

2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Corrections)

Corrections and Sentencing Legislation Amendment Bill 2014

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Corrections and Sentencing Legislation Amendment Bill 2014

A Bill for

An Act to amend legislation about corrections and sentencing

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Corrections and Sentencing Legislation Amendment*
4 *Act 2014*.

5 **2 Commencement**

6 This Act commences on the day after its notification day.

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

9 **3 Legislation amended**

10 This Act amends the following legislation:

- 11 • *Births, Deaths and Marriages Registration Act 1997*
- 12 • *Corrections Management Act 2007*
- 13 • *Crimes (Sentence Administration) Act 2005*.

1 **Part 2** **Births, Deaths and Marriages**
2 **Registration Act 1997**

3 **4** **New division 3.1 heading**

4 *before section 17, insert*

5 **Division 3.1** **Change of name—generally**

6 **5** **New division 3.2**

7 *insert*

8 **Division 3.2** **Change of name—restricted people**

9 **22A** **Definitions—div 3.2**

10 In this division:

11 *change of name application*, in relation to a restricted person,
12 means an application under this Act, division 3.1, or a law of
13 another jurisdiction corresponding to this Act, for registration of a
14 change of the restricted person's name.

15 *corresponding parole law*—see the *Crimes (Sentence*
16 *Administration) Act 2005*, section 162.

17 *relevant director-general* means—

18 (a) for a restricted person serving a sentence of imprisonment—the
19 director-general of the administrative unit responsible for the
20 *Corrections Management Act 2007*; or

21 (b) for a restricted person the subject of a parole order under the
22 *Crimes (Sentence Administration) Act 2005* or a corresponding
23 parole law—the director-general of the administrative unit
24 responsible for the *Crimes (Sentence Administration) Act 2005*.

- 1 **restricted person** means a person who—
- 2 (a) is serving a sentence of imprisonment (including by full-time
- 3 detention, periodic detention or release on licence); or
- 4 (b) is the subject of a parole order under the *Crimes (Sentence*
- 5 *Administration) Act 2005* or a corresponding parole law.

6 **22B Application for approval for restricted person to make**

7 **change of name application**

8 A restricted person may apply, in writing, to the relevant

9 director-general for approval to make a change of name application.

10 *Note 1* If a form is approved under s 69 for an application, the form must be

11 used.

12 *Note 2* A fee may be determined under s 67 for an application.

13 **22C Decision on s 22B application**

14 (1) Within 30 days after the day the relevant director-general receives

15 an application mentioned in section 22B, the relevant

16 director-general must—

17 (a) approve the application; or

18 (b) refuse the application.

19 (2) The relevant director-general may approve the application only if

20 satisfied that the proposed change of name is in all the

21 circumstances necessary or reasonable.

22 (3) However, the relevant director-general must not approve the

23 application if satisfied that the proposed change of name would, if

24 registered, be reasonably likely to—

25 (a) adversely affect the security, discipline or good order of any

26 premises or facility at which the restricted person is held or

27 accommodated; or

- 1 (b) jeopardise the restricted person's or another person's health or
2 safety; or
- 3 (c) be used to further an unlawful activity or purpose; or
- 4 (d) be used to evade or hinder the supervision of the restricted
5 person; or
- 6 (e) be regarded as offensive by a victim of crime or an appreciable
7 sector of the community.

8 **22D Notice of decision**

9 If the relevant director-general makes a decision on an application
10 mentioned in section 22B, the relevant director-general must give
11 written notice of the decision to—

- 12 (a) the person who made the application; and
- 13 (b) the registrar-general.

14 *Note* Written notice of the decision must be given to the person and the
15 registrar-general as soon as possible (see [Legislation Act](#), s 151B).

16 **22E Offences—restriction on change of name application by**
17 **restricted person etc**

- 18 (1) A restricted person commits an offence if—
- 19 (a) the person makes a change of name application; and
- 20 (b) the relevant director-general has not approved the making of
21 the application under section 22C.

