2012

LEGISLATIVE ASSEMBLY FOR THE

AUSTRALIAN CAPITAL TERRITORY

CORRECTIONS AND SENTENCING LEGISLATION AMENDMENT BILL

2012

EXPLANATORY STATEMENT

Presented by
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Corrections and Sentencing Legislation Amendment Bill 2012

Outline

Purpose of the Bill

ACT Corrective Services and the Sentence Administration Board operate primarily pursuant to three pieces of legislation:

- the *Crimes (Sentencing) Act 2005;*
- the *Crimes (Sentence Administration) Act 2005;* and
- the *Corrections Management Act 2007*.

The *Corrections and Sentencing Legislation Amendment Bill 2012* (the Bill) amends the *Crimes (Sentence Administration) Act 2005* (the CSA Act) and the *Corrections Management Act 2007* (the CMA Act). The key purpose of the Bill is to support the human right to fair trial and procedural fairness by implementing a more responsive and efficient detainee discipline system. This will result in improved safety, security and good order at adult correctional centres and ensure effective and efficient corrections administration in the ACT.

At present, detainee discipline provisions impose overly burdensome administrative requirements on the officers. These requirements lead to confusion among detainees about how the process functions.

The Bill seeks to streamline the detainee discipline scheme, as the Government has committed to this in response to the 2011 Report of the Independent Review of Operations at the Alexander Maconochie Centre (the Hamburger Review).

The Bill also seeks to:

- clarify the Sentence Administration Board's power to give retrospective approval not to perform periodic detention;
- give the chair of the Sentence Administration Board the power to organise business; and
- ensure that offenders who are not attending period detention cannot take advantage of credit provisions for Christmas and Easter holidays.

Human Rights Considerations

The responsibility of governments to undertake measures to protect their citizens has been discussed in European human rights jurisprudence. This responsibility has been described as the 'doctrine of positive obligations' which encompasses the notion that governments not only have the responsibility to ensure that human rights are free from violation, but that governments are required to provide for the full enjoyment of rights.[1] This notion has been interpreted as requiring states to put in place legislative

[1] Colvin, M & Cooper, J, 2009 *'Human Rights in the Investigation and Prosecution of Crime'* Oxford University Press, p. 424-425

and administrative frameworks designed to deter conduct that infringes human rights and to undertake operational measures to protect an individual who is at risk of suffering treatment that would infringe their rights.[2]

The Government is bound to ensure that people found guilty of breaking the law are themselves treated lawfully.[3] Limits on the fundamental rights protected by the *Human Rights Act 2004* (HR Act) are permissible only if the limits are authorised by a Territory law and are reasonable and demonstrably justifiable in a democratic society.

To the extent that clauses in the Bill engage rights in the HR Act these are addressed in the detail section of the explanatory statement below. The amendments to the detainee discipline scheme comply with due process, procedural fairness and human rights principles.

The Bill engages, and supports, the following HR Act rights:

- Section 19 – Humane treatment when deprived of liberty; and
- Section 21 – Fair trial.

Amendments to the detainee discipline scheme engage and support these rights as they clarify for a detainee the process to be used when determining whether an alleged breach of detainee discipline has occurred.

Section 19 – Humane treatment when deprived of liberty

Section 19 of the HR Act provides that anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person. In addition, an accused person held in custody must be segregated from convicted people, except in exceptional circumstance and must be treated in a way that is appropriate for a person who has not been convicted.

The amendments to the detainee discipline provisions engage and support the humane treatment of detainees when deprived of liberty in section 19 of the HR Act. The scope of the right to humane treatment of people deprived of liberty has been outlined under article 10 of the International Covenant on Civil and Political Rights (ICCPR) and considered further by the UN Human Rights Committee in General Comment No 21/1992. Treating all people deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. This rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[4]

The obligation on the State to ensure that a person is detained in conditions which are compatible with respect for their human dignity was affirmed in the cases of

[2] Ibid, p.425.

