

# Crimes (Administration of Sentences) Act 1999

## No 93

[1999-93]



New South Wales

### Status Information

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#### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

#### Notes—

- **Does not include amendments by**

[Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) (not commenced — to commence on 1.12.2005)

[Compulsory Drug Treatment Correctional Centre Act 2004 No 42](#) (not commenced)

[Crimes \(Administration of Sentences\) Amendment \(Parole\) Act 2004 No 94](#), Sch 1 (not commenced — Sch 1 [8] to commence on the commencement of Sch 3 [4] to the [Compulsory Drug Treatment Correctional Centre Act 2004](#); Sch 1 [9] to commence on the commencement of Sch 1 [49] to this Act, or on the commencement of Sch 3 [4] to the [Compulsory Drug Treatment Correctional Centre Act 2004](#), whichever is the later; Sch 1 [17] to commence on the commencement of Sch 1 [49] to this Act, or on the commencement of Sch 3 [5] to the [Compulsory Drug Treatment Correctional Centre Act 2004](#), whichever is the later; Sch 1 [18] to commence on the commencement of Sch 1 [16] to this Act, or on the commencement of Sch 1 [6] to the [Compulsory Drug Treatment Correctional Centre Act 2004](#), whichever is the later)

#### Authorisation

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File last modified 6 May 2005

# Crimes (Administration of Sentences) Act 1999 No 93



New South Wales

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# Crimes (Administration of Sentences) Act 1999 No 93



New South Wales

An Act to consolidate and amend the law with respect to the administration of certain sentences; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Crimes (Administration of Sentences) Act 1999*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Interpretation

(1) In this Act:

**audio link** means facilities (including telephone) that enable audio communication between persons at different places.

**audio visual link** means facilities (including closed-circuit television) that enable audio and visual communication between persons at different places.

**Chief Executive Officer, Corrections Health Service** means the person for the time being holding office or acting as the Chief Executive Officer of the Corrections Health Service.

**Commissioner** means the Commissioner of Corrective Services.

**community service order** means an order in force under section 8 of the *Crimes (Sentencing Procedure) Act 1999* or section 79 of the *Fines Act 1996*.

**community service work** means any service or activity approved by the Minister, and includes participation in personal development, educational or other programs.

**convicted inmate** means a person referred to in section 4 (1) (a), (b) or (c).



**correctional centre** means:

- (a) any premises declared to be a correctional centre by a proclamation in force under section 225, including any juvenile correctional centre or periodic detention centre, and
- (b) any police station or court cell complex in which an offender is held in custody in accordance with this or any other Act,

but in Part 2 does not include a periodic detention centre, except to the extent provided by the regulations referred to in section 98.

**correctional complex** means any premises declared to be a correctional complex by virtue of a proclamation in force under section 224.

**correctional officer** means a person who is employed within the Department as a correctional officer, as referred to in section 231.

**Corrections Health Service** means the Corrections Health Service specified in Schedule 2 to the [Health Services Act 1997](#) and constituted as a statutory health corporation by that Act.

**court** means:

- (a) the Supreme Court, the Court of Criminal Appeal, the Land and Environment Court, the Industrial Relations Commission, the District Court or a Local Court, or
- (b) any other court that, or person who, exercises criminal jurisdiction,

but, subject to the [Children \(Criminal Proceedings\) Act 1987](#), does not include the Children's Court or any other court that, or person who, exercises the jurisdiction of the Children's Court.

**Department** means the Department of Corrective Services.

**detention period** means a period that occurs during the term of an offender's sentence, being a period that, subject to any order under section 85:

- (a) in the case of the first such period:
  - (i) begins at 8.30 am on the day specified in that regard in the relevant periodic detention order, and
  - (ii) ends at 4.30 pm on the day following the day so specified, and
- (b) in the case of each subsequent such period:
  - (i) begins each week at 7.00 pm on the day of the week specified in that regard in the relevant periodic detention order, and

(ii) ends at 4.30 pm on the second day following the day so specified,

but does not include any such period that includes the whole or any part of Christmas Day, Good Friday or Easter Sunday.

**drug** means:

- (a) a prohibited drug or prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985*, or
- (b) any other substance declared by the regulations to be a drug for the purposes of this Act.

**exercise** a function includes perform a duty.

**full-time detention** means detention in a correctional centre, other than periodic detention within the meaning of Part 3.

**function** includes a power, authority or duty.

**governor** means:

- (a) in relation to a correctional centre, the governor of the correctional centre, or
- (b) in relation to a periodic detention centre, the governor of the correctional centre who is responsible for the periodic detention centre by virtue of a proclamation referred to in section 226 (3),

and includes any person who is for the time being in charge of the correctional centre or periodic detention centre, as the case may be.