22 Maximum penalty: 5 penalty units.

- 23 (2) A person commits an offence if—
- 24 (a) the person, on behalf of a restricted person, makes a change of
25 name application; and

1 (b) the relevant director-general has not approved the making of
2 the application under section 22C.

3 Maximum penalty: 5 penalty units.

4 (3) An offence against this section is a strict liability offence.

5 **22F Registrar-general must not register change of name**
6 **without relevant director-general's approval**

7 The registrar-general must not register a change of name under
8 section 20 if the registrar-general—

9 (a) knows that the change of name application is made by or on
10 behalf of a restricted person; and

11 (b) has not received a notice under section 22D from the relevant
12 director-general approving the making of the change of name
13 application.

14 **22G Registrar-general may correct register**

15 Without limiting section 40 (Correction of register), the
16 registrar-general may correct the register if—

17 (a) the name of a restricted person was changed because of an
18 application under division 3.1; and

19 (b) the relevant director-general did not approve the making of the
20 application under section 22C.

1 **22H Information-sharing**

- 2 (1) The relevant director-general—
- 3 (a) must notify the registrar-general of the following details in
- 4 relation to each restricted person:
- 5 (i) the restricted person's name (including any other name
- 6 by which the restricted person is or has previously been
- 7 known);
- 8 (ii) the restricted person's date of birth;
- 9 (iii) the restricted person's current residential address, or if
- 10 the restricted person is serving a sentence of
- 11 imprisonment, the person's residential address
- 12 immediately before being taken into custody; and
- 13 (b) may give the registrar-general other information necessary for
- 14 the relevant director-general's exercise of functions under this
- 15 division.
- 16 (2) The registrar-general—
- 17 (a) if the circumstances in section 22F (a) and (b) apply—must
- 18 notify the relevant director-general about the change of name
- 19 application; and
- 20 (b) may give the relevant director-general other information
- 21 necessary for the relevant director-general's exercise of
- 22 functions under this division.

23 **22I Protection of security sensitive information**

- 24 (1) This section applies if the relevant director-general decides to refuse
- 25 an application for approval to make a change of name application
- 26 under section 22C (1) (b).

- 1 (2) The relevant director-general is not required under this Act or any
2 other territory law to give reasons for the director-general's decision
3 to the extent that giving those reasons would disclose security
4 sensitive information.
- 5 (3) In this section:
- 6 *security sensitive information* means information that relates to
7 actual or suspected criminal activity (whether in the ACT or
8 elsewhere) the disclosure of which could reasonably be expected
9 to—
- 10 (a) prejudice a criminal investigation; or
- 11 (b) enable the discovery of the existence or identity of a
12 confidential source of information relevant to law enforcement;
13 or
- 14 (c) endanger a person's life or physical safety; or
- 15 (d) adversely affect the security, discipline or good order of any
16 premises or facility at which a restricted person is held or
17 accommodated; or
- 18 (e) adversely affect the supervision of a restricted person.

19 **22J ACAT or court review—security sensitive information**

- 20 (1) This section applies if—
- 21 (a) the relevant director-general decides to refuse an application
22 for approval (an *approval application*) to make a change of
23 name application under section 22C (1) (b) because, or partly
24 because, of information the relevant director-general considers
25 is security sensitive information; and
- 26 (b) the applicant for the approval application applies to the ACAT
27 or a court for review of the relevant director-general's decision.

- 1 (2) The relevant director-general must apply to the ACAT or the court
2 for a decision about whether the information is security sensitive
3 information.
- 4 (3) The application need not be served on anyone unless the ACAT or
5 the court otherwise orders on its own initiative.
- 6 (4) The ACAT or the court may decide that the information is, or is not,
7 security sensitive information.
- 8 (5) If the ACAT or the court decides that the information is security
9 sensitive information, in deciding an application for review of the
10 relevant director-general's decision to refuse the approval
11 application, the ACAT or the court—
- 12 (a) must ensure security sensitive information is not disclosed in
13 any reasons for the decision; and
- 14 (b) must, unless the relevant director-general otherwise agrees,
15 receive evidence and submissions in private in the absence of
16 the public, the applicant for review, the applicant's
17 representative and any other interested party.
- 18 (6) In this section:
- 19 *security sensitive information*—see section 22I (3).

