of force**

3 (1) The chief executive must ensure, as far as practicable, that the use of
4 force in relation to the management of detainees is always—

5 (a) a last resort; and

6 (b) in accordance with this part.

7 (2) Without limiting section 14 (Corrections policies and operating
8 procedures), the chief executive must make a corrections policy or
9 operating procedure in relation to the use of force, including
10 provision in relation to the following:

11 (a) the circumstances, and by whom, force may be used;

12 (b) the kinds of force that may be used.

13 *Note* The power to make a corrections policy or operating procedure includes
14 power to make different provisions in relation to different matters or
15 different classes of matters, and provisions that apply differently by
16 reference to stated exceptions or factors (see Legislation Act, s 48).

17 **137 Authorised use of force**

18 (1) A corrections officer may use force that is necessary and reasonable
19 for this Act, including for any of the following:

20 (a) to compel compliance with a direction given in relation to a
21 detainee by the chief executive;

22 (b) to act under section 125 (Searches—use of force);

23 (c) to prevent or stop the commission of an offence or disciplinary
24 breach;

25 (d) to prevent the escape of a detainee;

- 1 (e) to prevent unlawful damage, destruction or interference with
2 property;
- 3 (f) to defend the officer or someone else;
- 4 (g) to prevent a detainee from inflicting self-harm;
- 5 (h) anything else prescribed by regulation.
- 6 (2) However, a corrections officer may use force only if the officer
7 believes, on reasonable grounds, that the purpose for which force
8 may be used cannot be achieved in another way.

9 **138 Application of force**

- 10 (1) A corrections officer may use force under this part only if the
11 officer—
- 12 (a) gives a clear warning of the intended use of force; and
- 13 (b) allows enough time for the warning to be observed; and
- 14 (c) uses no more force than is necessary and reasonable in the
15 circumstances; and
- 16 (d) uses force, as far as practicable, in a way that reduces the risk
17 of causing death or grievous bodily harm.
- 18 (2) However, the corrections officer need not comply with
19 subsection (1) (a) or (b) if, in urgent circumstances, the officer
20 believes, on reasonable grounds, that doing so would create a risk of
21 injury to the officer, the detainee or anyone else.

22 **Example of urgent circumstances**

23 the detainee is assaulting someone or engaging in self-harm

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

1 **139 Use of restraints or weapons**

- 2 (1) The use of force under this part includes the use of restraints and
3 weapons.
- 4 (2) The chief executive must ensure, as far as practicable, that the use of
5 force involving a restraint or weapon is proportionate to the
6 circumstances, and in particular that—
- 7 (a) the circumstances are sufficiently serious to justify the use; and
8 (b) the kind of restraint or weapon is appropriate in the
9 circumstances; and
- 10 (c) the restraint or weapon is used appropriately in the
11 circumstances.
- 12 (3) The chief executive must also ensure that restraints and weapons are
13 only used under this part—
- 14 (a) by corrections officers trained to use them; and
15 (b) in accordance with a corrections policy or operating procedure
16 that applies to their use.
- 17 (4) A health professional appointed under section 22 (Health
18 professionals—non-therapeutic services) may administer a drug as a
19 restraint, or direct the use of another form of restraint, if the health
20 professional believes, on reasonable grounds, that is necessary and
21 reasonable—
- 22 (a) to treat a detainee, particularly where the detainee’s behaviour
23 cannot be controlled otherwise; or
- 24 (b) to prevent a detainee inflicting self-harm, or harming someone
25 else, particularly where other forms of restraint are unlikely to
26 be effective; or
- 27 (c) to prevent the escape of a detainee, particularly while being
28 transferred to or from a correctional centre or other place.

- 1 (5) The chief executive must ensure that firearms are not used under
2 this part unless someone's life is under threat or a detainee or other
3 person offers armed resistance to a corrections officer or police
4 officer exercising a function under this Act or another Act.
- 5 (6) In applying force under this part, a corrections officer may use a
6 restraint or weapon, including any of the following:
- 7 (a) body contact;
- 8 (b) handcuffs, restraint jackets and other restraining devices;
- 9 (c) riot control equipment;
- 10 (d) a chemical agent;
- 11 (e) a gas gun;
- 12 (f) a firearm;
- 13 (g) anything else prescribed by regulation.

14 **140 Medical examination after use of force**

15 The chief executive must ensure that a doctor appointed under
16 section 21 (Doctors—health service appointments) examines a
17 detainee injured by the use of force under this part as soon as
18 practicable and that appropriate health care is available to the
19 detainee.

20 **141 Reporting use of force**

- 21 (1) The chief executive must keep a record of any incident involving the
22 use of force under this part that causes injury or death to anyone.
- 23 (2) The record must—
- 24 (a) include details of the incident, including the circumstances, the
25 decision to use force and the force used; and

- 1 (b) be available for inspection under chapter 7 (Inspection of
2 correctional centres).
- 3 (3) The chief executive must give a copy of the record to an official
4 visitor.

1 Part 9.8 Access to correctional centres

2 142 Visiting conditions

- 3 (1) The chief executive may declare conditions that apply in relation to
4 visits to a correctional centre.

5 Examples of conditions declared

- 6 1 the times and duration of visits
7 2 the number of visitors allowed
8 3 the conditions for conjugal, contact and non-contact visits
9 4 the circumstances in which visitors may be monitored
10 5 a prohibition on smoking in nonsmoking areas

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

- 14 (2) A declaration is a disallowable instrument.

15 *Note 1* The power to make an instrument includes power to make different
16 provisions in relation to different matters or different classes of matters,
17 and provisions that apply differently by reference to stated exceptions or
18 factors (see Legislation Act, s 48).

19 *Note 2* A disallowable instrument must be notified, and presented to the
20 Legislative Assembly, under the Legislation Act.

21 143 Notice of visiting conditions

- 22 (1) The chief executive must take reasonable steps to bring the visiting
23 conditions to the attention of visitors at a correctional centre.

- 24 (2) Without limiting subsection (1), the chief executive must ensure
25 that—

- 26 (a) a notice is prominently displayed at each entrance to the centre
27 open to visitors to the effect that visiting conditions apply at
28 the centre; and

- 1 (b) a copy of the visiting conditions is available for inspection on
2 request by visitors at the centre.

3 **144 Taking prohibited things etc into correctional centre**

- 4 (1) A person commits an offence if the person—
5 (a) takes a prohibited thing into a correctional centre; or
6 (b) gives a prohibited thing to a detainee; or
7 (c) removes a prohibited thing from a correctional centre.

8 Maximum penalty: 100 penalty units, imprisonment for 1 year or
9 both.

- 10 (2) Subsection (1) does not apply to any action approved by the chief
11 executive.

- 12 (3) In this section:

13 *give* includes send.

14 *prohibited thing* includes something the person intends a detainee to
15 use for making a prohibited thing or use otherwise in relation to a
16 prohibited thing.

17 **145 Directions to visitors**

- 18 (1) The chief executive may, orally or in writing, give a direction to a
19 visitor at a correctional centre to do, or not do, something if the
20 chief executive believes, on reasonable grounds, that the direction is
21 necessary and reasonable—

22 (a) to ensure compliance with the visiting conditions; or

23 (b) for security or good order at a correctional centre.

- 1 (2) A person commits an offence if the person fails to comply with a
2 direction given to the person under this section.
3 Maximum penalty: 50 penalty units, imprisonment for 6 months or
4 both.
5 (3) An offence against this section is a strict liability offence.
6 (4) Subsection (2) does not apply if the person takes reasonable steps to
7 comply with the direction.

8 **146 Searches of visitors**

- 9 (1) The chief executive may direct a corrections officer to conduct a
10 scanning search, frisk search or ordinary search of a visitor at a
11 correctional centre if the chief executive suspects, on reasonable
12 grounds, that the visitor is carrying—
13 (a) a prohibited thing; or
14 (b) anything else that creates, or is likely to create, a risk to—
15 (i) the personal safety of anyone else; or
16 (ii) security or good order at a correctional centre.
17 (2) Part 9.4 (Searches) and part 9.5 (Seizing property) apply as if a
18 direction under this section, any scanning search, frisk search or
19 ordinary search conducted under the direction, and anything found
20 in the search, occurred under the relevant part in relation to a
21 detainee at a correctional centre.
22 (3) However, section 125 (Searches—use of force) does not apply in
23 relation to a search of a visitor at a correctional centre.

24 **147 Directions to leave correctional centre etc**

- 25 (1) The chief executive may direct a person at a correctional centre—
26 (a) not to enter the centre; or

- 1 (b) if the person is already in the centre—to leave the centre.
- 2 (2) The chief executive may give the direction only if—
- 3 (a) the chief executive suspects, on reasonable grounds, that—
- 4 (i) the person is intoxicated; or
- 5 (ii) the person has possession of a prohibited thing; or
- 6 (iii) the direction is necessary and reasonable for security or
- 7 good order at a correctional centre; or
- 8 (b) the person contravenes a direction given to the person under
- 9 section 145.
- 10 (3) A person commits an offence if the person fails to comply with a
- 11 direction given to the person under this section.
- 12 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 13 both.
- 14 (4) An offence against this section is a strict liability offence.
- 15 (5) Subsection (3) does not apply if the person takes reasonable steps to
- 16 comply with the direction.
- 17 (6) In this section:
- 18 ***intoxicated*** means under the influence of alcohol, a drug or another
- 19 substance, or a combination of alcohol, drugs or substances.
- 20 **Examples of substances**
- 21 1 glue
- 22 2 petrol
- 23 3 another solvent
- 24 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 25 does not limit, the meaning of the provision in which it appears (see
- 26 Legislation Act, s 126 and s 132).
- 27 ***prohibited thing***—see section 144 (3).

1 **148 Removing people from correctional centre**

2 (1) The chief executive may direct a corrections officer to enforce a
3 direction under section 147 if the person given the direction
4 contravenes the direction.

5 (2) The corrections officer may use force that is necessary and
6 reasonable to enforce the direction.

1 **Chapter 10** **Discipline**

2 **Part 10.1** **General**

3 **149** **Application—ch 10**

4 This chapter applies in relation to a disciplinary breach committed,
5 or allegedly committed, by a detainee.

6 **150** **Definitions—discipline**

7 In this Act:

8 *accused* means a detainee charged with a disciplinary breach.

9 *administrative penalty*—see section 183.

10 *administrator* means a corrections officer to whom the chief
11 executive has given functions of an administrator under this chapter.

12 *charge* means a disciplinary charge.

13 *charge notice*—see section 158.

14 *disciplinary action*—see section 182.

15 *disciplinary breach*—see section 151.

16 *disciplinary charge* means a charge under section 158.

17 *hearing*, for an inquiry, means a hearing under part 11.3
18 (Disciplinary hearing procedures).

19 *inquiry* means an inquiry to which chapter 11 (Disciplinary
20 inquiries) applies.

1 ***investigative segregation*** means segregation directed under any of
2 the following:

- 3 (a) section 155 (Report etc by corrections officer);
4 (b) section 156 (Report etc by investigator);
5 (c) section 157 (Action by administrator);
6 (d) section 159 (Chief executive directions—investigative
7 segregation).

8 ***investigator***—see section 152.

9 ***investigator’s report***—see section 156.

10 ***privilege***, in relation to a detainee—see section 153.

11 ***separate confinement***, of a detainee, means confinement of the
12 detainee in a cell, away from other detainees.

13 **151 Meaning of *disciplinary breach***

14 For a detainee, each of the following is a ***disciplinary breach***:

- 15 (a) contravening a direction given to the detainee by the chief
16 executive or a corrections officer under this Act or the *Crimes*
17 (*Sentence Administration*) Act 2005.;

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

- 21 (b) being in a prohibited area, without the chief executive’s
22 approval;

- 23 (c) smoking in a nonsmoking area at a correctional centre;

- 24 (d) taking (in any way) alcohol or a drug into the detainee’s body;

- 25 (e) providing a positive test sample for alcohol or a drug when
26 directed, under this Act or the *Crimes (Sentence*
27 *Administration*) Act 2005, to provide a test sample;

- 1 (f) making, possessing, concealing, knowingly consuming or
2 dealing with a prohibited thing, without the chief executive's
3 approval;
- 4 (g) gambling;
- 5 (h) being disrespectful or abusive towards a corrections officer in a
6 way that undermines the officer's authority;
- 7 (i) being disrespectful or abusive towards someone in a way that
8 is likely to provoke a person to be violent;
- 9 (j) intentionally or recklessly engaging in conduct that endangers,
10 or may endanger, the health or safety of the detainee or anyone
11 else;
- 12 (k) fighting;
- 13 (l) assaulting someone else;
- 14 (m) theft;
- 15 (n) possessing stolen property;
- 16 (o) possessing or dealing in things without the chief executive's
17 approval;
- 18 (p) intentionally or recklessly damaging or destroying property
19 belonging to someone else;
- 20 (q) interfering with property belonging to someone else, without
21 approval by the owner of the property;
- 22 (r) interfering with anyone's personal monitoring device without
23 the chief executive's approval;
- 24 (s) creating or participating in a disturbance, or other activity,
25 likely to endanger security or good order at a correctional
26 centre;

- 1 (t) contravening a condition of any of the following:
- 2 (i) a direction under section 203 (Local leave directions);
- 3 (ii) a local leave permit;
- 4 (iii) an interstate leave permit;
- 5 (u) doing anything for the purpose of escaping, or assisting a
- 6 detainee to escape, from detention;
- 7 (v) offering, giving or taking a bribe;
- 8 (w) attempting, or assisting anyone else attempting, to commit
- 9 another disciplinary breach;
- 10 (x) threatening to do anything mentioned in paragraphs (j), (k), (l),
- 11 (p) or (s);
- 12 (y) anything else prescribed by regulation.