**home detention order** means an order in force under section 7 of the *Crimes (Sentencing Procedure) Act 1999* or under section 165 of this Act.

**inmate** means a person to whom Part 2 applies.

**Inspector-General** means the Inspector-General appointed under Part 10.

**interstate leave permit** means a permit referred to in section 29.

**judicially qualified person** means:

- (a) any Judge or retired Judge of a New South Wales court or the Federal Court, or
- (b) any Magistrate or retired Magistrate, or
- (c) any person qualified to be appointed as a Judge of a New South Wales court.

**juvenile correctional centre** means any correctional centre declared to be a juvenile correctional centre by a proclamation in force under section 225A.

**law enforcement agency** means any of the following:

- (a) the Police Service, or the police force of another State or a Territory,
- (b) the New South Wales Crime Commission,
- (c) the Australian Federal Police,
- (d) the Australian Crime Commission,
- (e) the Director of Public Prosecutions of New South Wales, of another State or a Territory or of the Commonwealth,
- (f) the Police Integrity Commission,
- (g) the Independent Commission Against Corruption,
- (h) the Department of Juvenile Justice,
- (i) a person or body prescribed by the regulations for the purposes of this definition.

**local leave order** means an order referred to in section 25.

**local leave permit** means a permit referred to in section 26.

**managed correctional centre** means a correctional centre that is for the time being managed under a management agreement.

**management agreement** means an agreement referred to in section 238.

**management company** means a corporation with which the Commissioner has entered into a management agreement under which the corporation manages one or more correctional centres.

**medical officer**, in relation to a correctional centre, means a medical officer appointed for the correctional centre as referred to in section 236C.

**mobile phone** includes any device that may be used, in whole or in part, for the purpose of sending or receiving voice or other data over a mobile telephone network, whether or not it may be used for any other purpose.

**non-invasive sample** means any of the following samples of human biological material:

- (a) a sample of breath, taken by breath test, breath analysis or otherwise,
- (b) a sample of urine,
- (c) a sample of faeces,

- (d) a sample of saliva taken by buccal swab,
- (e) a sample of nail,
- (f) a sample of hair other than pubic hair,
- (g) a sample of sweat taken by swab or washing from any external part of the body other than:
  - (i) the genital or anal area or the buttocks, or
  - (ii) the breasts of a female or a transgender person who identifies as a female.

**non-parole period** has the same meaning as it has in the *Crimes (Sentencing Procedure) Act 1999*.

**offender**, where occurring elsewhere than in Part 3, 4 or 5, means a person who is subject to a sentence of imprisonment, and includes an inmate within the meaning of Part 2 and an offender within the meaning of Part 3 or 4.

**offender submission** means a submission made to the Review Council or the Parole Board, for the purposes of this Act, by an inmate of a correctional centre.

**Official Visitor** means an Official Visitor appointed under section 228.

**Parole Board** means the Parole Board constituted by section 183.

**parole order** means an order in force under:

- (a) section 138, 141, 149, 150, 154A, 159 or 160 of this Act, or
- (b) section 50 of the *Crimes (Sentencing Procedure) Act 1999*.

**periodic detention**, in relation to an offender, means detention in prison for such number of detention periods as there are in the term of the offender's sentence.

**periodic detention centre** means any correctional centre declared to be a periodic detention centre by a proclamation in force under section 226.

**periodic detention order** means an order in force under section 6 of the *Crimes (Sentencing Procedure) Act 1999* or section 89 of the *Fines Act 1996*.

**probation and parole officer** means a person who is employed within the Department as a probation and parole officer, as referred to in section 231.

**Review Council** means the Serious Offenders Review Council constituted by section 195.

**sentence** means a sentence of imprisonment.

**sentencing court**, in relation to an offender undergoing a penalty imposed by a court, means the court by which the penalty was imposed.

**serious offender** means:

- (a) an offender who is serving a sentence for life, or
- (b) an offender who is serving a sentence for which a non-parole period has been set in accordance with Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999*, or
- (c) an offender who is serving a sentence (or one of a series of sentences of imprisonment) where the term of the sentence (or the combined terms of all of the sentences in the series) is such that the offender will not become eligible for release from custody, including release on parole, until he or she has spent at least 12 years in custody, or
- (d) an offender who is for the time being required to be managed as a serious offender in accordance with a decision of the sentencing court, the Parole Board or the Commissioner, or
- (e) an offender who has been convicted of murder and who is subject to a sentence in respect of the conviction, or
- (f) an offender who belongs to a class of persons prescribed by the regulations to be serious offenders for the purposes of this definition.