[3] Mr John Stanhope speech on Justice and Community Safety Legislation Amendment Bill 2005 (No 2) (30 June 2005) http://www.hansard.act.gov.au/hansard/2005/week08/2503.htm

[4] Alexander, T, Bagaric, M & Faris, P , 2011 '*Australian Human Rights Law*', CCH Australia, page 292

Eastman v Chief Executive of the Department of Justice and Community Safety[5] and *Enea v Italy*[6]. In Eastman, Refshauge J expanded on the subject of the State's obligation to ensure detainees are to be treated humanely stating that under section 19 of the HR Act "the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity", free from "distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured". Moreover, the State must balance the need for security and good order in the prison with the prisoner's subsisting constitutional rights.[7]

The amendments to the detainee discipline scheme do not introduce any new form of disciplinary action against a detainee and reinforce that a presiding officer, under section 183 of the CM Act, can only:

(a) warn the detainee about committing a disciplinary breach;
(b) reprimand the detainee;
(c) impose an administrative penalty, or a combination of administrative penalties, on the detainee;
(d) give the detainee a direction under section 185 (Reparation).

The amendments support the humane treatment of detainee's whilst incarcerated in a detention centre. The new provisions streamline the detainee discipline scheme enhancing the right to fair trail and procedural fairness by delivering timely detainee discipline, increased objectivity of investigations into alleged disciplinary breaches and effective means for detainees to request an independent review of a detainee discipline decision made by the relevant correctional staff.

Section 21 – Fair trial

Section 21 of the HR Act provides everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The nature of the right to fair trial has been outlined in article 14 of the ICCPR and provides procedural guarantees as to the conduct of a hearing.

The detainee discipline provisions engage and support a detainee's right to fair trial in the context of administrative decision making set out in section 21 of the HR Act. This issue of procedural fairness in relation to the administrative nature of detainee discipline has been discussed at length in the explanatory statement of the *Corrections Management Bill 2006* (please refer to chapter 10 – Discipline).

In 2009, the Victorian Civil and Administrative Tribunal found that the right to a fair trial may be engaged where there is a decision of an administrative nature that affects civil rights that is of a 'genuine and serious nature'. The Tribunal commented that "in a civil context the whole [decision-making process] must be considered".[8]

[5] [2010] ACTSC 4

[6] [2009] ECHR 74912/01

[7] *Eastman v Chief Executive of the Department of Justice and Community Safety* [2010] ACTSC 4

[8] *Kracke v Mental Health Review Board & Ors (General)* [2009] VCAT 646 (23 April 2009)

The ACAT also said "the term 'obligations' in s 21 of the Human Rights Act may encompass good administration" in the case of *Thompson v ACT Planning and Land Authority (Administrative Review)* [2009] ACAT 38.

The streamlining of the detainee disciplinary scheme will promote a detainee's right to a fair trial in an administrative context and to procedural fairness by increasing the objectivity of investigations into alleged disciplinary breaches, strengthening provisions to enhance the ability of a detainee to request a review of their alleged breach of disciplinary breach and allowing for the director-general to review a breach of discipline decision.

Part 1 Preliminary

Clause 1 – Name of Act
This is a technical clause that names the short title of the Act. The Name of the Act would be the *Corrections and Sentencing Legislation Amendment Act 2012*.

Clause 2 – Commencement
Clause 2 states that different parts of the Act commence on different dates. Part 2 of the Act which relates to the *Corrections Management Act 2007* commences 6 months after this Act's notification day. This commencement will allow ACT Corrective Services to put in place measures to ensure compliance with the Act. The remaining provisions commence on the day after this Act's notification day.

Clause 3 – Legislation amended
Clause 3 lists the legislation that the Act amends.

Part 2 Corrections Management Act 2007

Part 2 of the *Corrections and Sentencing Legislation Amendment Bill 2012* amends the *Correction Management Act 2007* to address a key recommendation of the Hamburger Review report (Recommendation 4 (section 5.2.4.5)) that suggested that ACT Corrective Services work with appropriate authorities to review the detainee disciplinary process to address concerns relating to its complexity and if required make recommendations to the ACT Government to achieve legislative change to facilitate a simpler process.