13 **Examples of contravening chief executive directions—par (a)**

14 failing to comply with a direction by the chief executive to provide a test

15 sample or submit to a search under this Act

16 *Note* An example is part of the Act, is not exhaustive and may extend,

17 but does not limit, the meaning of the provision in which it

18 appears (see Legislation Act, s 126 and s 132).

19 **152 Meaning of *investigator***

- 20 (1) An *investigator* is—
- 21 (a) a corrections officer to whom the chief executive has given
- 22 functions of an investigator; or
- 23 (b) a person engaged under subsection (2).
- 24 (2) The chief executive may, on behalf of the Territory, engage a person
- 25 (other than a corrections officer) to exercise the functions of an
- 26 investigator.

- 1 (3) The chief executive may engage a person under subsection (2) only
2 if satisfied the person has appropriate qualifications or experience to
3 exercise the functions of an investigator.

4 **153 Meaning of *privilege***

5 A *privilege*, in relation to a detainee—

- 6 (a) is any amenity, facility or opportunity the detainee may have
7 the benefit of in detention; but
8 (b) does not include anything that is, for this chapter, an
9 entitlement for the detainee.

10 **Examples of privileges**

- 11 1 using common areas at a correctional centre for mixing with other detainees
12 2 participating in activities other than those forming part of a detainee's case
13 management plan
14 3 using phones, email or the internet other than for entitled usage
15 4 buying non-essential goods from money held in trust for a detainee
16 5 using a radio, television, CD or DVD player or other electronic equipment
17 for recreational purposes
18 6 pursuing hobbies and crafts
19 7 keeping personal property in a cell

20 **Examples of entitlements**

21 things expressed in chapter 6 (Living conditions at correctional centres) to be
22 entitlements for detainees

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

26 **154 Overlapping disciplinary breaches and criminal offences**

- 27 (1) This section applies if a detainee engages, or is alleged to have
28 engaged, in conduct that is both—
29 (a) a disciplinary breach; and

- 1 (b) an offence (a *criminal offence*) against a territory law,
2 including this Act.
- 3 (2) The detainee must not be prosecuted for the criminal offence if an
4 administrative penalty has been imposed on the detainee because of
5 the disciplinary breach.
- 6 (3) A disciplinary charge for the disciplinary breach must not be started,
7 or further dealt with, under this chapter if a prosecution for the
8 criminal offence has been started in a court.
- 9 (4) Disciplinary action for the disciplinary breach must not be taken
10 against the detainee if the detainee has been convicted or found
11 guilty of the criminal offence by a court.
- 12 *Note* For the kinds of disciplinary action that may be taken, see s 182.

1 **Part 10.2** **Disciplinary investigations**

2 **Division 10.2.1** **Investigation of disciplinary breaches**

3 **155** **Report etc by corrections officer**

- 4 (1) This section applies if a corrections officer believes, on reasonable
5 grounds, that a detainee has committed a disciplinary breach.
- 6 (2) The corrections officer may do 1 or more of the following if the
7 officer believes, on reasonable grounds, that it is appropriate in the
8 circumstances:
- 9 (a) counsel the detainee;
- 10 (b) warn the detainee about committing a disciplinary breach;
- 11 (c) reprimand the detainee;
- 12 (d) subject to section 160 (Grounds for investigative segregation),
13 direct that the detainee be segregated from other detainees for
14 the purposes of this part;
- 15 (e) give an investigator a report about the alleged disciplinary
16 breach.
- 17 (3) A report under subsection (2) (e) must be given to an investigator as
18 soon as possible, and must set out the following:
- 19 (a) details of the alleged disciplinary breach;
- 20 (b) the officer's reasons for believing the detainee has committed
21 the disciplinary breach;
- 22 (c) if subsection (2) (d) applies—
- 23 (i) details of the segregation directed; and
24 (ii) the officer's reasons for the direction; and

- 1 (iii) a recommendation about the detainee's segregation;
2 (d) anything else prescribed by regulation.

3 **156 Report etc by investigator**

- 4 (1) This section applies if an investigator is given a report by a
5 corrections officer under section 155 about an alleged disciplinary
6 breach by a detainee.
- 7 (2) After considering the report and making any investigation the
8 investigator considers appropriate, the investigator may do 1 or
9 more of the following if the investigator believes, on reasonable
10 grounds, that it is appropriate in the circumstances:
- 11 (a) take no further action in relation to the report;
12 (b) counsel the detainee;
13 (c) warn the detainee about committing a disciplinary breach;
14 (d) reprimand the detainee;
15 (e) refer the allegation to the chief police officer;
16 (f) subject to section 160 (Grounds for investigative segregation),
17 direct that the detainee be segregated from other detainees for
18 the purposes of this part;
19 (g) give an administrator a report (an *investigator's report*) about
20 the alleged disciplinary breach.
- 21 (3) An investigator's report must be given to an administrator as soon as
22 possible, and must set out the following:
- 23 (a) details (or a copy) of the corrections officer's report;
24 (b) details of any referral of the allegation to the chief police
25 officer;

- 1 (c) if subsection (2) (f) applies—
2 (i) details of the segregation directed; and
3 (ii) the investigator's reasons for the direction; and
4 (iii) a recommendation about the detainee's segregation;
5 (d) a recommendation for any action by the administrator under
6 section 157;
7 (e) anything else prescribed by regulation.
8 (4) A referral under subsection (2) (e) must be in writing and be
9 accompanied by the investigator's report.
10 (5) A corrections officer who is also an investigator must not exercise
11 any function as an investigator in relation to any report made by the
12 officer under section 155.

13 **157 Action by administrator**

- 14 (1) This section applies if an administrator is given a report under
15 section 156 about an alleged disciplinary breach by a detainee.
16 (2) After considering the report and making any further investigation
17 the administrator considers appropriate, the administrator may do
18 1 or more of the following if the administrator believes, on
19 reasonable grounds, that it is appropriate in the circumstances:
20 (a) take no further action in relation to the report;
21 (b) counsel the detainee;
22 (c) warn the detainee about committing a disciplinary breach;
23 (d) reprimand the detainee;
24 (e) refer the allegation to—
25 (i) the chief police officer; or
26 (ii) the director of public prosecutions;

- 1 (f) charge the detainee under section 158 (Disciplinary charge);
2 (g) subject to section 160 (Grounds for investigative segregation),
3 direct that the detainee be segregated from other detainees for
4 the purposes of this part;
5 (h) anything else prescribed by regulation.
- 6 (3) A referral under subsection (2) (e) must be in writing and be
7 accompanied by the investigator's report.
- 8 (4) A corrections officer who is also an administrator, or who is or has
9 been an investigator, must not exercise any function as an
10 administrator under this section in relation to any report made by the
11 officer under section 155 or section 156.

12 **158 Disciplinary charge**

13 To charge a detainee with a disciplinary breach, the administrator
14 must give the detainee written notice of the charge (a *charge*
15 *notice*), including details of the following:

- 16 (a) the disciplinary breach charged;
17 (b) a brief statement of the conduct to which the charge applies
18 and when, or the period during which, it happened or is alleged
19 to have happened;
20 (c) the option of having the charge dealt with by consent under
21 division 10.3.1 (Disciplinary action—with accused's consent);
22 (d) the election available under section 166 (Disciplinary breach
23 admitted by accused) to accept the disciplinary action proposed
24 by the administrator;

- 1 (e) the disciplinary action the administrator believes, on
2 reasonable grounds, would be appropriate if the charge were
3 dealt with under section 167 (Presiding officer's powers—
4 breach admitted by accused).

5 *Note* If a form is approved under s 227 for a disciplinary charge, the form
6 must be used.

7 **Division 10.2.2 Investigative segregation**

8 **159 Chief executive directions—investigative segregation**

- 9 (1) Subject to section 160, the chief executive may direct that a detainee
10 be segregated from other detainees for the purposes of this part.
- 11 (2) To remove any doubt, this section is additional to, and does not
12 limit, the power to direct that a detainee be segregated from other
13 detainees under any of the following:
- 14 (a) section 155 (Report etc by corrections officer);
15 (b) section 156 (Report etc by investigator);
16 (c) section 157 (Action by administrator).

17 **160 Grounds for investigative segregation**

- 18 (1) This section applies to a direction for investigative segregation.
- 19 (2) The direction may be given only if the person giving the direction
20 believes, on reasonable grounds, that segregation of the detainee is
21 necessary or prudent for the purposes of this part.
- 22 (3) Without limiting subsection (2), the direction may be given if the
23 person giving the direction believes, on reasonable grounds, that the
24 opportunity for the detainee to associate with anyone else creates, or
25 is likely to create, a risk of—
- 26 (a) harm, or threatened harm, to the detainee or anyone else; or

1 (b) the perverting, or attempted perverting, of an investigation,
2 under this part; or

3 (c) undermining security or good order at a correctional centre.

4 **161 Notice of investigative segregation**

5 The person giving a direction for investigative segregation of a
6 detainee must give the detainee prompt notice of the direction, why
7 it was given, when it takes effect and the provisions for its duration
8 and review under this part.

9 **162 Duration of investigative segregation**

10 (1) The chief executive must revoke a direction for investigative
11 segregation if the chief executive believes, on reasonable grounds,
12 that the direction is no longer necessary or prudent.

13 (2) The chief executive—

14 (a) may review a direction for investigative segregation of a
15 detainee at any time on the chief executive's own initiative or
16 on request by the detainee; and

17 (b) must review the direction before any transfer of the detainee to
18 another correctional centre; and

19 (c) must review the direction at least once every 7 days while it
20 remains in force.

21 (3) After reviewing a direction for investigative segregation, the chief
22 executive may—

23 (a) confirm the direction; or

24 (b) make a direction or further direction under section 159 (1); or

25 (c) revoke the direction under subsection (1).

- 1 (4) To remove any doubt, the chief executive may make more than
2 1 direction under section 159 (1) in relation to a detainee for the
3 same investigation.
- 4 (5) Subject to this section and section 93 (Segregated detainees
5 removed to NSW), a direction, or further direction, for investigative
6 segregation ends at the end of the earlier of the following days:
- 7 (a) the 7th day after the day the direction is given;
- 8 (b) the day the administrator makes a decision under section 157
9 (Action by administrator) in relation to the alleged disciplinary
10 breach to which the direction applies (other than a decision to
11 direct investigative segregation of the detainee).

12 **163 Application for review of investigative segregation**
13 **directions**

- 14 (1) A detainee may apply to an adjudicator for a review of a direction
15 for investigative segregation of the detainee.
- 16 (2) The application must be made no later than 7 days after the day the
17 person making the direction gives the detainee notice under
18 section 161 of the direction.
- 19 *Note* If a form is approved under s 227 for an application under this section,
20 the form must be used.
- 21 (3) Subject to any decision by the adjudicator under section 164, the
22 making of the application does not affect the segregation of the
23 detainee under the direction.

24 **164 Review of investigative segregation directions**

- 25 (1) On application under section 163, an adjudicator may—
- 26 (a) conduct an inquiry to review the direction for investigative
27 segregation of the detainee; or
- 28 (b) refuse to review the direction.