**submanagement agreement** means an agreement referred to in section 239.

**submanagement company** means a corporation with which a management company has entered into a submanagement agreement under which the corporation manages one or more correctional centres on behalf of the management company.

**transitional centre** means premises managed or approved by the Commissioner for the purpose of accommodating certain inmates prior to their release from custody.

**victim** of a serious offender means a person whose name is recorded in the Victims Register as a victim of that offender.

**Victims Register** means the register kept under section 256 of the names of victims of offenders who have requested that they be given notice of the possible parole of the offender concerned.

**victim submission** means a submission made to the Review Council or the Parole Board, for the purposes of this Act, by a victim of a serious offender.

**Visiting Magistrate** means a Visiting Magistrate appointed under section 227.

(2) In this Act:

- (a) a reference to a sentence to which an offender is subject includes a reference to a sentence that has been imposed but is yet to commence, and
- (b) a reference to the term of a sentence is, if the term is varied under this or any other Act, a reference to the term as so varied, and
- (c) a reference to a non-parole period of a sentence is, if the period is varied under this or any other Act, a reference to the period as so varied, and
- (d) a reference to a court that has sentenced an offender, made an order or given a direction includes a reference to the same court differently constituted and (in the case of a Local Court) includes a reference to any other Local Court.

(3) Notes in the text of this Act do not form part of this Act.

## **Part 2 Imprisonment by way of full-time detention**

### **Division 1 Preliminary**

#### **4 Application of Part**

(1) This Part applies to:

- (a) any person the subject of a warrant under section 62 of the *Crimes (Sentencing Procedure) Act 1999* by which a court has committed the person to a correctional centre to serve a sentence or the remainder of a sentence by way of full-time detention, other than a person who is on release on parole, and
- (b) any person the subject of a warrant under section 87 of the *Fines Act 1996* by which the State Debt Recovery Office has committed the person to a correctional centre to serve a sentence by way of full-time detention, and
- (c) any person the subject of a warrant under section 181 of this Act by which the Parole Board has committed the person to a correctional centre to serve the remainder of a sentence by way of full-time detention, and
- (d) any person the subject of a warrant or order by which a court has committed the person to a correctional centre on remand in connection with proceedings for an offence committed, or alleged to have been committed, by the person, and
- (e) any person the subject of a warrant or order by which a court or other competent authority has committed the person to a correctional centre otherwise than as referred to in paragraph (a), (b), (c) or (d).

(2) This Part does not apply to a person who is detained in a correctional centre in accordance with the *Intoxicated Persons Act 1979*.

(3) In this Part, ***inmate*** means a person to whom this Part applies and ***convicted inmate***

means a person referred to in subsection (1) (a), (b) or (c).

## **5 Obligations of inmate**

The obligations of an inmate while serving a sentence by way of full-time detention are:

- (a) to comply with such requirements of this Part and the regulations as apply to the inmate, and
- (b) to comply with the requirements of any directions given to the inmate under this Part.

## **6 Work performed by inmates**

- (1) The governor of a correctional centre may make an order directing any convicted inmate in the correctional centre to carry out such work as the governor considers suitable.
- (2) Such convicted inmates or such classes or groups of convicted inmates as the Commissioner may from time to time determine may be directed to carry out community service work, or any work for the Department or a public or local authority, outside the correctional centre in which they are imprisoned.
- (3) An inmate is not required to carry out work that the inmate is not capable of carrying out.

## **7 Payments to inmates**

- (1) The Commissioner may, out of money provided by Parliament or otherwise legally available, make payments to inmates for any reason (including for work done).
- (2) Payment for work done by inmates of a managed correctional centre may not be made by the management company for the correctional centre otherwise than in accordance with a scheme approved by the Commissioner.
- (3) The payment of an inmate by the Commissioner under this section for work done (whether or not at the direction of the Commissioner) does not constitute employment of, or a contract of service with, the inmate by the Crown or any other person, and accordingly an inmate who undertakes any such paid work is not:
  - (a) a worker for the purposes of the [Workers Compensation Act 1987](#), the [Workplace Injury Management and Workers Compensation Act 1998](#), the [Annual Holidays Act 1944](#) or the [Long Service Leave Act 1955](#), or
  - (b) an employee (however described) for the purposes of the [Industrial Relations Act 1996](#) or any Act or other law.

## **8 Release from custody**

- (1) Unless sooner released on parole, an inmate who is serving a sentence by way of full-

time detention (the **current sentence**) is to be released from custody on the day the sentence expires (the **release date**), as determined in accordance with Division 1 of Part 4 of the *Crimes (Sentencing Procedure) Act 1999* but subject to any variation of the term of that sentence under this or any other Act.