The amendments ensure that current provisions relating to the detainee discipline system which pose a threat to good order, security and safety within the correctional centre in the ACT are remedied. Furthermore it makes the current system more effective and responsive which enhances the fundamental duty of care to detainees, visitors and staff.

The new provisions have been crafted to adhere to, and support, the *Human Rights Act 2004* by providing greater transparency and procedural fairness in the context of administrative decisions made by corrections staff. This includes increasing the own motion review options available to a detainee accused of a disciplinary breach and allowing the director-general to review a detainee discipline decision.

The amendments in part 2 improve the detainee discipline process by:
- removing the administrator role from the process; and
- making the "investigator role" a step to be used at the discretion of the presiding officer.

The amendments will also include a new review to be used by the director-general on their own motion. This will allow for improved transparency and consistency in administrative decision making by correctional officers.

Clause 4 – Definitions—discipline Section 151, definition of *administrator*
Clause 4 omits the term 'administrator' from the Act as the role of the administrator will be removed from the new detainee discipline scheme. The streamlining of the scheme supports the human right to fair trial and procedural fairness by implementing a more responsive and efficient detainee discipline system. This results in improved safety,

security and good order at all correctional centres. The amended scheme ensures effective and efficient corrections administration in the ACT.

The amendment will require a corrections officer to deliver an initial report to a presiding officer for the purposes of investigating a detainee's disciplinary breach. When evaluating the legitimacy of an initial report the presiding officer can refer the matter to an independent investigating officer to review all relevant matters in relation to the alleged disciplinary breach.

Clause 5 – Section 151, new definition of *initial report*

Clause 5 inserts a cross-reference definition of "initial report" into the Act. An "initial report" is defined in section 156(2)(e) and is the report a corrections officer gives to a presiding officer to review a breach of detainee discipline. An initial report outlines the details of the alleged disciplinary breach and the reporting officer's reasons for believing the detainee has committed the disciplinary breach.

Clause 6 – Section 151, definitions of *investigative segregation* and *investigator's report*

Clause 6 substitutes a new definition of "investigative segregation" which means segregation directed under section 156 (Report etc by corrections officer), section 158 (Action by presiding officer) or section 160 (Director-general directions—investigative segregation).

This clause also substitutes a new definition of an "investigator's report" into the Act. An "investigator's report" is defined in section 157(2)(b) to be a report that is given to the presiding officer about the alleged disciplinary breach of a detainee. When preparing an "investigator's report" the investigator must consider the initial report given to the presiding officer by the corrections officer and investigate the detainee disciplinary breach. An investigator's report must include a copy of the initial report, a recommendation for any action by the presiding officer to be taken under section 158(2), the reasons for the recommendation and anything else prescribed by regulation and any other information the investigator considers is relevant in relation to the alleged disciplinary breach.

Clause 7 – Section 151, new definition of *presiding officer*

Clause 7 inserts a new definition of "presiding officer" into the Act. A "presiding officer" is a corrections officer to whom the director-general has given the functions of a presiding officer under this Act. The role of a presiding officer is outlined in section 158 of the Act and includes an obligation to review an initial report and any investigator's report in relation to an alleged detainee disciplinary breach.

After considering either an initial or investigator's report and making any further investigations considered appropriate, the presiding officer may decide to do one or more of the following options outlined in section 158(2)(a)-(h):

- take no further action in relation to the initial report;
- counsel the detainee;
- warn the detainee about committing a disciplinary breach;
- reprimand the detainee;
- refer the allegation to the chief police officer or the director of public prosecutions;
- charge the detainee under section 159;
- direct that the detainee be segregated (subject to section 161); or

- do anything else prescribed by regulation.

Clause 8 – Report etc by corrections officer Section 156 (2) (e)

Clause 8 omits the words "an investigator a report" and substitutes them with "a presiding officer a report (an ***initial report***)". This amendment reflects and supports the new roles of the presiding officer and investigator within the proposed detainee discipline scheme. The amendment supports the human right to fair trial and procedural fairness by implementing a more responsive and efficient detainee discipline system. This results in improved safety, security and good order at correctional centres and ensures effective and efficient corrections administration in the ACT.