- 1 (2) Chapter 11 (Disciplinary inquiries) applies to the inquiry, with any
2 changes prescribed by regulation, as if it were an inquiry under that
3 chapter.
- 4 (3) After completing an inquiry under this section, the adjudicator
5 may—
- 6 (a) confirm the direction under review; or
7 (b) amend the direction under review; or
8 (c) set aside the direction under review; or
9 (d) set aside the direction under review and make a substitute
10 direction that the detainee be segregated from other detainees
11 for the purposes of this part.
- 12 (4) The adjudicator must give the detainee prompt written notice of the
13 adjudicator's decision under this section.
- 14 (5) If the adjudicator refuses to review the direction, the notice must
15 include the reasons for the refusal.
- 16 *Note* Under the *Administrative Decisions (Judicial Review) Act 1989*, a
17 person aggrieved by an administrative decision made under an
18 enactment may apply to the Supreme Court for a review of the decision.
19 Subject to any order of the court, the making of the application does not
20 affect the operation of the decision or prevent its implementation (see
21 that Act, s 16).

1 **Part 10.3** **Disciplinary action and review**

2 **Division 10.3.1** **Disciplinary action—with accused's**
3 **consent**

4 **165** **Meaning of *presiding officer*—div 10.3.1**

5 In this division:

6 *presiding officer* means a corrections officer to whom the chief
7 executive has given functions of a presiding officer under this
8 division.

9 **166** **Disciplinary breach admitted by accused**

10 (1) An accused may elect to have a disciplinary charge against the
11 detainee dealt with under this division by giving the administrator a
12 written notice in which the accused—

13 (a) admits the disciplinary breach charged; and

14 (b) accepts the proposed disciplinary action stated in the charge
15 notice.

16 **Example of election**

17 a signed admission and acceptance on the charge notice

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

21 *Note 2* If a form is approved under s 227 for an election under this section, the
22 form must be used.

23 (2) The election must be given to the administrator—

24 (a) no later than the day after the day the administrator gives the
25 accused the charge notice; or

- 1 (b) within any extended period allowed under subsection (3).
2 (3) For subsection (2) (b), the administrator may extend the period
3 within which the election must be made if the administrator
4 believes, on reasonable grounds, that is appropriate.
- 5 *Note* An extension of the time for making an election may be given even
6 though the relevant time has ended (see Legislation Act, s 151C (Power
7 to extend time)).
- 8 (4) The administrator must give the accused written notice of a decision
9 under subsection (3).

10 **167 Presiding officer's powers—breach admitted by accused**

- 11 (1) This section applies if the accused elects under section 166 to have a
12 disciplinary charge dealt with under this division.
- 13 (2) A presiding officer may, without further investigation or inquiry,
14 counsel the accused and take disciplinary action against the accused
15 in accordance with division 10.3.5 (Disciplinary action).
- 16 (3) However, the only disciplinary action the presiding officer may take
17 under this section is the disciplinary action stated as the appropriate
18 action in the charge notice.
- 19 (4) The presiding officer must give the accused written notice of a
20 decision made under this section.

21 **Division 10.3.2 Internal disciplinary inquiry**

22 **168 Meaning of *presiding officer*—div 10.3.2**

23 In this division:

24 *presiding officer* means a corrections officer to whom the chief
25 executive has given functions of a presiding officer under this
26 division.

1 **169** **Disciplinary inquiry into charge**

- 2 (1) This section applies if an accused—
- 3 (a) is given a charge notice; and
- 4 (b) does not elect under section 166 to have the charge dealt with
- 5 under division 10.3.1 (Disciplinary action—with accused’s
- 6 consent).
- 7 (2) A presiding officer must conduct an inquiry into the disciplinary
- 8 breach charged.
- 9 (3) A corrections officer must not exercise any function of a presiding
- 10 officer under this division in relation to the disciplinary charge if the
- 11 officer—
- 12 (a) made a report under either of the following sections in relation
- 13 to the alleged disciplinary breach to which the charge relates:
- 14 (i) section 155 (Report etc by corrections officer);
- 15 (ii) section 156 (Report etc by investigator); or
- 16 (b) made the charge under section 157 (Action by administrator).
- 17 *Note* Ch 11 (Disciplinary inquiries) applies in relation to an inquiry under this
- 18 division (see s 189).

19 **170** **Presiding officer’s powers after internal inquiry**

- 20 (1) This section applies if a presiding officer has completed an inquiry
- 21 under section 169.
- 22 (2) If the presiding officer is satisfied, on the balance of probabilities,
- 23 that a disciplinary breach charged has been proven, the presiding
- 24 officer may take disciplinary action against the accused in
- 25 accordance with division 10.3.5 (Disciplinary action).

- 1 (3) The presiding officer must dismiss the charge—
2 (a) if not satisfied, on the balance of probabilities, that the
3 disciplinary breach charged has been proven; or
4 (b) if satisfied, on reasonable grounds, that it would otherwise be
5 appropriate to do so.
- 6 (4) If the presiding officer believes, on reasonable grounds, that it is
7 necessary or desirable to do so, the presiding officer may refer the
8 charge to—
9 (a) the chief police officer; or
10 (b) the director of public prosecutions.
- 11 (5) The presiding officer must give the accused prompt written notice of
12 the presiding officer's decision under this section, including—
13 (a) a statement of the reasons for the decision; and
14 (b) a statement about the effect of division 10.3.3.
- 15 *Note 1* If a form is approved under s 227 for the notice, the form must be used.
16 *Note 2* For the meaning of a statement of reasons, see the Legislation Act,
17 s 179.
- 18 (6) A referral under subsection (4) must be in writing and be
19 accompanied by a report by the presiding officer.

20 **Division 10.3.3 Internal review of inquiry decision**

21 **171 Meaning of *review officer*—div 10.3.3**

22 In this division:

23 *review officer* means a corrections officer to whom the chief
24 executive has given functions of a review officer under this division.

1 **172 Application for review of inquiry decision**

- 2 (1) An accused may apply to the chief executive for a review of a
3 decision by a presiding officer under section 170 in relation to the
4 accused.

5 **Example of application for review**

6 a signed application on the presiding officer's notice under section 170

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

10 *Note 2* If a form is approved under s 227 for an application under this section,
11 the form must be used.

- 12 (2) The application must be made no later than 7 days after the day the
13 accused is given notice of the decision under section 170.

- 14 (3) Subject to any decision by a review officer under section 175, the
15 making of the application does not affect the taking of disciplinary
16 action under the decision under review.

17 **173 Chief executive to assign review officer**

- 18 (1) On application under section 172, the chief executive must assign a
19 review officer, or review officers, to review the decision to which
20 the application relates.

- 21 (2) A corrections officer must not exercise any function of a review
22 officer under this division in relation to a disciplinary charge if the
23 officer—

24 (a) made a report under either of the following sections in relation
25 to the alleged disciplinary breach to which the charge relates:

26 (i) section 155 (Report etc by corrections officer);

27 (ii) section 156 (Report etc by investigator); or

28 (b) made the charge under section 157 (Action by administrator);
29 or

- 1 (c) conducted an inquiry as presiding officer under section 169
2 (Disciplinary inquiry into charge) in relation to the charge.

3 **174 Review of inquiry decision**

4 A review officer assigned under section 173 to review a decision
5 under section 170 (Presiding officer's powers after internal inquiry)
6 must conduct a further inquiry to review the decision.

7 *Note* Ch 11 (Disciplinary inquiries) applies in relation to an inquiry under this
8 division (see s 189).

9 **175 Review officer's powers after further inquiry**

10 (1) After completing a review under section 174, the review officer
11 may—

12 (a) confirm the decision under review; or

13 (b) exercise any function of a presiding officer under section 170
14 in relation to the accused, either by—

15 (i) amending the decision under review; or

16 (ii) setting aside the decision under review and making a
17 decision in substitution for the decision set aside.

18 (2) The review officer must give the accused prompt written notice of
19 the review officer's decision under this section, including—

20 (a) a statement of the reasons for the decision; and

21 (b) a statement about the effect of division 10.3.4.

22 *Note 1* If a form is approved under s 227 for the notice, the form must be used.

23 *Note 2* For the meaning of a statement of reasons, see the Legislation Act,
24 s 179.

1 **Division 10.3.4 External review of inquiry decisions**

2 **176 Appointment of adjudicator**

- 3 (1) The Minister may appoint at least 1 adjudicator.

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

- 6 (2) A person may be appointed as an adjudicator only if the person is a
7 magistrate and consents, in writing, to be appointed as an
8 adjudicator.

9 *Note* The appointment of a magistrate to another position under a law of the
10 Territory requires consultation between the Attorney-General and the
11 Chief Magistrate (see the *Magistrates Court Act 1930*, s 7G
12 (Magistrates not to do other work)).

- 13 (3) The Legislation Act, division 19.3.3 (Appointments—Assembly
14 consultation) does not apply to an appointment of an adjudicator
15 under subsection (1).

16 **177 Application for review by adjudicator**

- 17 (1) An accused may apply to an adjudicator for a review of a decision
18 under section 175 (Review officer's powers after further inquiry) in
19 relation to the accused.

20 **Example of application for review**

21 a signed application on the review officer's notice under section 175

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

- 25 (2) The application must be made no later than 7 days after the day the
26 accused is given notice of the review officer's decision under
27 section 175.

- 1 (3) Subject to any decision by the adjudicator under section 179, the
2 making of the application does not affect the taking of disciplinary
3 action under the decision under review.

4 **178 Review by adjudicator**

- 5 (1) On application under section 177, an adjudicator may—
6 (a) conduct an inquiry to review the review officer's decision; or
7 (b) refuse to review the review officer's decision.

8 *Note* Ch 11 (Disciplinary inquiries) applies in relation to an inquiry under this
9 division (see s 189).

- 10 (2) If the adjudicator refuses to review the review officer's decision, the
11 adjudicator must give the accused prompt written notice of the
12 refusal, including—

- 13 (a) a statement of the reasons for the refusal; and
14 (b) notice that a person aggrieved by the decision may apply for a
15 review of the decision under the *Administrative Decisions*
16 *(Judicial Review) Act 1989*.

17 *Note 1* If a form is approved under s 227 for the notice, the form must be used.

18 *Note 2* For the meaning of a statement of reasons, see the Legislation Act,
19 s 179.

20 *Note 3* Under the *Administrative Decisions (Judicial Review) Act 1989*, a
21 person aggrieved by an administrative decision made under an
22 enactment may apply to the Supreme Court for a review of the decision.
23 Subject to any order of the Court, the making of the application does not
24 affect the operation of the decision or prevent its implementation (see
25 that Act, s 16).

26 **179 Adjudicator's powers after review**

- 27 (1) After completing a review under section 178, the adjudicator may—
28 (a) confirm the decision under review; or

- 1 (b) exercise any function of a review officer under section 175 in
2 relation to the accused, either by—
- 3 (i) amending the decision under review; or
- 4 (ii) setting aside the decision under review and making a
5 decision in substitution for the decision set aside.
- 6 (2) The adjudicator must give the accused prompt written notice of the
7 adjudicator's decision under this section, including—
- 8 (a) a statement of the reasons for the decision; and
- 9 (b) notice that a person aggrieved by the decision may apply for a
10 review of the decision under the *Administrative Decisions*
11 *(Judicial Review) Act 1989*.
- 12 *Note 1* If a form is approved under s 227 for the notice, the form must be used.
- 13 *Note 2* For the meaning of a statement of reasons, see the Legislation Act,
14 s 179.
- 15 *Note 3* Under the *Administrative Decisions (Judicial Review) Act 1989*, a
16 person aggrieved by an administrative decision made under an
17 enactment may apply to the Supreme Court for a review of the decision.
18 Subject to any order of the Court, the making of the application does not
19 affect the operation of the decision or prevent its implementation (see
20 that Act, s 16).

21 **Division 10.3.5 Disciplinary action**

22 **180 Application—div 10.3.5**

23 This division applies to a detainee against whom disciplinary action
24 may be taken under this chapter.

- 1 **181** **Meaning of *relevant presiding officer*—div 10.3.5**
- 2 In this division:
- 3 ***relevant presiding officer*** means any of the following:
- 4 (a) a presiding officer under division 10.3.1 (Disciplinary action—
- 5 with accused’s consent);
- 6 (b) a presiding officer under division 10.3.2 (Internal disciplinary
- 7 inquiry);
- 8 (c) a review officer under division 10.3.3 (Internal review of
- 9 inquiry decision);
- 10 (d) an adjudicator under division 10.3.4 (External review of
- 11 inquiry decisions).
- 12 **182** **Disciplinary action by relevant presiding officer**
- 13 (1) As disciplinary action against a detainee, a relevant presiding officer
- 14 may do 1 or more of the following (each of which is ***disciplinary***
- 15 ***action***):
- 16 (a) warn the detainee about committing a disciplinary breach;
- 17 (b) reprimand the detainee;
- 18 (c) impose an administrative penalty, or a combination of
- 19 administrative penalties, on the detainee;
- 20 (d) give the detainee a direction under section 184 (Reparation).
- 21 (2) The relevant presiding officer must ensure that the disciplinary
- 22 action against a detainee for a disciplinary breach is proportionate to
- 23 the breach.