- (2) An inmate may be released from custody:
  - (a) at any time on the release date for the current sentence, or
  - (b) if the release date for the current sentence is a Saturday, Sunday or public holiday and the inmate so requests, at any time during the next day that is not a Saturday, Sunday or public holiday.
- (3) This section does not apply to an inmate who, as at the release date for the current sentence, is subject to another sentence that is being served by way of full-time detention:
  - (a) where the other sentence commenced before, but will not end until after, the release date for the current sentence, or
  - (b) where the other sentence commences immediately after the release date for the current sentence.

## **Division 2 Segregated and protective custody**

### **9 Definitions**

In this Division:

**protective custody direction** means a direction referred to in section 11.

**segregated custody direction** means a direction referred to in section 10.

**suspension direction** means a direction referred to in section 20 (1) (a).

### **10 Segregated custody of inmates**

- (1) The Commissioner may direct that an inmate be held in segregated custody if of the opinion that the association of the inmate with other inmates constitutes or is likely to constitute a threat to:
  - (a) the personal safety of any other person, or
  - (b) the security of a correctional centre, or
  - (c) good order and discipline within a correctional centre.
- (2) The governor of a correctional centre may exercise the Commissioner's functions under this section in relation to the correctional centre and, on each occasion he or she does so, must notify the Commissioner of that fact and of the grounds on which



the segregated custody direction was given.

- (3) A segregated custody direction given by the governor of a correctional centre does not apply in relation to any other correctional centre.
- (4) Subsection (3) is subject to section 15.

#### **11 Protective custody of inmates**

- (1) The Commissioner may direct that an inmate be held in protective custody if of the opinion that the association of the inmate with other inmates constitutes or is likely to constitute a threat to the personal safety of the inmate.
- (2) The Commissioner may also direct that an inmate be held in protective custody if the inmate requests the Commissioner in writing to do so.
- (3) The governor of a correctional centre may exercise the Commissioner's functions under this section in relation to the correctional centre and, on each occasion he or she does so, must notify the Commissioner of that fact and of the grounds on which the protective custody direction was given.
- (4) A protective custody direction given by the governor of a correctional centre does not apply in relation to any other correctional centre.
- (5) Subsection (4) is subject to section 15.

#### **12 Effect of segregated or protective custody direction**

- (1) An inmate subject to a segregated or protective custody direction is to be detained:
  - (a) in isolation from all other inmates, or
  - (b) in association only with such other inmates as the Commissioner (or the governor of the correctional centre in the exercise of the Commissioner's functions under section 10 or 11) may determine.
- (2) An inmate who is held in segregated or protective custody:
  - (a) is not to suffer any reduction of diet, and
  - (b) is not to be deprived of any rights or privileges other than those determined by the Commissioner (or the governor in the exercise of the Commissioner's functions under section 10 or 11), either generally or in a particular case, and other than those the deprivation of which is necessarily incidental to the holding of the inmate in segregated or protective custody.

#### **13 Form of direction**

A segregated or protective custody direction must be in writing and must include the

grounds on which it is given.

#### **14 Information concerning review of segregated or protective custody direction**

As soon as practicable after an inmate is directed:

- (a) to be held in segregated custody under section 10, or
- (b) to be held in protective custody under section 11 (other than at the inmate's request),

the governor of the correctional centre is to provide the inmate with information concerning the inmate's rights to a review of the segregated or protective custody direction.

#### **15 Transfer of inmate held in segregated or protective custody**

- (1) If an inmate held in segregated or protective custody under a segregated or protective custody direction given by the governor of a correctional centre is transferred to another correctional centre, the segregated or protective custody direction applies:
  - (a) in relation to the correctional centre to which the inmate is transferred (***the receiving correctional centre***), and
  - (b) in relation to the conveyance of the inmate to the receiving correctional centre, including custody of the inmate in any correctional centre in which the inmate is held during the course of being conveyed to the receiving correctional centre.
- (2) Within 72 hours after the arrival of the inmate at the receiving correctional centre, the governor of the receiving correctional centre must review the segregated or protective custody direction, having regard to the grounds referred to in section 10 or 11, and give one of the following directions:
  - (a) a direction revoking the segregated or protective custody direction,
  - (b) a direction confirming the segregated or protective custody direction,
  - (c) a direction confirming the segregated or protective custody direction but amending its terms.
- (3) A direction given under subsection (2) has effect according to its terms.
- (4) A segregated or protective custody direction that is subject to a direction under subsection (2) (b) or (c) is, on and after the giving of that direction, taken to be a segregated or protective custody direction given by the governor of the receiving correctional centre.
- (5) A direction by the governor of a receiving correctional centre revoking, confirming or amending a segregated or protective custody direction has effect even though it is

given outside the period during which it is required to be given under this section.