Clause 9 – Section 156 (3)

Clause 9 omits the term "an investigator" and substitutes it with "the presiding officer". This minor amendment reflects and supports the new role of the presiding officer and investigator within the detainee discipline scheme. Please refer to clauses 7 and 8 for detailed explanation of the role of the presiding officer.

Clause 10 – Sections 157 and 158

Clause 10 details the role of the investigator and the scope of an investigation into an alleged breach of detainee discipline undertaken by an investigator at the request of the presiding officer. After receiving an initial report from a corrections officer, a presiding officer may believe on reasonable grounds that it is appropriate to refer a report to an investigator. When undertaking an investigation under section 157 an investigator must consider the initial report and investigate the alleged disciplinary breach and give the presiding officer a report about the alleged disciplinary breach. An investigator's report must include a copy of the initial report, a recommendation for any action by the presiding officer to be taken under section 158(2), the reasons for the recommendation and anything else prescribed by regulation and any other information the investigator considers is relevant in relation to the alleged disciplinary breach. As the role of an investigator is to provide an independent and objective investigation of the alleged disciplinary breach the corrections officer who made the initial report is barred from exercising any function of an investigator.

This clause also outlines the role of a presiding officer under section 158 of the *Corrections Management Act 2007* and includes an obligation to review an initial and any consequential investigator's report in relation to an allegation of a detainee disciplinary breach. After considering either an initial or investigator's report, and conducting any further inquires considered appropriate, the presiding officer may decide to do one or more of the following options outlined in section 158(2)(a)-(h):

- take no further action in relation to the initial report;
- counsel the detainee;
- warn the detainee about committing a disciplinary breach;
- reprimand the detainee;
- refer the allegation to the chief police officer or the director of public prosecutions;
- charge the detainee under section 159;
- direct that the detainee be segregated (subject to section 161); or
- do anything else prescribed by regulation.

The corrections officer who made the initial report is barred from exercising any function of a presiding officer. This ensures an independent and objective review of the alleged disciplinary breach. This also maintains and supports procedural fairness by allowing for

unbiased and objective decision making in relation to an alleged disciplinary breach and will further enhance the consistency of discipline decision outcomes.

Clause 11 – Disciplinary charge Section 159

Clause 11 omits the term "administrator" and replaces it with "presiding officer". Please refer to clause 4 for detailed reasoning behind the removal of the role of administrator from the detainee discipline scheme.

This clause provides the presiding officer with the power to charge a detainee with a disciplinary breach. This amendment creates an obligation on a presiding officer to give a detainee written notice of the charge and include details of the disciplinary breach charged, a brief statement of the conduct to which the charge applies and when it happened, the option of having the charge dealt with under division 10.3.1, the election available to the detainee under section 167 to accept the disciplinary action and the disciplinary action the presiding officer believes would be appropriate if the charge were dealt with under section 168. Section 168 deals with the presiding officers powers if the accused admits the breach.

Clause 12 – Director-general directions—investigative segregation Section 160 (2)

Clause 12 is a technical amendment that omits the word "any" and substitutes it with the word "either". This minor amendment provides clearer understanding of the powers the director-general has to direct that a detainee be segregated from other detainees under either section 156 (Report etc by corrections officer), section 157 (Report etc by investigator) or section 158 (Action by presiding officer).

Clause 13 – Section 160 (2) (b) and (c)

Clause 13 removes reference to the "administrator" and "investigator" reflecting the new role of the presiding officer in the detainee discipline scheme. The clause amends section 160 by inserting a reference to a "presiding officer" in section 160 (2)(b) (Action by presiding officer). This provision also allows the director-general to direct a detainee be segregated from other detainees under section 156 (Report etc by corrections officer) or section 158 (Action by presiding officer).