- 1 (3) Without limiting section 14 (Corrections policies and operating
2 procedures), the chief executive must make a corrections policy and
3 operating procedure providing for matters to be considered when
4 deciding whether disciplinary action is proportionate to a
5 disciplinary breach.

6 **183 Administrative penalties**

7 Each of the following is an *administrative penalty*:

- 8 (a) a financial penalty not exceeding \$500;
9 (b) a withdrawal of privileges for not longer than 180 days;
10 (c) a requirement to perform extra work;
11 (d) separate confinement for 1 of the following:
12 (i) 3 days;
13 (ii) 7 days;
14 (iii) 28 days;
15 (e) anything declared by regulation to be an administrative
16 penalty.

17 **184 Reparation**

- 18 (1) This section applies if a relevant presiding officer finds that—
19 (a) a charge for a disciplinary breach by a detainee is proven; and
20 (b) a person (the *injured person*) suffered loss as a direct result of
21 the breach.
22 (2) The relevant presiding officer may direct the detainee to make
23 reparation for the injured person's loss by payment of an amount or
24 otherwise.

- 1 (3) An amount directed to be paid must not exceed—
2 (a) \$100; or
3 (b) if a higher amount is prescribed by regulation—the
4 prescribed amount.
- 5 (4) An amount payable under a direction is payable out of any money
6 held by the chief executive for the detainee.
- 7 (5) In this section:
8 *loss*—
9 (a) see the Criminal Code, section 300; and
10 (b) includes out-of-pocket or other expense incurred.

11 **185 Maximum administrative penalties**

- 12 (1) This section applies if—
13 (a) a detainee is charged with 2 or more disciplinary breaches; and
14 (b) the charges arise out of the same conduct.
- 15 (2) The total of the administrative penalties imposed for the breaches
16 must not, for any particular kind of penalty, be more than the
17 maximum penalty that may be imposed for any 1 of those breaches.

18 **186 Separate confinement conditions**

- 19 (1) This section applies if separate confinement is imposed on a
20 detainee as an administrative penalty for a disciplinary breach.
- 21 (2) The chief executive must ensure that—
22 (a) a doctor appointed under section 21 (Doctors—health service
23 appointments) examines the detainee as soon as practicable
24 after the separate confinement starts and ends; and

- 1 (b) a corrections officer monitors the detainee's condition in
2 separate confinement at least daily.

3 **187 Privileges and entitlements—impact of discipline**

4 To remove any doubt—

- 5 (a) anything expressed in chapter 6 (Living conditions at
6 correctional centres) to be an entitlement for this chapter is not
7 affected by anything that happens under this chapter,
8 including—
9 (i) investigative segregation; and
10 (ii) disciplinary action; and
11 (b) anything else mentioned in chapter 6 is, for this chapter, a
12 privilege.

13 **188 Record of disciplinary action**

- 14 (1) The chief executive must keep a record of any disciplinary action
15 taken against a detainee.
16 (2) The record must include details of the following:
17 (a) the detainee's name;
18 (b) the disciplinary breach;
19 (c) a brief statement of the conduct to which the disciplinary
20 breach applies and when, or the period during which, it
21 happened;
22 (d) the disciplinary action taken against the detainee;
23 (e) anything else prescribed by regulation.

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- 1 (3) The record must also include details of any finding by a relevant
2 presiding officer that a disciplinary breach is proven against the
3 detainee if the relevant presiding officer decides not to take
4 disciplinary action against the detainee.
- 5 (4) The record must be available for inspection under chapter 7
6 (Inspection of correctional centres).

1 **Chapter 11** **Disciplinary inquiries**

2 **Part 11.1** **Conduct of disciplinary**
3 **inquiries—general**

4 **189** **Application—ch 11**

5 This chapter applies to an inquiry under any of the following:

- 6 (a) division 10.3.2 (Internal disciplinary inquiry);
7 (b) division 10.3.3 (Internal review of inquiry decision);
8 (c) division 10.3.4 (External review of inquiry decisions).

9 **190** **Meaning of *presiding officer*—ch 11**

10 In this chapter:

11 *presiding officer*, for an inquiry, means the relevant presiding
12 officer under division 10.3.5 (Disciplinary action) for the inquiry.

1 **Part 11.2** **Disciplinary inquiry procedures**

2 **191** **Nature of disciplinary inquiries**

- 3 (1) To remove any doubt, an inquiry is an administrative process.
- 4 (2) At an inquiry—
- 5 (a) the rules of natural justice apply; and
- 6 (b) the laws of evidence do not apply; and
- 7 (c) evidence must not be given on oath or by affidavit; and
- 8 (d) the question whether a detainee has committed a disciplinary
- 9 breach must be decided on the balance of probabilities.

10 **192** **Application of Criminal Code, ch 7**

11 To remove any doubt, an inquiry is not a legal proceeding for the

12 Criminal Code, chapter 7 (Administration of justice offences).

13 *Note* That chapter includes offences (eg perjury, falsifying evidence, failing

14 to attend and refusing to be sworn) applying in relation to an inquiry.

15 **193** **Notice of disciplinary inquiry etc**

- 16 (1) The presiding officer for an inquiry in relation to an accused must
- 17 give the accused written notice of the inquiry.
- 18 (2) The notice must include the following:
- 19 (a) a statement about where and when the inquiry is to start;
- 20 (b) details of the disciplinary charge or disciplinary action to
- 21 which the inquiry relates;
- 22 (c) the closing date for the accused to give the presiding officer
- 23 submissions to the inquiry;

- 1 (d) a statement about the effect of section 191 (Nature of
2 disciplinary inquiries);
- 3 (e) a statement about the effect of subsections (3) and (4);
- 4 (f) a statement to the effect that the presiding officer may hold a
5 hearing for the inquiry in accordance with part 11.3
6 (Disciplinary hearing procedures).

- 7 (3) The accused may make submissions to the presiding officer for the
8 inquiry in any form acceptable to the presiding officer.

9 **Example of acceptable form**

10 an audio recording or a document written for a detainee

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

- 14 (4) The presiding officer must consider any submission given to the
15 presiding officer by the accused before the closing date for
16 submissions stated in the notice of the inquiry given to the accused.

17 **194 Conduct of disciplinary inquiries**

- 18 (1) An inquiry must be conducted with as little formality and
19 technicality, and as quickly as the requirements of this Act and a
20 proper consideration of the charge allow.
- 21 (2) The presiding officer at an inquiry may hold a hearing for the
22 inquiry.
- 23 (3) A hearing for an inquiry must be held in accordance with part 11.3.
- 24 (4) Proceedings at an inquiry are not open to the public, unless the
25 presiding officer decides otherwise in a particular case.
- 26 (5) A decision of the presiding officer at an inquiry is not invalid only
27 because of any informality or lack of form.

- 1 **195 Presiding officer may require official reports**
- 2 (1) For an inquiry, the presiding officer may, by written notice given to
- 3 any of the following, require the person to give the presiding officer
- 4 a written report about the accused:
- 5 (a) the chief executive;
- 6 (b) if the accused has been detained at a NSW correctional
- 7 centre—the commissioner of corrective services under the
- 8 *Crimes (Administration of Sentences) Act 1999* (NSW);
- 9 (c) the director of public prosecutions;
- 10 (d) a corrections officer;
- 11 (e) a public servant.
- 12 (2) The person given the notice must comply with it.
- 13 **196 Presiding officer may require information and documents**
- 14 (1) For an inquiry, the presiding officer may, by written notice given to
- 15 a person, require the person—
- 16 (a) to provide stated information to the presiding officer relevant
- 17 to the inquiry; or
- 18 (b) to produce to the presiding officer a stated document or thing
- 19 relevant to the inquiry.
- 20 (2) This section does not require a person to give information, or
- 21 produce a document or other thing, to the presiding officer if the
- 22 Minister certifies in writing that giving the information, or
- 23 producing the document or other thing—
- 24 (a) may endanger a detainee or anyone else; or

1 (b) is contrary to the public interest.

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

4 **197 Possession of inquiry documents etc**

5 The presiding officer may have possession of a document or other
6 thing produced to the presiding officer for an inquiry for as long as
7 the presiding officer considers necessary for the inquiry.

8 **198 Record of inquiry**

9 The presiding officer for an inquiry must keep a written record of
10 proceedings at the inquiry.

1 **Part 11.3** **Disciplinary hearing procedures**

2 **199** **Notice of disciplinary hearing**

- 3 (1) The presiding officer for an inquiry must give written notice of a
4 hearing for the inquiry to each of the following:
- 5 (a) the accused to whom the inquiry relates;
 - 6 (b) the chief executive.
- 7 (2) The notice must include the following:
- 8 (a) a statement about where and when the hearing is to be held;
 - 9 (b) a statement about the accused's entitlements under section 200
10 and section 201.
- 11 (3) To remove any doubt, the hearing may be held at the correctional
12 centre where the accused is detained.

13 **200** **Appearance at disciplinary hearing**

- 14 (1) The accused is entitled to be present at a hearing for an inquiry in
15 relation to the accused.
- 16 (2) For the hearing, the presiding officer may, by written notice given to
17 the accused or anyone else, require the person to appear before the
18 presiding officer, at a stated time and place, to do either or both of
19 the following:
- 20 (a) answer questions;
 - 21 (b) produce a stated document or other thing relevant to the
22 inquiry.

- 1 (3) A person is taken to have complied with a notice under
2 subsection (2) (b) if the person gives the document or thing to the
3 presiding officer before the time stated in the notice for its
4 production.
- 5 (4) The presiding officer at a hearing for an inquiry may require the
6 accused, or a witness, appearing before the presiding officer to do
7 1 or more of the following:
- 8 (a) answer a question relevant to the inquiry;
9 (b) produce a document or other thing relevant to the inquiry.
- 10 (5) The presiding officer at the hearing may disallow a question put to a
11 person if the presiding member considers the question—
- 12 (a) is unfair, unduly prejudicial or vexatious; or
13 (b) involves an abuse of the inquiry process.
- 14 *Note* The Legislation Act, s 170 and s 171 deal with the application of the
15 privilege against selfincrimination and client legal privilege.
- 16 (6) The presiding officer may allow a corrections officer or anyone else
17 to be present, and to be heard, at a disciplinary hearing.

18 **201 Rights of accused at disciplinary hearing**

- 19 (1) An accused who appears at a hearing for an inquiry in relation to the
20 accused—
- 21 (a) is entitled to be heard, to examine and cross-examine
22 witnesses, and to make submissions for the inquiry; and
- 23 (b) is not entitled to be represented by a lawyer or anyone else,
24 without the presiding officer's consent.
- 25 (2) In deciding whether to grant leave for legal representation, the
26 presiding officer must have regard to the following:
- 27 (a) the seriousness of the disciplinary breach charged;

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- 1 (b) the administrative penalty likely to be imposed for the
2 disciplinary breach charged;
3 (c) the likely procedural complexities;
4 (d) the accused's capacity for selfrepresentation;
5 (e) the need for a fair and prompt resolution of the charge.

6 **Example—par (c)**

7 the extent of cross-examination that might be required

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

- 11 (3) However, the presiding officer may, by written order, exclude the
12 accused from a hearing for the inquiry if the accused—
13 (a) unreasonably interrupts, interferes with or obstructs the
14 hearing; or
15 (b) contravenes a reasonable direction by the presiding officer
16 about the conduct of the hearing.
17 (4) If the accused fails to attend a hearing for the inquiry, the presiding
18 officer may conduct the hearing, and make a decision on the charge,
19 in the accused's absence.

20 **202 Appearance at disciplinary hearing—audiovisual or audio**
21 **link**

- 22 (1) This section applies if, in relation to a hearing for an inquiry, or part
23 of the hearing, the presiding officer has given a direction under
24 either of the following sections of the *Evidence (Miscellaneous*
25 *Provisions) Act 1991*:
26 (a) section 20 (Territory courts may take evidence and
27 submissions from outside ACT);
28 (b) section 32 (Use of link in proceedings).

- 1 (2) A person may appear and take part in the hearing in accordance with
2 the direction, if the person—
- 3 (a) is required or entitled to appear personally, whether as the
4 accused or as a witness; or
- 5 (b) is entitled to appear for someone else.
- 6 (3) A person who appears at the hearing under this section is taken to be
7 before the presiding officer.

1 **Chapter 12 Full-time detainees—leave**

2 **Part 12.1 Local leave**

3 **203 Local leave directions**

- 4 (1) The chief executive may direct that a full-time detainee be taken
5 from a correctional centre to any place in the ACT for any purpose
6 the chief executive considers appropriate.