## **16 Review of segregated or protective custody direction by Commissioner**

- (1) The governor of a correctional centre where an inmate is held in segregated or protective custody must submit a report about the segregated or protective custody direction to the Commissioner within 14 days after the date on which the direction is given (***the relevant date***), regardless of whether the segregated or protective custody direction was given by the Commissioner or by the governor of a correctional centre.
- (2) Within 7 days after receiving the report, the Commissioner must review the segregated or protective custody direction and give one of the following directions:
  - (a) a direction revoking the segregated or protective custody direction,
  - (b) a direction confirming the segregated or protective custody direction,
  - (c) a direction confirming the segregated or protective custody direction but amending its terms.
- (3) If the direction is confirmed, the governor of the correctional centre where the inmate is held in segregated or protective custody must submit a further report about the direction to the Commissioner within 3 months after the relevant date, and within each subsequent period of 3 months after that period.
- (4) Within 7 days after each occasion on which the Commissioner receives any such further report, the Commissioner must review the segregated or protective custody direction and give one of the directions referred to in subsection (2) (a)-(c).
- (5) The confirmation of a segregated or protective custody direction by the governor of a correctional centre under section 15, or by the Review Council under section 22, does not affect the requirements for reporting about and reviewing a segregated or protective custody direction under this section.
- (6) A direction by the Commissioner revoking, confirming or amending a segregated or protective custody direction has effect even though it is given outside the period during which it is required to be given under this section.
- (7) In this section:

***report***, in relation to a segregated or protective custody direction, means a report recommending whether or not the segregated or protective custody direction should be revoked, confirmed or amended.

## **17 Revocation of segregated or protective custody direction**

- (1) A segregated or protective custody direction remains in force until it is revoked.

- (2) The Commissioner may, at any time, revoke a segregated or protective custody direction or amend its terms.
- (3) The Commissioner must revoke a protective custody direction given at the request of an inmate if the inmate requests the Commissioner in writing to revoke it.
- (4) The governor of a correctional centre may exercise the Commissioner's functions under this section in relation to the correctional centre.

#### **18 Report to Minister on segregated or protective custody direction**

- (1) As soon as practicable after confirming a segregated or protective custody direction, the Commissioner must give written notice of that fact to the Minister, giving reasons for the confirmation direction, if:
  - (a) the confirmation direction will result in the inmate being subject to a total continuous period of segregated or protective custody exceeding 6 months, or
  - (b) the inmate has already been subject to a total continuous period of segregated or protective custody exceeding 6 months.
- (2) This section does not apply to a direction confirming a protective custody direction that was given at the request of an inmate.

#### **19 Review of segregated or protective custody direction by Review Council**

- (1) An inmate whose total continuous period of segregated or protective custody exceeds 14 days may apply to the Review Council for a review of the segregated or protective custody direction under which the inmate is held in segregated or protective custody.
- (2) The application is to be in writing and is to include the inmate's reasons for making the application.
- (3) The Review Council must review the direction unless subsection (4) applies.
- (4) The Review Council may refuse to review the direction if:
  - (a) the application does not, in the opinion of the Review Council, disclose substantial grounds for a review, or
  - (b) the Review Council has previously determined a review of the same direction under this Division and the application does not, in the opinion of the Review Council, disclose substantially different grounds for review.
- (5) The Review Council may not refuse to review a direction under subsection (4) if a period of more than 3 months has elapsed since the Review Council determined a review of the segregated or protective custody direction.
- (6) This section applies regardless of whether the relevant segregated or protective

custody direction was given by the Commissioner or by the governor of a correctional centre.

## **20 Suspension directions by Review Council**

- (1) The Chairperson of the Review Council may give a direction for:
  - (a) the suspension of an inmate's segregated or protective custody direction, or
  - (b) the transfer of an inmate to a different correctional centre.
- (2) A suspension direction may be given at any time after an application for a review is made and before it is determined.
- (3) While a suspension direction is in force, the inmate is not to be held in segregated or protective custody unless a new segregated or protective custody direction is given.
- (4) The Chairperson may at any time vary or revoke a suspension direction.
- (5) A suspension direction does not revoke a segregated or protective custody direction.
- (6) A direction for the transfer of an inmate to a different correctional centre may be given:
  - (a) if the Chairperson considers that the inmate's removal would facilitate the review of the segregated or protective custody direction, or
  - (b) for any other reason that the Chairperson thinks fit.
- (7) The determination of a review of a segregated or protective custody direction by the Review Council under section 22 revokes any suspension direction applying to the segregated or protective custody direction.