Clause 14 – Duration of investigative segregation Section 163 (5) (b)

Clause 14 is a technical amendment that removes reference to the term "administrator" and replaces it with the term "presiding officer". The reasons for the removal of "administrator" are discussed in detail at clause 4 and clause 10. The amendment retains the obligations on, and options available to, the director-general to revoke a direction for investigative segregation if on reasonable grounds the direction is no longer necessary or prudent.

Clause 15 – Meaning of *presiding officer*—div 10.3.1 Section 166

Clause 15 removes the definition of a "presiding officer" from division 10.3.1. As a result of the expansion of the role of the presiding officer in the detainee discipline scheme a new definition of "presiding officer" is inserted into section 151 (Definitions – discipline) of the Act by clause 7. A presiding officer means a corrections officer to whom the director-general has given functions of a presiding officer under this Act. The role of a presiding officer is outlined in proposed new section 158 of the Act and includes an obligation to review an initial report and any consequential investigator's report in relation to an allegation of detainee disciplinary breach.

Clause 16 – Disciplinary breach admitted by accused Section 167 (1)

Clause 16 is a technical amendment removing the reference to 'the administrator' and substituting it with 'a presiding officer'. This amendment reflects the policy to strengthen procedural fairness and transparency in the detainee discipline scheme. The policy is discussed further in the purpose of the bill and in detail at clauses 4 and 10.

This clause retains and supports the power for a detainee to elect to have a disciplinary charge against them dealt with by giving the prescribed officer a written notice admitting the disciplinary breach charge and accepting the proposed disciplinary action stated in the charge notice.

Clause 17 Sections 167 (2) to (4)

Clause 17 is a technical amendment removing the previous reference to 'the administrator' and replacing it with 'a presiding officer'. This amendment reflects the policy to strengthen procedural fairness and transparency in the detainee discipline scheme. The policy is discussed further in the purpose of the bill and in detail at clauses 4 and 10.

This clause retains subsections outlined in section 167(2) to (4) asserting that an election to accept a disciplinary action must be made by the detainee to the presiding officer no later than the day after the presiding officer has given the accused the charge notice. Furthermore, the presiding officer may extend the election period if the presiding officer believes on reasonable grounds that it is appropriate. In addition, the presiding officer must give the accused written notice of a decision to extend the period of election.

Clause 18 – Meaning of *presiding officer*—div 10.3.2 Section 169

Clause 18 removes the definition of a "presiding officer" from division 10.3.2. As a result of the expansion of the role of the presiding officer in the detainee discipline scheme a new definition of "presiding officer" is inserted into section 151 (Definitions – discipline) of the Act by clause 7. A presiding officer means a corrections officer to whom the director-general has given functions of a presiding officer under this Act. The role of a presiding officer is outlined in proposed new section 158 of the Act and includes an obligation to review an initial report and any consequential investigator's report in relation to an allegation of detainee disciplinary breach.

Clause 19 – Disciplinary inquiry into charge Section 170 (3) (a) and (b)

Clause 19 replaces the existing section 170(3)(a) & (b) to allow for the removal of the role of 'the administrator' from, and addition of the "presiding officer" in the detainee discipline scheme. This amendment reflects the policy to strengthen procedural fairness and transparency in the detainee discipline scheme. The policy is discussed further in the purpose of the bill and in detail at clauses 4 and 10.

Clause 19 ensures that a corrections officer must not exercise any function of a presiding officer under this division in relation to the disciplinary charge if the officer made a report in relation to the alleged disciplinary breach to which the charge relates under section 156 (Report etc by corrections officer) or section 157 (Investigation by investigator) or made the charge under section 158 (Action by presiding officer).

The clause retains and supports the steps a presiding officer must take where an accused detainee has been given a charge notice and does not elect under section 167 of the Act to have the charge dealt with under division 10.3.1. In these circumstances, a presiding

officer is required under section 170(2) to conduct an inquiry into the disciplinary breach charged.