7 **Example**

8 a direction that a detainee be taken to a place to assist police or a criminal justice
9 entity in relation to the administration of justice

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

13 *Note 2* Power given under an Act to make a statutory instrument (including a
14 direction) includes power to amend or revoke the instrument (see
15 Legislation Act, s 46 (1)).

- 16 (2) The direction is subject to the following conditions:

17 (a) any condition prescribed by regulation;

18 (b) any other condition, consistent with the conditions (if any)
19 prescribed by regulation, that—

20 (i) the chief executive believes, on reasonable grounds, is
21 necessary and reasonable; and

22 (ii) is stated in the permit.

23 **Example of condition stated in direction**

24 a condition that an escort officer escorts the detainee

1 **204 Local leave permits**

2 (1) The chief executive may give a full-time detainee a written permit
3 (a *local leave permit*) to be absent from a correctional centre for any
4 purpose the chief executive considers appropriate.

5 **Examples of purposes**

- 6 1 to attend a health or rehabilitation service
7 2 to take part in work or work-related activities
8 3 for compassionate reasons

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

12 *Note 2* If a form is approved under s 227 for this provision, the form must be
13 used.

14 *Note 3* Power given under an Act to make a statutory instrument (including a
15 direction) includes power to amend or revoke the instrument (see
16 Legislation Act, s 46 (1)).

17 (2) The permit must include the following:

- 18 (a) the purpose for which the leave is granted;
19 (b) the period, not longer than 7 days, for which leave is granted.

20 (3) The permit is subject to the following conditions:

- 21 (a) any condition prescribed by regulation;
22 (b) any other condition, consistent with the conditions (if any)
23 prescribed by regulation, that—
24 (i) the chief executive believes, on reasonable grounds, is
25 necessary and reasonable; and
26 (ii) is stated in the permit.

27 **Example of condition stated in permit**

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

1 **Part 12.2 Interstate leave**

2 **Division 12.2.1 General**

3 **205 Definitions—pt 12.2**

4 In this part:

5 *corresponding chief executive*, of a participating State, means the
6 person responsible for the administration of correctional centres
7 (however described) for full-time detention in the participating
8 State.

9 *corresponding leave law* means a law of a State or another Territory
10 declared to be a corresponding leave law under section 206.

11 *escape*, in relation to an interstate detainee, includes fail to return to
12 lawful custody at the end of the period to which the detainee's
13 interstate leave permit applies.

14 *interstate detainee* means a person to whom an interstate leave
15 permit under a corresponding leave law applies.

16 *participating State* means a State or another Territory where a
17 corresponding leave law is in force.

18 **206 Declaration of corresponding leave laws**

19 (1) The Minister may declare that a law of a State or another Territory
20 is a corresponding leave law.

21 (2) The Minister may make the declaration only if satisfied that the law
22 substantially corresponds to this part.

23 (3) A declaration under this section is a notifiable instrument.

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

1 **Division 12.2.2 ACT permits for interstate leave**

2 **207 Interstate leave permits**

3 (1) The chief executive may, by written notice (an *interstate leave*
4 *permit*) given to a full-time detainee, give the detainee leave to
5 travel to and from, and remain in, a participating State.

6 (2) An interstate leave permit must include the following details:

7 (a) the State or Territory to which the permit applies;

8 (b) the purpose for which the leave is granted;

9 (c) the period, not longer than 7 days, for which leave is granted.

10 *Note 1* If a form is approved under s 227 for this provision, the form must be
11 used.

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

15 (3) An interstate leave permit may be issued—

16 (a) for a full-time detainee with a high security classification—
17 only if the leave is to enable the detainee to receive a health
18 service or for a compassionate reason; or

19 (b) in any other case—for any purpose the chief executive
20 believes, on reasonable grounds, is appropriate.

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

22 (a) any condition prescribed by regulation;

23 (b) any other condition, consistent with the conditions (if any)
24 prescribed by regulation, that—

25 (i) the chief executive believes, on reasonable grounds, is
26 necessary and reasonable; and

1 (ii) is stated in the permit.

2 **Examples of conditions stated in interstate leave permits**

3 1 a condition that an escort officer stated in the permit escort the
4 detainee

5 2 a condition prohibiting association with a particular person or being
6 near a particular place

7 3 a condition that an indigenous detainee travelling interstate to mark the
8 birth or death of a relative be escorted by an indigenous elder or
9 relative

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

13 **208 Effect of ACT permit for interstate leave**

14 (1) An interstate leave permit for a full-time detainee authorises the
15 detainee to be absent from a correctional centre in accordance with
16 the permit—

17 (a) unescorted; or

18 (b) if the permit is subject to a condition that an escort officer must
19 escort the detainee—while under escort by the escort officer.

20 (2) If an interstate leave permit is subject to a condition that the
21 full-time detainee be escorted by an escort officer, the permit
22 authorises the escort officer to escort the detainee in accordance
23 with the permit—

24 (a) to and within the participating State stated in the permit
25 (whether or not through any other jurisdiction); and

26 (b) back to the correctional centre.

1 **209 Notice to participating States**

2 The chief executive must give written notice of an interstate leave
3 permit given to a full-time detainee, and the period of the permit, to
4 each of the following:

- 5 (a) the corresponding chief executive of the participating State to
6 which the permit applies;
- 7 (b) the chief of police (however described) of the participating
8 State to which the permit applies;
- 9 (c) the chief of police (however described) of any other State or
10 Territory through which the detainee may travel under the
11 permit.

12 **210 Powers of escort officers**

13 (1) An escort officer escorting a full-time detainee under an interstate
14 leave permit may, to keep custody of the detainee under the permit
15 or to arrest the detainee if the detainee has escaped—

16 (a) give the detainee any direction that the officer believes, on
17 reasonable grounds, is necessary and reasonable; and

18 (b) use force in accordance with part 9.7 (Use of force).

19 (2) An escort officer escorting a full-time detainee under an interstate
20 leave permit may conduct a scanning search, frisk search or ordinary
21 search of the detainee if the officer suspects, on reasonable grounds,
22 the detainee may be carrying a prohibited thing.

23 (3) Part 9.4 (Searches) and part 9.5 (Seizing property) apply, with any
24 necessary changes and any changes prescribed by regulation, in
25 relation to a search under this section.

1 **211 Liability for damage etc**

- 2 (1) The Territory is liable for any damage or loss sustained by anyone
3 in a participating State that is caused by the conduct of a full-time
4 detainee or an escort officer while in the participating State under an
5 interstate leave permit.
- 6 (2) This section does not affect any right the Territory may have against
7 the detainee or escort officer for the damage or loss.

8 **Division 12.2.3 Interstate leave under corresponding**
9 **leave laws**

10 **212 Effect in ACT of interstate leave permit under**
11 **corresponding leave law**

- 12 (1) This section applies to a person (an *interstate escort officer*) who is
13 authorised under an interstate leave permit issued under a
14 corresponding leave law to escort an interstate detainee to or from,
15 or in, the ACT.
- 16 (2) The interstate escort officer is authorised, in the ACT, to escort the
17 interstate detainee in accordance with the interstate leave permit.

18 **213 Powers of interstate escort officers**

- 19 (1) This section applies if an interstate escort officer uses force, a
20 weapon, or a means of restraint, in the ACT for—
- 21 (a) keeping custody of an interstate detainee under an interstate
22 leave permit; or
- 23 (b) arresting an interstate detainee who has escaped.
- 24 (2) The use of force, weapon or means of restraint is lawful in the ACT
25 if it would have been lawful in the participating State where the
26 interstate permit was issued.

1 **214 Escape of interstate detainee**

- 2 (1) This section applies to an interstate detainee in the ACT under an
3 interstate leave permit issued under a corresponding leave law.
- 4 (2) If the interstate detainee escapes from lawful custody, the detainee
5 may be arrested without warrant by—
- 6 (a) an interstate escort officer for the detainee; or
7 (b) a police officer.
- 8 (3) A police officer who arrests the detainee may return the detainee to
9 an interstate escort officer for the detainee.

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

13 **215 Return of escaped interstate detainee**

- 14 (1) This section applies if, in the ACT, an interstate detainee attempts to
15 escape or is arrested after an escape.
- 16 (2) The interstate detainee may be taken before a magistrate.
- 17 (3) Despite the terms of the interstate detainee's interstate leave permit,
18 the magistrate may by warrant (a *return warrant*)—
- 19 (a) order the return of the detainee to the participating State where
20 the permit was issued; and
- 21 (b) order the interstate detainee to be delivered into the custody of
22 a police officer or interstate escort officer for that purpose.
- 23 (4) If a return warrant is issued for the interstate detainee, the detainee
24 may be kept in detention until the earlier of the following events:
- 25 (a) the detainee is delivered into the custody of a police officer or
26 interstate escort officer in accordance with the warrant;
- 27 (b) the end of 14 days after the day the warrant was issued.

Chapter 12 Full-time detainees—leave
Part 12.2 Interstate leave
Division 12.2.3 Interstate leave under corresponding leave laws

Section 215

- 1 (5) The return warrant ends if the interstate detainee is not delivered
2 into the custody of a police officer or interstate escort officer, in
3 accordance with the warrant, before the end of 14 days after the day
4 the warrant is issued.

1 Chapter 13 Miscellaneous

2 216 Lawful temporary absence from correctional centre

3 (1) This section applies to a detainee who is absent from a correctional
4 centre under any of the following:

5 (a) a direction by the chief executive, including a direction
6 under—

7 (i) section 53 (Transfers to health facilities);

8 (ii) section 203 (Local leave directions);

9 (b) a local leave permit;

10 (c) an interstate leave permit;

11 (d) any other authority (however described) prescribed by
12 regulation.

13 (2) To remove any doubt, the detainee is—

14 (a) taken to be in the chief executive's custody; and

15 (b) if under escort by an escort officer—also taken to be in the
16 escort officer's custody.

17 217 Detainee's work—no employment contract etc

18 (1) To remove any doubt, any work by a detainee under this Act,
19 whether at a correctional centre or elsewhere, is taken not to create a
20 contract of employment or a contract for services.

21 (2) In particular, a contract of employment is taken not to exist between
22 the following in relation to work by a detainee:

23 (a) the detainee and the Territory;

- 1 (b) the detainee and a person involved in the work;
2 (c) the Territory and a person involved in the work.

3 **218 Detainee’s work—occupational health and safety**

- 4 (1) The chief executive must ensure, as far as practicable, that the
5 conditions in relation to work by a detainee, whether at a
6 correctional centre or elsewhere, comply with requirements under
7 the *Occupational Health and Safety Act 1989* in relation to work by
8 employees.
- 9 (2) In particular, the chief executive must ensure that arrangements in
10 relation to a detainee’s work take account, as far as practicable, of
11 the need—
- 12 (a) to secure the health, safety and welfare of the detainee; and
13 (b) to protect people at or near the workplace from risks to health
14 or safety arising out of the activities of the detainee.
- 15 (3) A regulation may provide for the application of the *Occupational*
16 *Health and Safety Act 1989* in relation to work by a detainee,
17 including for changes to that Act in its application in relation to the
18 work.

19 **219 Personal injury management—detainees etc**

- 20 (1) This section applies if—
- 21 (a) a detainee suffers injury that arises out of, or in the course of,
22 the detainee’s detention; or
- 23 (b) an offender, who is directed to do community service work
24 under the *Crimes (Sentence Administration) Act 2005*,
25 section 91, suffers injury that arises out of, or in the course of,
26 the work.

- 1 (2) A regulation may make provision in relation to the injury, including
2 provision in relation to the following:
- 3 (a) injury management;
- 4 (b) vocational rehabilitation;
- 5 (c) compensation for a permanent injury;
- 6 (d) death benefits.
- 7 (3) In this section:
- 8 *injury* includes—
- 9 (a) disease; and
- 10 (b) aggravation, acceleration and recurrence of an injury or
11 disease.

12 **220 Random testing of detainees—statistical purposes**

- 13 (1) The chief executive may direct a number of randomly selected
14 detainees at a correctional centre to provide test samples for
15 detecting alcohol or drug abuse.
- 16 (2) The chief executive must ensure that—
- 17 (a) no record is made that identifies the donor of a test sample; and
- 18 (b) the results of any tests conducted on the test samples are used
19 only for statistical purposes.
- 20 (3) In this section:
- 21 *random selection* means selection by a computer programmed to
22 select names randomly from the register of detainees.

1 **221 Confidentiality**

2 (1) In this section:

3 *corresponding corrections law* means a law of a State or another
4 Territory declared to be a corresponding corrections law under
5 section 224.

6 *court* includes a tribunal.

7 *Note* A *tribunal* includes any entity authorised to hear, receive and examine
8 evidence (see Legislation Act, dict, pt 1).