1 **6 Section 54**

2 *substitute*

3 **54 Reviewable decision notices**

4 (1) If a decision-maker makes a reviewable decision, the
5 decision-maker must give a reviewable decision notice to each
6 person mentioned in schedule 1, column 4 in relation to the
7 decision.

8 *Note 1* The decision-maker must also take reasonable steps to give a
9 reviewable decision notice to any other person whose interests are
10 affected by the decision (see *ACT Civil and Administrative Tribunal*
11 *Act 2008*, s 67A).

12 *Note 2* The requirements for reviewable decision notices are prescribed under
13 the *ACT Civil and Administrative Tribunal Act 2008*.

14 (2) In this section:

15 *decision-maker*, for a reviewable decision, means—

- 16 (a) the registrar-general; or
17 (b) a relevant director-general.

18 *relevant director-general*—see section 22A.

19 **7 Reviewable decisions**
20 **Schedule 1, new items 3A and 3B**

21 *insert*

3A	22C (1) (b)	refuse approval to make a change of name application in relation to a restricted person	applicant
3B	22F	refuse to register change of name in relation to a restricted person	applicant

8 Dictionary, new definitions

2 *insert*

3 *change of name application*, in relation to a restricted person, for
4 division 3.2 (Change of name—restricted people)—see section 22A.

5 *corresponding parole law*, for division 3.2 (Change of name—
6 restricted people)—see section 22A.

7 *relevant director-general*, for division 3.2 (Change of name—
8 restricted people)—see section 22A.

9 *restricted person*, for division 3.2 (Change of name—restricted
10 people)—see section 22A.

1 **Part 3** **Corrections Management**
2 **Act 2007**

3 **9** **New section 217A**

4 *insert*

5 **217A** **Power of court to bring detainee before it—civil**
6 **proceeding**

7 (1) For a civil proceeding, a court may order the director-general to
8 bring a person lawfully detained in a correctional centre or other
9 place before the court, if the person consents, and to return the
10 person to the centre or other place in accordance with the order.

11 (2) In this section:

12 *civil proceeding*—see the *Evidence Act 2011*, dictionary.

13 *court* includes the ACAT.

1 **Part 4** **Crimes (Sentence**
2 **Administration) Act 2005**

3 **10** **Periodic detention—offender in custody for other reasons**
4 **Section 57A (1)**

5 *substitute*

6 (1) This section applies if an offender does not perform periodic
7 detention for a detention period because the offender is, during the
8 period—

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

11 (b) detained at a place under the *Mental Health (Treatment and*
12 *Care) Act 1994*.

13 **11** **Community service work—failure to report etc**
14 **Section 92 (1)**

15 *omit*

16 This section

17 *substitute*

18 Subsection (2)

19 **12** **New section 92 (3) and (4)**

20 *insert*

21 (3) Subsection (4) applies if—

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

- 1 (b) the offender is at the time of the work period—
- 2 (i) remanded in custody under a territory law or a law of the
- 3 Commonwealth or a State; or
- 4 (ii) detained at a place under the *Mental Health (Treatment*
- 5 *and Care) Act 1994*.
- 6 (4) The offender is taken to have performed community service work in
- 7 accordance with the direction for the work period.

8 **13 Definitions—pt 7.6**

9 **Section 162, definition of *parole order***

- 10 *omit*
- 11 corresponding parole order
- 12 *substitute*
- 13 corresponding parole law

14 **14 Appointment of board members**

15 **Section 174 (8)**

- 16 *substitute*
- 17 (8) For this section, a person is *judicially qualified* if the person has
- 18 been a legal practitioner for not less than 5 years.

19 **15 Dictionary, note 2**

- 20 *insert*
- 21 • legal practitioner

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 27 February 2014.

2 Notification

Notified under the [Legislation Act](#) on 2014.

3 Republications of amended laws

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

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