## **21 Procedure for review of segregated or protective custody direction by Review Council**

- (1) In determining any matter relating to the segregated or protective custody of an inmate, the Review Council is not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate.
- (2) The Review Council must cause notice of any hearing in relation to a review to be given to the inmate who applied for the review.
- (3) If the inmate so wishes, the Review Council must allow the inmate to be present, and to be heard, at the hearing.
- (4) The inmate may be represented by a legal practitioner chosen by the inmate or, if the Review Council so approves, by some other person chosen by the inmate.
- (5) The Commissioner or the governor of a correctional centre (or both) may be represented by a legal practitioner or by some other person.

- (6) Division 2 of Part 9 applies to the conduct of a review by the Review Council under this Division.

## **22 Determination of review by Review Council**

- (1) In reviewing a segregated or protective custody direction, the Review Council must take the following matters into account:
- (a) whether the direction was given or reviewed in accordance with this Division,
  - (b) whether the direction was reasonable in the circumstances,
  - (c) whether the direction was necessary to secure the personal safety of the inmate or any other person,
  - (d) the security of, and the preservation of good order and discipline within, the relevant correctional centre,
  - (e) the interests of the public.
- (2) In determining an application for review, the Review Council may revoke, confirm or amend the segregated or protective custody direction to which the application relates.

## **Division 3 Transfer and leave of absence**

### **Subdivision 1 Transfer and leave of absence within New South Wales**

#### **23 Transfers from one correctional centre to another**

- (1) The Commissioner may order that an inmate be transferred from one correctional centre to another:
- (a) because the correctional centre is being or is about to be repaired, altered, enlarged or rebuilt, or
  - (b) because of an outbreak or threatened outbreak in the correctional centre of an infectious disease, or
  - (c) because the correctional centre has ceased or is about to cease to be a correctional centre, or
  - (d) because the correctional centre is overcrowded, or
  - (e) because inmates in the correctional centre need to be separated in compliance with the requirements of the regulations, or
  - (f) because of any other reason specified in the order.
- (2) In relation to an inmate who is under the age of 18 years, such an order may not be made on a ground referred to in subsection (1) (d), (e) or (f) so as to transfer the

inmate from a juvenile correctional centre to a correctional centre that is not a juvenile correctional centre.

**Note—**

Such an inmate may only be transferred to such a correctional centre in accordance with section 41C (2).

## **24 Transfers to hospital**

- (1) The Commissioner may order that an inmate be transferred:
  - (a) to a hospital (including a hospital that is or forms part of a correctional centre or correctional complex), or
  - (b) to some other place specified in the order,if of the opinion that it is necessary or desirable for the inmate to receive medical attention there.
- (2) While the inmate is at the hospital or other place, the Commissioner may direct a correctional officer to take charge of the inmate.
- (3) An inmate who is transferred to a hospital may be discharged from the hospital on the certificate of the medical superintendent or other person in charge of the hospital.
- (4) On being discharged from the hospital or other place, the inmate must immediately be returned:
  - (a) to the correctional centre from which the inmate was transferred, or
  - (b) to such other correctional centre as the Commissioner may direct.
- (5) The Commissioner's functions under this section may be exercised in relation to a correctional centre by the governor of the correctional centre.

## **25 Local leave orders**

- (1) The Commissioner may make an order (a **local leave order**) requiring an inmate to be taken from a correctional centre to any place in the State:
  - (a) on such conditions and for such period as may be specified in the order, and
  - (b) for such purpose as the Commissioner considers appropriate.
- (2) Without limiting subsection (1) (b), the purposes for which a local leave order may be made include the following:
  - (a) enabling an inmate to be interviewed by a police officer, or by an officer of a law enforcement agency, in connection with the commission of an offence in a correctional centre, whether or not the offence was committed or is suspected of having been committed by the inmate,

- (b) enabling an inmate to assist in the administration of justice.
- (3) The conditions to which a local leave order is subject must include such conditions as are required by the regulations to be included in such an order.
- (4) Subject to subsection (3), the Commissioner may, at any time:
  - (a) vary or omit any condition of a local leave order, or
  - (b) substitute or add new conditions to a local leave order, or
  - (c) revoke a local leave order.