9 *divulge* includes communicate.

10 *person to whom this section applies* means a person who—

11 (a) exercises, or has exercised, a function under this Act; or

12 (b) is, or has been, otherwise involved in the administration of this
13 Act.

14 *produce* includes allow access to.

15 *protected information* means information about a person that is
16 disclosed to, or obtained by, a person to whom this section applies
17 because of—

18 (a) the exercise of a function under this Act by the person or
19 someone else; or

20 (b) the involvement of the person, or someone else, in the
21 administration of this Act.

22 (2) A person to whom this section applies commits an offence—

23 (a) if the person—

24 (i) makes a record of protected information about someone
25 else; and

26 (ii) is reckless about whether the information is protected
27 information about someone else; or

- 1 (b) if the person does something that divulges protected
2 information about someone else and is reckless about
3 whether—
- 4 (i) the information is protected information about someone
5 else; and
- 6 (ii) doing the thing would result in the information being
7 divulged to someone else.
- 8 Maximum penalty: 50 penalty units, imprisonment for 6 months or
9 both.
- 10 (3) Subsection (2) does not apply if the record is made, or the
11 information is divulged, by the person as follows:
- 12 (a) under this Act or another territory law;
- 13 (b) in relation to the exercise of a function under this Act or
14 another territory law;
- 15 (c) for the *Crimes (Sentencing) Act 2005*, section 136 (Information
16 exchanges between criminal justice entities);
- 17 (d) to a person exercising a function under, or otherwise involved
18 in the administration of, a corresponding corrections law;
- 19 (e) to a law enforcement agency;
- 20 *Note* **Law enforcement agency** is defined in the dictionary.
- 21 (f) to an entity prescribed by regulation;
- 22 (g) otherwise in relation to the administration of this Act or
23 another territory law.
- 24 (4) Subsection (2) does not apply to the divulging of protected
25 information about someone—
- 26 (a) with the person's consent; or
- 27 (b) if authorised by the chief executive under subsection (5); or

- 1 (c) if the information only tells someone of the place where a
2 detainee is held in detention; or
- 3 (d) if the information is disclosed under a regulation.
- 4 (5) The chief executive may, in writing, authorise the divulging of
5 protected information about a person if the chief executive believes,
6 on reasonable grounds, that divulging the information is—
- 7 (a) necessary to protect someone whose life or safety is in danger;
8 or
- 9 (b) otherwise in the public interest.

10 **222 Protection from liability**

- 11 (1) This section applies to a person who—
- 12 (a) exercises, or has exercised, a function under this Act; or
- 13 (b) is, or has been, otherwise involved in the administration of this
14 Act.
- 15 (2) The person does not incur civil liability for an act or omission done
16 honestly and without recklessness for this Act.
- 17 *Note* A reference to an Act includes a reference to the statutory instruments
18 made or in force under the Act, including regulations and the
19 corrections rules (see Legislation Act, s 104).
- 20 (3) Any civil liability that would, apart from this section, attach to the
21 person attaches instead to the Territory.

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- 1 **223 Corrections dogs**
- 2 A regulation may make provision in relation to the use of
- 3 corrections dogs.
- 4 **Examples of provision made by regulation**
- 5 1 the training and approval of dogs for exercising functions under this Act
- 6 2 approvals for corrections officers to use corrections dogs
- 7 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 8 does not limit, the meaning of the provision in which it appears (see
- 9 Legislation Act, s 126 and s 132).
- 10 **224 Declaration of corresponding corrections law**
- 11 (1) The Minister may declare that a law of a State or another Territory
- 12 is a corresponding corrections law.
- 13 (2) The Minister may make the declaration only if satisfied that the law
- 14 substantially corresponds to this Act or a part of this Act.
- 15 (3) A declaration is a notifiable instrument.
- 16 *Note* A notifiable instrument must be notified under the Legislation Act.
- 17 **225 Evidentiary certificates**
- 18 (1) A certificate that appears to be signed by or for the chief executive,
- 19 and states any matter relevant to anything done or not done under
- 20 this Act in relation to a detainee, is evidence of the matter.
- 21 (2) Without limiting subsection (1), a certificate under subsection (1)
- 22 may state any of the following:
- 23 (a) that a stated person did, or did not, occupy a position under this
- 24 Act;
- 25 (b) that a stated person was, or was not, a detainee;
- 26 (c) that a stated instrument under this Act was, or was not, in
- 27 force;

- 1 (d) that a stated disciplinary breach by a stated detainee was, or
2 was not, admitted by the detainee or found proven at an inquiry
3 for chapter 10 (Discipline);
- 4 (e) that a stated instrument is a copy of an instrument made, given,
5 issued or received under this Act.
- 6 (3) A certificate that appears to be signed by or for the chief executive,
7 and states any matter prescribed by regulation for this section, is
8 evidence of the stated matter.
- 9 (4) A certificate mentioned in subsection (1) or (2) may state a matter
10 by reference to a date or period.
- 11 (5) A certificate of the results of the analysis of a substance under this
12 Act, signed by an analyst appointed under subsection (8), is
13 evidence of the facts stated in the certificate.
- 14 (6) A court must accept a certificate or other document mentioned in
15 this section as proof of the matters stated in it if there is no evidence
16 to the contrary.
- 17 (7) However, an instrument mentioned in subsection (2) (c), or
18 certificate mentioned in subsection (5), must not be admitted in
19 evidence by a court unless the court is satisfied that reasonable
20 efforts have been made to serve a copy of the instrument or
21 certificate on the person concerned.
- 22 (8) The chief executive may appoint analysts for this Act.
- 23 *Note 1* For the making of appointments (including acting appointments), see
24 the Legislation Act, pt 19.3.
- 25 *Note 2* In particular, a person may be appointed for a particular provision of a
26 law (see Legislation Act, s 7 (3)) and an appointment may be made by
27 naming a person or nominating the occupant of a position (see s 207).
- 28 (9) An appointment under subsection (8) is a notifiable instrument.
- 29 *Note* A notifiable instrument must be notified under the Legislation Act.

1 **226 Determination of fees**

2 (1) The Minister may determine fees for this Act.

3 *Note* The Legislation Act contains provisions about the making of
4 determinations and regulations relating to fees (see pt 6.3).

5 (2) A determination is a disallowable instrument.

6 *Note* A disallowable instrument must be notified, and presented to the
7 Legislative Assembly, under the Legislation Act.

8 **227 Approved forms**

9 (1) The Minister may approve forms for this Act (other than forms for
10 use in or in relation to a court).

11 (2) If the Minister approves a form for a particular purpose, the
12 approved form must be used for that purpose.

13 *Note* For other provisions about forms, see the Legislation Act, s 255.

14 (3) An approved form is a notifiable instrument.

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

16 **228 Regulation-making power**

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

18 (2) In particular, a regulation may deal with any of the following:

19 (a) the administration of correctional centres;

20 (b) the detention of people in police and court cells;

21 (c) the escorting of detainees;

22 (d) living conditions at correctional centres, including the
23 treatment of detainees;

24 (e) the inspection of correctional centres and investigation of
25 complaints by detainees;

- 1 (f) the admission of detainees to correctional centres;
- 2 (g) the management and security of correctional centres,
3 particularly in relation to any of the following:
- 4 (i) the assessment of risks and measures to contain risks;
- 5 (ii) the classification and management of detainees;
- 6 (iii) work or activities by detainees;
- 7 (iv) correctional centre routine;
- 8 (v) detainees' money or property;
- 9 (vi) communications by detainees with other people, whether
10 by phone or mail or any other means;
- 11 (vii) the movement or segregation of detainees;
- 12 (viii) requirements for the wearing of uniforms by detainees;
- 13 (ix) searches of people or property and the seizure of property;
- 14 (x) alcohol or drug testing;
- 15 (xi) the use of force;
- 16 (xii) the analysis of things seized under this Act;
- 17 (xiii) access to correctional centres;
- 18 (xiv) good order and discipline;
- 19 (xv) release procedures;
- 20 (h) leave for detainees to be absent from correctional centres.
- 21 (3) For chapter 10 (Discipline), a detainee's entitlements in relation to
22 chapter 6 (Living conditions at correctional centres) include
23 anything expressed to be an entitlement in a regulation made for a
24 provision of chapter 6.

- 1 (4) A regulation is taken to be consistent with this Act to the extent that
2 it is capable of operating concurrently with this Act.
- 3 (5) A regulation may apply, adopt or incorporate a law of another
4 jurisdiction or an instrument, or a provision of a law of another
5 jurisdiction or instrument, as in force from time to time.
- 6 *Note 1* The text of an applied, adopted or incorporated law or instrument,
7 whether applied as in force from time to time or at a particular time, is
8 taken to be a notifiable instrument if the operation of the Legislation
9 Act, s 47 (5) or (6) is not disappplied (see s 47 (7)).
- 10 *Note 2* A notifiable instrument must be notified under the Legislation Act.
- 11 (6) A regulation may create offences and fix maximum penalties of not
12 more than 20 penalty units for the offences.
- 13 *Note* Regulations must be notified, and presented to the Legislative
14 Assembly, under the Legislation Act.

15 **229 Legislation amended—sch 1**

16 This Act amends the legislation mentioned in schedule 1.

1 **Chapter 50 Transitional**

2 **500 Meaning of *commencement day*—ch 50**

3 In this chapter:

4 *commencement day* means the day this chapter commences.

5 **501 Application of Act to transitional detainees**

6 (1) To remove any doubt, this Act applies to a person who is a detainee
7 because of any of the following provisions of the *Crimes (Sentence*
8 *Administration) Act 2005*:

9 (a) section 330 (Full-time imprisonment—sentenced offenders);

10 (b) section 331 (Full-time imprisonment—remandees);

11 (c) section 331A (Full-time imprisonment—other detainees).

12 (2) When this section expires, the following note also expires:

- 13 • section 6, note 2.

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

16 (4) This section expires on the expiry of the *Crimes (Sentence*
17 *Administration) Act 2005*, chapter 16 (Transitional—general).

18 **502 Application of Act to transitional interstate leave permits**

19 (1) A permit in force immediately before the commencement day under
20 the Prisoners Interstate Leave Act, section 6 (Grants of interstate
21 leave of absence permits) is taken, on and after the commencement
22 day, to be an interstate leave permit under this Act.

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

- 1 (3) This section expires on the expiry of the *Crimes (Sentence*
2 *Administration) Act 2005*, chapter 16 (Transitional—general).
- 3 (4) In this section:
- 4 *Prisoners Interstate Leave Act* means the *Prisoners Interstate*
5 *Leave Act 1997* (repealed) as applied by the *Crimes (Sentence*
6 *Administration) Act 2005*, section 605 (Old custody law continues).
- 7 **503 Application of Act to certain transitional remandees**
- 8 (1) The removal of a detainee from a remand centre under the Remand
9 Centres Act, section 14 (Removal of detainee to hospital) before the
10 commencement day is, for any period for which the detainee
11 remains removed from the remand centre on or after the
12 commencement day, taken to be a transfer directed under this Act,
13 section 53 (5) (Transfers to health facilities).
- 14 (2) A pending complaint under the Remand Centres Act, section 25
15 (Complaints by detainees) is taken, on and after the commencement
16 day, to be a complaint made under this Act, section 58 (Complaints
17 to official visitors).
- 18 (3) For subsection (2), a complaint is *pending* if an official visitor has
19 not, before the commencement day, completed an inquiry and made
20 any recommendation or report in relation to the complaint under the
21 Remand Centres Act, section 25.
- 22 (4) A release in force immediately before the commencement day under
23 the Remand Centres Act, section 28 (Temporary release of detainees
24 within ACT) is taken, for any period of the release on or after the
25 commencement day, to be a local leave permit under this Act.
- 26 (5) This section is a law to which the Legislation Act, section 88
27 (Repeal does not end effect of transitional laws etc) applies.
- 28 (6) This section expires 2 years after the commencement day.

- 1 (7) In this section:
2 *Remand Centres Act* means the *Remand Centres Act 1976*
3 (repealed) as applied by the *Crimes (Sentence Administration)*
4 *Act 2005*, section 605 (Old custody law continues).

5 **504 Transitional arrangements with NSW—Rehabilitation of**
6 **Offenders (Interim) Act, s 94**

- 7 (1) This section applies to an arrangement in force immediately before
8 the commencement day under the Rehabilitation of Offenders
9 (Interim) Act, section 94 (Chief Minister may make arrangements
10 with NSW).
- 11 (2) The arrangement is taken, on and after the commencement day, to
12 be an arrangement under this Act, section 25 (Correctional
13 centres—arrangements with NSW).
- 14 (3) This section is a law to which the Legislation Act, section 88
15 (Repeal does not end effect of transitional laws etc) applies.
- 16 (4) This section expires 2 years after the commencement day.
- 17 (5) In this section:
18 *Rehabilitation of Offenders (Interim) Act* means the *Rehabilitation*
19 *of Offenders (Interim) Act 2001* (repealed) as applied by the *Crimes*
20 *(Sentence Administration) Act 2005*, section 605 (Old custody law
21 continues).