Clause 20 – Presiding officer's powers after internal inquiry New section 171 (5A)

Clause 20 inserts a new subsection (5A) into section 171 of the Act requiring that the presiding officer must give the director-general a copy of the written notice given to an accused detainee under section 171(5) of the Act. This amendment reflects the policy to strengthen procedural fairness and transparency in the detainee discipline scheme by allowing the director-general the ability to review all the relevant facts and documentation in regard to a review of an accused detainee's disciplinary charge.

Clause 21 - Meaning of *review officer*—div 10.3.3 Section 172

Clause 21 is a technical amendment which removes the definition of the term a 'review officer' under division 10.3.3 of the Act. This provision facilitates the new own motion review power in clause 24.

Clause 22 - Application for review of inquiry decision Section 173 (3)

Clause 22 substitutes the term 'a review officer' with the term 'the director-general' in section 173(3) of the Act. Section 173 provides an accused detainee with the right to apply to the director-general for review of a decision by a presiding officer in relation to an alleged breach of discipline charge. An application to the director-general must be made no later than 7 days after the accused is given notice of a decision under section 171. This clause will allow for improved transparency and consistency in administrative decision making by correctional officers.

Clause 23 – Sections 174 and 175

Clause 23 substitutes sections 174 and 175 for a new section 175 that provides that, on application made under section 173, the director-general must conduct a further inquiry to review the decision to which the application relates. Section 174 that currently requires the director-general to assign a review officer will no longer be required. Instead, an officer delegated with the review function by the director-general will conduct a review under section 175.

On the director-general's own initiative, a further inquiry may be conducted to review the decision to which a decision made under section 171(5) relates. This clause will allow for improved transparency and consistency in administrative decision making by correctional officers.

Clause 24 – Section 176 heading

Clause 24 is a technical amendment and removes the term "review officer's" and replaces it with "director-general's". This amendment facilitates the new own motion review power outlined in section 176 as amended.

Clause 25 – Section 176 (1) and (2)

Clause 25 is a technical amendment that removes the term "review officer" and replaces it with "director-general". This amendment facilitates the new own motion review power outlined in section 176 (1) which provides that after completing a review under section 175 the director-general may:

- confirm the decision under review; or
- exercise any function of a presiding officer under section 171 in relation to the accused, either by –

- amending the decision under review; or
- setting aside the decision under review and making a decision in substitution for the decision set aside.

This clause will also amend section 176(2) to ensure that the director-general must give the accused prompt written notice of their decision under section 171(1) including a statement for the reasons for the decision and a statement about the effect of division 10.3.4. This clause will allow for improved transparency and consistency in administrative decision making by correctional officers.

Clause 26 – Section 176 (2) etc

Clause 26 is a technical amendment to remove the term "review officer's" and replace it with the term "director-general's" in sections 176(2), 178(2) and 179.

The rationale for the amendment to section 176(2) is described at clause 25.

This clause also amends section 178(2) to provide that an application made to an adjudicator, by a detainee alleged to have breached detainee discipline, for review of a decision made by the director-general made under section 176, must be made no later than 7 days after the day the accuse is given notice of the director-general's decision under section 176.

In addition, this clause amends section 179 to allow an adjudicator to review or to refuse to review the director-general's decision made under section 176. This amendment provides for enhanced procedural fairness in relation to the administrative decision making of the presiding officer and the director-general's power to review a disciplinary decision provided by section 176.

Clause 27 – Adjudicator's powers after review Section 180 (1) (b)

Clause 27 is a technical amendment that removes the term 'a review officer' and replaces it with 'the director-general'. The reasons for amendment to section 180 (1)(b) is described at clause 25.

Clause 28 - Meaning of *relevant presiding officer*—div 10.3.5 Section 182, definition of *relevant presiding officer*, paragraph (c)

Clause 28 is a technical amendment that removes the term 'a review officer' and replaces it with 'the director-general'. The reasons for amendment to section 182(2)(c) is detailed at clause 25. The amendment will ensure that any disciplinary action taken by a relevant presiding officer against a detainee under section 183 includes a decision made by the director-general under section 176.