## **26 Local leave permits**

- (1) The Commissioner may issue a permit (a **local leave permit**) allowing an inmate to be absent from a correctional centre:
  - (a) on such conditions and for such period as may be specified in the permit, and
  - (b) for such purpose as the Commissioner considers appropriate.
- (2) Without limiting subsection (1) (b), the purposes for which a local leave permit may be issued include the following:
  - (a) enabling an inmate to be interviewed by a police officer, or by an officer of a law enforcement agency, in connection with the commission of an offence in a correctional centre, whether or not the offence was committed or is suspected of having been committed by the inmate,
  - (b) enabling an inmate to assist in the administration of justice,
  - (c) enabling an inmate to attend a funeral service or burial of a member of the inmate's immediate or extended family,
  - (d) enabling an inmate to be present at an occasion of special significance to the inmate's immediate or extended family,
  - (e) enabling an inmate to visit any member of the inmate's immediate family who is suffering serious illness or disability,
  - (f) enabling an inmate to apply for work or attend an interview with an employer or prospective employer,
  - (g) enabling an inmate to attend a place of education or training in connection with any course of education or training,
  - (h) enabling an inmate to engage in employment specified in the permit,
  - (i) enabling an inmate to have weekend leave,



- (j) enabling an inmate to reside at a transitional centre,
  - (k) enabling an inmate to attend tuition or perform work in connection with a course of education or training being undertaken by the inmate,
  - (l) in the case of a female inmate who is the mother of a young child or young children, enabling the inmate to serve her sentence with her child or children in an appropriate environment.
- (3) The conditions to which a local leave permit is subject must include such conditions as are required by the regulations to be included in such a permit.
- (4) Subject to subsection (3), the Commissioner may, at any time:
- (a) vary or omit any condition of a local leave permit, or
  - (b) substitute or add new conditions to a local leave permit, or
  - (c) revoke a local leave permit.
- (5) For the purposes of this section, **member of the inmate's immediate family** includes a person with whom the inmate has a de facto relationship (within the meaning of the [Property \(Relationships\) Act 1984](#)).

#### **26A Conditions of leave as to non-association and place restriction**

- (1) The conditions to which a local leave permit is subject may include either or both of the following:
- (a) provisions prohibiting or restricting the inmate from associating with a specified person,
  - (b) provisions prohibiting or restricting the inmate from frequenting or visiting a specified place or district.
- (2) A condition referred to in subsection (1) (a) or (b) is suspended while the inmate is in lawful custody (otherwise than while unescorted as referred to in section 38 (2) (a)).
- (3) An inmate does not contravene a prohibition or restriction as to his or her association with a specified person:
- (a) if the inmate does so in compliance with an order of a court, or
  - (b) if, having associated with the person unintentionally, the inmate immediately terminates the association.
- (4) An inmate does not contravene a requirement not to frequent or visit a specified place or district if the inmate does so in compliance with an order of a court.
- (5) In this section, **associate with** means:

(a) to be in company with, or

(b) to communicate with by any means (including post, facsimile, telephone and email).

## Subdivision 2 Interstate leave of absence

### 27 Definitions

In this Subdivision:

**corresponding Commissioner**, in relation to a participating State, means the officer responsible for the administration of correctional centres (however described) in the participating State.

**corresponding interstate law** means a law that is declared to be a corresponding interstate law for the purposes of this Subdivision by an order published under section 28.

**escape**, in relation to an interstate prisoner temporarily released from lawful custody, includes fail to return to lawful custody at the end of the time for which the prisoner has been released.

**escorted custody**, in relation to an interstate prisoner, means in the custody of an interstate escort under section 30.

**interstate escort**, in relation to a participating State, means:

- (a) a correctional officer (however described) or a police officer of that State, or
- (b) a person who is authorised to have the custody of an interstate prisoner under a permit issued in accordance with the corresponding interstate law of that State, or
- (c) a person who is appointed by the corresponding Commissioner of that State by an instrument in writing to be an escort for the purpose of escorting an interstate prisoner to that State.

**interstate prisoner** means a person who is in New South Wales under the authority of a permit issued under a corresponding interstate law.

**participating State** means any State in which a corresponding interstate law is in force.

**State** includes the Australian Capital Territory and the Northern Territory.

**unescorted custody**, in relation to an interstate prisoner, means leave within New South Wales in circumstances where:

- (a) the leave is authorised by a permit issued under a corresponding interstate law, and
- (b) no interstate escort has been appointed to escort the prisoner while within New South Wales, and

- (c) the corresponding interstate law provides that the prisoner is taken to be in the custody of the corresponding Commissioner or another official of the participating State while in New South Wales.

## 28 Corresponding interstate law

- (1) The Governor may, by order published in the Gazette, declare that a law of a State other than New South Wales is a corresponding interstate law for the purposes of this Subdivision.
- (2) Such an order is to be made only if the Governor is satisfied that the law substantially corresponds with the provisions of this Subdivision.