22 **505 Construction of outdated references**

- 23 (1) In any Act, instrument made under an Act or a document, a
24 reference to an earlier law is, in relation to anything to which this
25 Act applies, a reference to this Act.

- 1 (2) In any Act, instrument made under an Act or a document, a
2 reference to a provision of an earlier law is, in relation to anything
3 to which this Act applies, a reference to the corresponding provision
4 of this Act.
- 5 (3) In any Act, instrument made under an Act or a document, a
6 reference to anything that is no longer applicable because of the
7 repeal or amendment of an earlier law by the *Sentencing Legislation*
8 *Amendment Act 2006*, and for which there is a corresponding thing
9 under this Act, is taken to be a reference to the corresponding thing
10 under this Act, if the context allows and if otherwise appropriate.
- 11 (4) This section is a law to which the Legislation Act, section 88
12 (Repeal does not end effect of transitional laws etc) applies.
- 13 (5) This section expires 10 years after the commencement day.
- 14 (6) In this section:
- 15 ***earlier law*** means any of the following:
- 16 (a) *Community Based Sentences (Transfer) Act 2003* (repealed);
- 17 (b) *Crimes Act 1900*;
- 18 (c) *Custodial Escorts Act 1998* (repealed);
- 19 (d) *Magistrates Court Act 1930*;
- 20 (e) *Parole Orders (Transfer) Act 1983* (repealed);
- 21 (f) *Periodic Detention Act 1995* (repealed);
- 22 (g) *Prisoners (International Transfer) Act 1999* (repealed);
- 23 (h) *Prisoners Interstate Leave Act 1997* (repealed);
- 24 (i) *Prisoners (Interstate Transfer) Act 1993* (repealed);
- 25 (j) *Rehabilitation of Offenders (Interim) Act 2001* (repealed);
- 26 (k) *Remand Centres Act 1976* (repealed);

- 1 (l) *Removal of Prisoners Act 1968* (repealed);
2 (m) *Supervision of Offenders (Community Service Orders)*
3 *Act 1985* (repealed).

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

7 **506 Crimes (Sentence Administration) Act 2005, ch 17**
8 **(Transitional—interim custody arrangements)—definition**
9 **of Corrections Management Act 2006**

- 10 (1) This section applies to the *Crimes (Sentence Administration)*
11 *Act 2005*, section 603 (Definitions—ch 17), definition of
12 *Corrections Management Act 2006*, (the *interim definition*).
13 (2) The interim definition applies to this Act.
14 (3) This section is a law to which the Legislation Act, section 88
15 (Repeal does not end effect of transitional laws etc) applies.
16 (4) This section expires 1 year after the commencement day.

17 **507 Transitional regulations**

- 18 (1) A regulation may prescribe transitional matters necessary or
19 convenient to be prescribed because of the enactment of this Act,
20 the *Crimes (Sentencing) Act 2005*, the *Sentencing Legislation*
21 *Amendment Act 2006* or the *Crimes (Sentence Administration)*
22 *Act 2005*.
23 (2) A regulation may modify this chapter (including its operation in
24 relation to another territory law) to make provision in relation to
25 anything that, in the Executive's opinion, is not, or is not adequately
26 or appropriately, dealt with in this chapter.
27 (3) A regulation under subsection (2) has effect despite anything else in
28 this Act or another territory law.

- 1 (4) This section is a law to which the Legislation Act, section 88
2 (Repeal does not end effect of transitional laws etc) applies.
- 3 (5) This section expires 2 years after the commencement day.

1 **Schedule 1 Amendments of other**
2 **legislation**

3 **Part 1.1 Crimes Act 1900**

4 **[1.1] Dictionary, definition of *corrections officer***

5 *omit*

6 **Part 1.2 Crimes (Sentencing) Act 2005**

7 **[1.2] Sections 41 and 42**

8 *substitute*

9 **40A Pre-sentence report matters**

10 For this part, each of the following is a *pre-sentence report matter*
11 in relation to the offender:

- 12 (a) the offender's age;
- 13 (b) the offender's social history and background (including
14 cultural background);
- 15 (c) the offender's medical and psychiatric history;
- 16 (d) the offender's educational background;
- 17 (e) the offender's employment history;
- 18 (f) the extent to which the offender is complying, or has complied,
19 with any sentence;
- 20 (g) the offender's financial circumstances;
- 21 (h) any special needs of the offender;

- 1 (i) any courses, programs, treatment, therapy or other assistance
2 that is available to the offender and from which the offender
3 may benefit;
- 4 (j) any risk assessments made of the likelihood that the offender
5 will commit further offences or of things (including
6 circumstances) that may make the offender more likely to
7 commit further offences;
- 8 (k) the opinion of the assessor preparing a pre-sentence report for
9 the offender in relation to an offence, and the basis for the
10 opinion, about the following:
- 11 (i) the offender's attitude to the offence;
- 12 (ii) the need to protect victims of the offence from violence
13 or harassment by the offender;
- 14 (iii) anything that may make the offender more likely to
15 commit further offences;
- 16 **Examples—par (iii)**
- 17 1 dependence on alcohol or a controlled drug
- 18 2 a gambling addiction
- 19 3 association with particular people
- 20 *Note* An example is part of the Act, is not exhaustive and may
21 extend, but does not limit, the meaning of the provision in
22 which it appears (see Legislation Act, s 126 and s 132).
- 23 (iv) the likelihood that the offender may commit further
24 offences;
- 25 (v) whether it would be appropriate to refer the offender for
26 restorative justice under the *Crimes (Restorative Justice)*
27 *Act 2004*.

- 1 **41 Pre-sentence reports—order**
- 2 (1) Before sentencing the offender, a court may—
- 3 (a) order the chief executive to prepare a report (a *pre-sentence*
- 4 *report*) for the offender; and
- 5 (b) adjourn the proceeding for the report to be prepared.
- 6 *Note* If a form is approved under the *Court Procedures Act 2004* for an order
- 7 under this section, the form must be used (see that Act, s 8 (2)).
- 8 (2) However, the court must order the chief executive to prepare a
- 9 pre-sentence report before sentencing the offender to serve all or
- 10 any part of a sentence by—
- 11 (a) periodic detention; or
- 12 (b) community service work under a good behaviour order; or
- 13 (c) undertaking a rehabilitation program under a good behaviour
- 14 order.
- 15 (3) The court order for the preparation of a pre-sentence report may
- 16 state 1 or more pre-sentence report matters, or any other matter, that
- 17 the report must address.
- 18 (4) Subsection (2) (c) does not apply if relevant sentencing information,
- 19 under section 97 (Rehabilitation programs—suitability), is already
- 20 before the court.
- 21 (5) The chief executive must arrange for an assessor to prepare a
- 22 pre-sentence report ordered by the court.
- 23 (6) In this part:
- 24 *assessor* means a public servant whose functions include preparing
- 25 pre-sentence reports.

42 Pre-sentence reports by assessors

- 1
- 2 (1) A pre-sentence report must address—
- 3 (a) each pre-sentence report matter, or any other matter, stated in
- 4 the court order for the report; and
- 5 (b) any other pre-sentence report matter, or any other matter, that,
- 6 on investigation, appears to the assessor to be relevant.
- 7 (2) If a court order directs that a pre-sentence report deal with an
- 8 offender's suitability for a deferred sentence, the report must also—
- 9 (a) address the matters mentioned in section 116 (1) (Deferred
- 10 sentence orders—eligibility); and
- 11 (b) include the assessor's recommendation about—
- 12 (i) the offender's suitability for a deferred sentence; and
- 13 (ii) any condition that might be included in a deferred
- 14 sentence order.
- 15 (3) If a court order directs that a pre-sentence report deal with an
- 16 offender's suitability for serving all or any part of a sentence by
- 17 periodic detention, the report must also—
- 18 (a) address the matters mentioned in section 79 (Periodic
- 19 detention—pre-sentence report matters); and
- 20 (b) include the assessor's recommendation about—
- 21 (i) the offender's suitability for serving all or any part of a
- 22 sentence by periodic detention; and
- 23 (ii) any condition that might be appropriate for the offender's
- 24 periodic detention.

- 1 (4) If a court order directs that a pre-sentence report deal with an
2 offender's suitability for serving all, or any part, of a sentence by
3 community service work under a good behaviour order, the report
4 must also—
- 5 (a) address the matters mentioned in section 90 (Community
6 service—pre-sentence report matters); and
- 7 (b) include the assessor's recommendation about—
- 8 (i) the offender's suitability for serving all or any part of a
9 sentence by community service work under a good
10 behaviour order; and
- 11 (ii) any condition that might be appropriate for a community
12 service condition.
- 13 (5) If a court order directs that a pre-sentence report deal with an
14 offender's suitability for serving all, or any part, of a sentence by
15 undertaking a rehabilitation program under a good behaviour order,
16 the report must also—
- 17 (a) address the matters mentioned in section 98 (Rehabilitation
18 programs—pre-sentence report matters); and
- 19 (b) include the assessor's recommendation about—
- 20 (i) the offender's suitability for serving all or any part of a
21 sentence by undertaking a rehabilitation program under a
22 good behaviour order; and
- 23 (ii) any condition that might be appropriate for a
24 rehabilitation program condition.

1 **[1.3] Section 43 (5) (b)**

2 *omit*

3 section 41 (2) (c)

4 *substitute*

5 section 41 (2)

6 **[1.4] Section 79**

7 *omit*

8 section 42 (3) (c) (ii) (Pre-sentence reports—contents)

9 *substitute*

10 section 42 (3) (Pre-sentence reports by assessors)

11 **[1.5] Section 90**

12 *omit*

13 section 42 (3) (c) (iii) (Pre-sentence reports—contents)

14 *substitute*

15 section 42 (4) (Pre-sentence reports by assessors)

16 **[1.6] Section 98**

17 *omit*

18 section 42 (3) (c) (iv) (Pre-sentence reports—contents)

19 *substitute*

20 section 42 (5) (Pre-sentence reports by assessors)

1 **[1.7] Section 134 (5) (b)**

2 *omit*

3 subsection (3)

4 *substitute*

5 subsection (4)

6 **[1.8] Dictionary, definition of *assessor***

7 *omit*

8 section 41 (5)

9 *substitute*

10 section 41 (6)

11 **[1.9] Dictionary, new definition of *pre-sentence report matter***

12 *insert*

13 *pre-sentence report matter*, for part 4.2 (Pre-sentence reports)—see
14 section 40A.

15 **[1.10] Dictionary, definition of *pre-sentence report order***

16 *omit*

17 **Part 1.3 Crimes (Sentence
18 Administration) Act 2005**

19 **[1.11] Section 9 (4)**

20 *substitute*

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

1 **[1.12] Section 10 (2)**

2 *substitute*

- 3 (2) A reference in this section to a court sentencing an offender to
4 imprisonment includes an entity prescribed by regulation.

5 **[1.13] Section 36 (2) (a)**

6 *omit*

7 detention at a correctional centre

8 *substitute*

9 detention at a NSW correctional centre

10 **[1.14] Section 36 (3) (b)**

11 *substitute*

12 (b) the following provisions of the *Corrections Management*
13 *Act 2006* apply in relation to the detainee:

- 14 (i) section 93 (Segregated detainees removed to NSW);
15 (ii) a provision prescribed by regulation.

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

18 **[1.15] New section 61 (2) (e)**

19 *insert*

20 (e) section 75 (Board powers—management of periodic
21 detention).

22 **[1.16] Section 75 (1) (c) and (d)**

23 *substitute*

24 (c) change the offender's periodic detention obligations by
25 imposing an additional condition on, or amending a condition
26 of, the offender's periodic detention;

- 1 (d) give the offender approval not to perform periodic detention
2 for up to 8 detention periods if satisfied that is appropriate
3 having regard to the offender's health or any exceptional
4 circumstances;
- 5 (e) if subsection (3) applies—cancel the offender's periodic
6 detention;
- 7 (f) if subsection (3A) applies—refer the offender to the offender's
8 sentencing court to be dealt with under section 82A
9 (Re-sentencing offender etc—referral to court).