Clause 29 – New chapter 51

Clause 29 inserted new chapter 51 Transitional—Corrections and Sentencing Legislation Amendment Act 2012. A transitional chapter is necessary for continuity and clarity of the disciplinary process for reports made prior to the commencement of provisions in this Bill. This transitional chapter will confirm that any a report about an alleged disciplinary breach by a detainee that was made by a corrections officer under section 156 (2) (e) that was not finalised before the commencement of this Act must be dealt with under the provisions as in force before commencement of this Act.

The transitional chapter expires 1 year after the amendments in part 2 of this Act commence.

Clause 30 – Dictionary, definition of *administrator*
Clause 30 is a technical amendment that removes the definition of "administrator" from the Act.

Clause 31 – Dictionary, new definition of *initial report*
Clause 31 is a technical amendment that inserts the definition "initial report" into the Act.

Clause 32 – Dictionary, definition of *investigator's report*
Clause 32 is a technical amendment that substitutes the definition of "investigator's report" to cross refer to section 157(2)(b) of the Act.

Clause 33 – Dictionary, definition of *presiding officer*
Clause 33 is a technical amendment that defines the term "presiding officer" in the Act. The rationale for this amendment is discussed at clause 7 of the explanatory statement. The amendment differentiates between the term 'presiding officer' in regard to the Act generally and for specific use in chapter 11 (Disciplinary inquiries). In relation to chapter 11 (Disciplinary inquiries) a presiding officer is to have the meaning outlined in division 10.3.5 of the Act. Here a 'relevant presiding officer' is defined to include a presiding officer under divisions 10.3.1, 10.3.2, 10.3.3 and 10.3.4.

Clause 34 – Dictionary, definition of *review officer*
Clause 34 is a technical amendment that removes the definition of "review officer" from the Act. The rationale for this amendment is discussed at clause 25 of this explanatory statement.

Part 3 Crimes (Sentence Administration) Act 2005

Part 3 of the *Corrections and Sentencing Legislation Amendment Bill 2012* amends the *Crimes (Sentence Administration) Act 2005* (the CSA Act) to:

- clarify the Sentence Administration Board's (SAB) power to give retrospective approval not to perform periodic detention;
- ensure the chair of the SAB has the power to reorganise divisions of the SAB where Board members are unavailable; and
- provide that offenders who are not performing periodic detention will not be given credit for performing period detention over excluded periods.

Clause 35 – Periodic detention—meaning of detention period Section 41 (2)
Section 41of the CSA Act provides the meaning of 'detention period'. This is an important definition for the Act as it is used by the ACT Corrective Services and the Sentence Administration Board to determine when an offender has satisfied their sentence of period detention. Section 41(2) excludes periods that include Christmas Day, Good Friday, Easter Sunday or another day prescribed by regulation. In effect this provision excuses all 'periodic detention detainees' from their normal reporting obligations on these holidays.

Clause 35 substitutes section 41(2) of the Act to ensure that holiday exclusion days do not apply to offenders who are regularly failing to attend periodic detention, potentially to the extent where a warrant may have been issued for their arrest but not executed. Taken to its extreme, this could potentially allow a person to abscond but ultimately acquit their sentence of periodic detention by holiday 'deeming'. The clause will amend section 41(2) to exclude an offender who has not attended periodic detention for a number of periods from obtaining the holiday exemption for periodic detention.

In order to be eligible for the holiday exclusion, the amendment requires that the offender must attend periodic detention the week prior to, and the week following, the Christmas Day, Good Friday, Easter Sunday or another day prescribed by regulation. In circumstances where the offender's last term of periodic detention will fall on a Christmas Day, Good Friday, Easter Sunday or another day prescribed by regulation, the offender will only be required to attend the week prior to the holiday.

Clause 36 – Periodic detention—approval not to perform etc Section 55 (2), example

Clause 36 is a technical amendment which omits words from the example in the current section 55(2). The example has been amended to exclude reference to being in custody other than in relation to periodic detention obligations. This relates to clause 37.

Clause 37 – New section 57A

Clause 37 inserts a new section 57A provision into the CSA Act to provide that where an offender does not perform periodic detention for a detention period because the offender is remanded in custody they will have been taken to perform periodic detention for the period.