10 **[1.17] Section 75 (3)**

11 *substitute*

- 12 (2A) For each detention period for which an offender has the board's
13 approval not to perform periodic detention, the periodic detention
14 period of the offender's sentence of imprisonment, and the term of
15 the sentence, are automatically extended by 1 week.
- 16 (3) This subsection applies if the board decides any of the following:
- 17 (a) that the periodic detention should be cancelled on the
18 offender's application;
- 19 (b) that periodic detention is, or would be, no longer suitable for
20 the offender.

21 **Examples of unsuitability—par (b)**

22 the indicators set out in table 79, the offender's health or exceptional
23 circumstances

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

1 (3A) This subsection applies if the board decides that the offender is, for
2 any reason, unlikely to be able to serve the remainder of the
3 offender's periodic detention period by periodic detention, having
4 regard particularly to—

5 (a) the offender's health; and

6 (b) any exceptional circumstances affecting the offender.

7 **[1.18] New section 82A**

8 *in division 5.4.4, insert*

9 **82A Re-sentencing offender etc—referral to court**

10 (1) This section applies if the board refers an offender to the sentencing
11 court under section 75 (Board powers—management of periodic
12 detention).

13 (2) The court may—

14 (a) if satisfied that the offender should serve the remainder of the
15 offender's sentence in accordance with section 79 (4) (Periodic
16 detention—effect of suspension or cancellation etc); or

17 (b) re-sentence the offender for the offence (the *relevant offence*)
18 for which the offender was ordered to serve periodic detention.

19 (3) The *Crimes (Sentencing) Act 2005* applies to the re-sentencing in
20 the same way that it applies to the sentencing of an offender on a
21 conviction for the relevant offence.

1 **[1.19] New sections 607A and 607B**

2 *insert*

3 **607A Reference to full-time detention in NSW**

4 (1) To remove any doubt, section 36 (2) (a) operates in relation to the
5 interim custody period as if the reference to full-time detention at a
6 correctional centre were a reference to full-time detention at a NSW
7 correctional centre.

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

10 **607B References in territory laws to Corrections Management
11 Act 2006 etc in relation to interim custody period**

12 (1) A reference in a territory law to the *Corrections Management
13 Act 2006* is, in relation to the interim custody period, taken to be a
14 reference to that Act as defined in this Act, section 603.

15 (2) A reference in a territory law to any of the following things is, in
16 relation to the interim custody period, taken to be a reference to the
17 thing that would be the corresponding thing under this Act,
18 section 604 (Application of new sentencing law—interim custody
19 period):

20 (a) a correctional centre;

21 (b) a corrections officer;

22 (c) an escort officer;

23 (d) frisk search;

24 (e) positive, in relation to a test sample;

25 (f) test sample.

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

1 **[1.20] Section 612**

2 *substitute*

3 **612 Expiry—ch 17**

4 This section expires 1 year after the commencement of the
5 *Corrections Management Act 2006*, section 506 (which relates to
6 the meaning of the *Corrections Management Act 2006* in the interim
7 custody period).

8 **[1.21] Dictionary, definitions of *correctional centre* and
9 *corrections officer***

10 *substitute*

11 *correctional centre*—see the *Corrections Management Act 2006*,
12 dictionary.

13 *corrections officer*—see the *Corrections Management Act 2006*,
14 dictionary.

15 **[1.22] Dictionary, definition of *drug***

16 *substitute*

17 *drug*—see the *Corrections Management Act 2006*, section 131.

18 **[1.23] Dictionary, definition of *escort officer***

19 *substitute*

20 *escort officer*—see the *Corrections Management Act 2006*,
21 dictionary.

1 **Part 1.4 Evidence (Miscellaneous**
2 **Provisions) Act 1991**

3 **[1.24] Section 16, definition of *territory court*, paragraph (g)**

4 *omit*

5 chapter 10 (Conduct of disciplinary inquires)

6 *substitute*

7 chapter 11 (Disciplinary inquiries)

8 **Part 1.5 Listening Devices Act 1992**

9 **[1.25] New section 3B**

10 *in part 1, insert*

11 **3B Application of Act to corrections management**

12 (1) This section applies in relation to an electronic communication,
13 other than a protected electronic communication, between a detainee
14 in a correctional centre and someone else.

15 (2) This Act does not apply to any of the following under the
16 *Corrections Management Act 2006*:

17 (a) the listening to or recording of the communication;

18 (b) the communication or publication of the communication.

19 (3) In this section:

20 *detainee*—see the *Corrections Management Act 2006*, section 6.

21 *electronic communication*—see the *Corrections Management*
22 *Act 2006*, section 102 (Monitoring telephone calls etc).

23 *protected electronic communication*—see the *Corrections*
24 *Management Act 2006*, section 102 (Monitoring telephone calls etc).

1 **Part 1.6** **Magistrates Court Act 1930**

2 **[1.26] Section 154D (1)**

3 *omit*

4 registrar

5 *substitute*

6 court

7 **[1.27] Section 158 (a)**

8 *omit*

9 detained under the warrant

10 *substitute*

11 so imprisoned

12 **Part 1.7** **Security Industry Regulation**
13 **2003**

14 **[1.28] Section 6 (3), definition of *custodial officer*, paragraph (a)**

15 *substitute*

16 (a) a corrections officer; or

1 Dictionary

2 (see s 3)

3 *Note 1* The Legislation Act contains definitions and other provisions relevant to
4 this Act.

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

- 6 • chief executive (see s 163)
- 7 • chief police officer
- 8 • doctor
- 9 • domestic partner (see s 169 (1))
- 10 • Governor
- 11 • human rights commissioner
- 12 • in relation to
- 13 • intersex person (see s 169B)
- 14 • judge
- 15 • Legislative Assembly
- 16 • magistrate
- 17 • NSW correctional centre
- 18 • nurse
- 19 • ombudsman
- 20 • police officer
- 21 • public advocate
- 22 • public employee
- 23 • public servant
- 24 • quarter
- 25 • sentence administration board
- 26 • transgender person (see s 169A (1) and (2))
- 27 • tribunal.

1 **accredited person**, in relation to a detainee, means each of the
2 following:

- 3 (a) if the detainee is a sentenced offender—anyone involved in
4 relation to the administration of the sentence;
- 5 (b) a lawyer representing the detainee;
- 6 (c) an official visitor;
- 7 (d) the human rights commissioner;
- 8 (e) the public advocate;
- 9 (f) the ombudsman;
- 10 (g) a person prescribed by regulation.

11 *Note* Territory laws apply to a delegate of a person in the exercise of a
12 delegation as if the delegate were the person who appointed the delegate
13 (see legislation Act, s 239 (2)).

14 **accused**—see section 150.

15 **activity**—see the *Crimes (Sentence Administration) Act 2005*,
16 dictionary.

17 **adjudicator** means a person who is appointed as an adjudicator
18 under section 176.

19 **administrative penalty**—see section 150.

20 **administrator**, in relation to a disciplinary breach—see section 150.

21 **admission**, of a detainee to a correctional centre—see section 62.

22 **body search**, of a detainee—see section 106.

23 **case management plan**, for a detainee, means the detainee's case
24 management plan maintained under section 77.

25 **charge**—see section 150.

26 **charge notice**—see section 150.

27 **conduct** means an act or omission.

- 1 **correctional centre** means a place declared to be a correctional
2 centre under section 24.
- 3 **corrections dog** means a dog approved under the regulations to
4 exercise functions as a corrections dog under this Act.
- 5 **corrections officer** means a person who is appointed as a
6 corrections officer under section 19.
- 7 **corrections policy** means a corrections policy under section 14.
- 8 **corresponding chief executive**, for part 12.2 (Interstate leave)—see
9 section 205.
- 10 **corresponding corrections law**—see section 224.
- 11 **corresponding leave law**, for part 12.2 (Interstate leave)—see
12 section 205.
- 13 **court cell**, for chapter 4 (Detention in police and court cells etc)—
14 see section 29.
- 15 **detainee**—see section 6.
- 16 **detention period**, for an offender’s periodic detention—see the
17 *Crimes (Sentence Administration) Act 2005*, section 41.
- 18 **disciplinary action**—see section 150.
- 19 **disciplinary breach**—see section 150.
- 20 **disciplinary charge**—see section 150.
- 21 **drug**—see section 131.
- 22 **engage in conduct** means—
- 23 (a) do an act; or
- 24 (b) omit to do an act.
- 25 **escape**, for part 12.2 (Interstate leave)—see section 205.

- 1 **escort officer**, in relation to a person, means—
- 2 (a) a police officer; or
- 3 (b) a corrections officer whose functions including escorting the
- 4 person.
- 5 **family member**, of a detainee, means any of the following:
- 6 (a) the detainee’s domestic partner;
- 7 (b) a parent, step-parent or grandparent of the detainee;
- 8 (c) a child, step-child or grandchild of the detainee;
- 9 (d) a brother, sister, step-brother or step-sister of the detainee;
- 10 (e) a guardian or carer of the detainee.
- 11 **frisk search**—see section 106.
- 12 **full-time detainee**—see the *Crimes (Sentence Administration)*
- 13 *Act 2005*, section 22 (1).
- 14 **health facility** means a hospital or other facility where health
- 15 services are provided.
- 16 **health professional** means a health professional registered under the
- 17 *Health Professions Act 2004*.
- 18 **health service**—see the *Health Professions Act 2004*, section 15.
- 19 **hearing**, for an inquiry—see section 150.
- 20 **inquiry**—see section 150.
- 21 **interstate detainee**, for part 12.2 (Interstate leave)—see section 205.
- 22 **interstate escort officer**—see section 212.
- 23 **interstate leave permit**—see section 207.
- 24 **investigative segregation**—see section 150.
- 25 **investigator**—see section 150.

- 1 **investigator's report**—see section 150.
- 2 **law enforcement agency**—see the *Spent Convictions Act 2000*,
3 dictionary.
- 4 **legally privileged**—a thing is **legally privileged** if client legal
5 privilege attaches to the thing.
- 6 **local leave permit**—see section 204.
- 7 **mail** means postal mail.
- 8 **nonsmoking area**, at a correctional centre—see section 85.
- 9 **offender**—see the *Crimes (Sentence Administration) Act 2005*,
10 dictionary.
- 11 **official visitor** means a person who is appointed as an official
12 visitor under section 56.
- 13 **operating procedure** means an operating procedure under
14 section 14.
- 15 **ordinary search**—see section 106.
- 16 **participating State**, for part 12.2 (Interstate leave)—see section 205.
- 17 **periodic detention**, for an offender—see the *Crimes (Sentence
18 Administration) Act 2005*, section 40.
- 19 **personal monitoring device**—see section 100.
- 20 **police cell**, for 0 (Detention in police and court cells)—see
21 section 29.
- 22 **positive**, for a test sample for alcohol or a drug—see section 132.
- 23 **possession**, of a thing, includes the following:
- 24 (a) receiving or obtaining possession of the thing;
- 25 (b) having control over the disposition of the thing (whether or not
26 having custody of the thing);
- 27 (c) having joint possession of the thing.

- 1 ***presiding officer***—
- 2 (a) for division 10.3.1 (Disciplinary action—with accused’s
- 3 consent)—see section 165; or
- 4 (b) for division 10.3.2 (Internal disciplinary inquiry)—see
- 5 section 168; or
- 6 (c) for chapter 11 (Disciplinary inquiries)—see section 190.
- 7 ***privilege***, in relation to a detainee—see section 150.
- 8 ***prohibited area***, at a correctional centre—see section 84.
- 9 ***prohibited thing*** means a thing declared to be a prohibited thing
- 10 under section 80.
- 11 ***protected mail***—see section 103 (4).
- 12 ***register of detainees*** means the register kept under section 75.
- 13 ***relevant presiding officer***, for division 10.3.5 (Disciplinary
- 14 action)—see section 181.
- 15 ***remandee***—see the *Crimes (Sentence Administration) Act 2005*,
- 16 dictionary.
- 17 ***review officer***, for division 10.3.3 (Internal review of inquiry
- 18 decision)—see section 171.
- 19 ***scanning search***—see section 106.
- 20 ***security classification***, for a detainee, means the detainee’s security
- 21 classification under section 79.
- 22 ***segregation***, of a detainee—see section 87.
- 23 ***sentence***—see the *Crimes (Sentence Administration) Act 2005*,
- 24 dictionary.
- 25 ***separate confinement***, of a detainee—see section 150.
- 26 ***strip search***, of a detainee—see section 106.
- 27 ***test sample***—see section 131.

1 ***visiting conditions***, at a correctional centre, means conditions
2 declared under section 142 (Visiting conditions) in relation to the
3 centre.

4 ***visitor***, in relation to a correctional centre, includes a person wishing
5 to enter the centre as a visitor.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2006.

2 Notification

Notified under the Legislation Act on 2006.

3 Republications of amended laws

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

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