This amendment would allow the Board to manage each individual case given an offender can be said to meet their sentence obligations.

Clause 38 – Section 69 heading

Clause 38 is a technical amendment that substitutes a new heading ("Board powers—repeated failures to perform periodic detention") to add clarity to the purpose of section 69 of the CSA Act.

Clause 39 – New sections 69 (2A) and (2B)

Clause 39 inserts new subsections (2A) and (2B) into section 69.

Currently, section 75 of the CSA Act allows the Board to conduct an inquiry and manage an offender's periodic detention at any time. One of the powers the Board has under this section is to give the offender approval not to perform periodic detention for up to 8 detention periods because of the offender's health or any exceptional circumstances.

Section 69 of the CSA Act provides that where an offender has missed two or more detention periods the Sentence Administration Board must cancel the offender's periodic detention and the offender must serve the rest of their sentence by full time imprisonment.

Clause 39 will amend the CSA Act to clarify that the Board can choose to manage absence by an offender from two or more periods of periodic detention other than by cancellation, in effect by giving the offender retrospective approval not to perform periodic detention on those two or more occasions (and up to a maximum of eight) occasions, if the offender's health or exceptional circumstances justify such approval. The amendment will also ensure that for each period of leave granted to the offender, the offender's periodic detention period and sentence of imprisonment will be automatically extended by 1 week.

The Board will be able to manage an offender's period detention under the amended section 69 where an offender has missed two or more detention periods. This will clarify

that the Board need not cancel an offender's periodic detention where the circumstances call for the granting of an approved leave period.

Clause 40 – Cancellation of periodic detention on further conviction etc Section 70 (1)

In *Morro, N & Ahadizad v Australian Capital Territory* [2009] ACTSC 118 and *Jamie Griggs v The Sentence Administration Board of the ACT & Ors* [2010] ACTSC 155, the ACT Supreme Court determined that cancellation of periodic detention orders by the SAB under section 70 should only occur where the relevant offence was committed during the periodic detention period.

Clause 40 inserts the term "commits" into the new section 70(1) into the CSA Act. The new section clarifies the confusion that has been caused when the SAB has been applying section 151 (2) (a) (cancellation after parole order has ended) in relation to whether an offender must have been convicted or found guilty of a relevant offence to trigger this provision.

The amendment will clarify that section 70 applies in circumstances where an offender sentenced to periodic detention commits, and is convicted or found guilty of a further offence in the ACT or within Australia that is punishable by imprisonment or, in the case of an overseas jurisdiction the act was against the law and, if the act was committed in Australia, would be punishable by imprisonment.

Clause 41 – Cancellation of parole order for non-ACT offence Section 150 (1)

Clause 41 inserts the term "commits" into the new section 150(1) in the CSA Act. The new section clarifies the confusion that has been caused when the SAB has been applying section 151 (2) (a) (cancellation after parole order has ended) in relation to whether an offender must have been convicted or found guilty of a relevant offence to trigger this provision.

The amendment will clarify that section 151 applies in circumstances where an offender sentenced to periodic detention commits, and is convicted or found guilty of a further offence in the ACT or within Australia that is punishable by imprisonment or, in the case of an overseas jurisdiction the act was against the law and, if the act was committed in Australia, would be punishable by imprisonment.

Clause 42 – Constitution of divisions of board Section 182 (2)

Clause 42 provides the chair of the SAB with the power to assign 3 board members to each division including at least 1 judicial member under section 182(2). This amendment will ensure the chair of the SAB has the power to reorganise divisions of the SAB to include 1 or more judicial members in circumstances where board members are unavailable. This amendment will improve the efficiency of the SAB.

Clause 43 – Section 182 (3) (c)

Clause 43 provides the chair of the SAB the power to assign a board member to 2 or more divisions at the same time under section 182(3)(c). This amendment will ensure the chair of the SAB has the power to reorganise divisions of the SAB to deal with circumstances where Board members are unavailable. This amendment will improve the efficiency of the SAB.