## 29 Issue of interstate leave permit

- (1) The Commissioner may issue an interstate leave permit to an inmate of a correctional centre for leave to travel to and from, and remain in, a participating State for a specified period:
  - (a) if the inmate does not have a high security classification, on any grounds that the Commissioner considers appropriate, or
  - (b) if the inmate has a high security classification, only if the leave is for medical treatment or for some compassionate purpose.
- (2) In particular, the Commissioner may issue an interstate leave permit to an inmate who is an Aboriginal person if satisfied that the purpose of the leave is:
  - (a) to enable the inmate to attend a funeral service or burial of a member of the inmate's immediate or extended family, or
  - (b) to enable the inmate to be present at an occasion of special significance to the inmate's immediate or extended family.
- (3) The period specified in an interstate leave permit must not exceed 7 days.
- (4) An interstate leave permit is subject to such conditions (including conditions relating to the escort of the inmate) as the Commissioner specifies in the permit or as may be prescribed by the regulations.
- (5) The Commissioner may, by instrument in writing, appoint any correctional officer to be an escort for the purposes of this Subdivision.
- (6) In this section, **high security classification** means a classification prescribed by the regulations as a high security classification.
- (7) For the purposes of this section, **member of the inmate's immediate family** includes a person with whom the inmate has a de facto relationship (within the meaning of the [Property \(Relationships\) Act 1984](#)).

### **30 Effect of interstate leave permit**

- (1) If it is a condition of an interstate leave permit that an inmate be escorted to a participating State, the permit:
  - (a) authorises the inmate concerned to be absent from the correctional centre in the custody of an escort for the purpose and period specified in the permit, and
  - (b) authorises the escort to take and keep custody of the inmate for the purpose of escorting the inmate:
    - (i) to the participating State (whether or not across any other State), and
    - (ii) within the participating State,in accordance with the permit, and
  - (c) authorises the escort to take and keep custody of the inmate for the purpose of returning the inmate to the correctional centre from which leave of absence was given.
- (2) If it is not a condition of an interstate leave permit that an inmate be escorted to a participating State, the permit authorises the inmate concerned to be absent from the correctional centre for the purpose and period specified in the permit.

### **31 Variation or revocation of interstate leave permit**

The Commissioner may at any time:

- (a) vary or omit any condition of an interstate leave permit (whether specified in the permit or prescribed by the regulations), or
- (b) substitute or add new conditions to an interstate leave permit, or
- (c) revoke an interstate leave permit.

### **32 Breach of interstate leave permit**

An inmate must not fail, without reasonable excuse, to comply with any condition of an interstate leave permit.

Maximum penalty: 10 penalty units.

### **33 Notice to participating State and transit jurisdiction**

On granting an interstate leave permit, the Commissioner must cause written notice of the fact that the permit has been granted, and of the period of the permit, to be given:

- (a) to the corresponding Commissioner and the chief officer of police of the participating State to which the inmate is to travel, and

- (b) to the chief officer of police of any other jurisdiction through which the inmate is to travel to reach the participating State.

#### **34 Effect of interstate leave permit issued under corresponding interstate law**

A correctional officer (however described) or a police officer of a participating State who is authorised under a permit issued under a corresponding interstate law to escort a person imprisoned in that State to or through New South Wales is authorised, while in New South Wales:

- (a) to take and keep custody of the person for the purposes and period set out in the permit, and
- (b) to take and keep custody of the person for the purpose of returning the person to the participating State.

#### **35 Arrest of escaped interstate prisoners**

If it appears to an interstate escort, a police officer or any other person that an interstate prisoner has escaped from lawful custody, the interstate escort, police officer or person may arrest the interstate prisoner and (in the case of an interstate prisoner in escorted custody) return the interstate prisoner to the custody of the interstate escort.

#### **36 Return of escaped interstate prisoners to State of origin**

- (1) An interstate prisoner:
  - (a) who is arrested following an escape, or
  - (b) who attempts to escape,may be taken before a Magistrate.
- (2) Despite the terms of any permit issued in accordance with a corresponding interstate law, a Magistrate may by warrant (a **return warrant**):
  - (a) order the return of the interstate prisoner to the participating State in which the permit was issued, and
  - (b) order the interstate prisoner to be delivered to an interstate escort for the purpose of such a return.
- (3) A return warrant may be executed in accordance with its terms.
- (4) An interstate prisoner who is the subject of a return warrant may be held in custody as an inmate until the person is delivered into the custody of an interstate escort in accordance with that warrant, or until the expiry of a period of 14 days from the issue of the warrant, whichever first occurs.
- (5) A return warrant ceases to have effect if the interstate prisoner who is the subject of

the warrant is not delivered into the custody of an interstate escort, in accordance with the terms of the warrant, within 14 days after the warrant is issued.

### **37 Liability of Crown for damage caused by inmate or escort**

- (1) The Crown in right of the State is liable for any damage or loss sustained by any person in a participating State that is caused by the acts or omissions of an inmate or escort while in a participating State because of an interstate leave permit.
- (2) Nothing in this section affects any right of action the Crown may have against the inmate or escort for the damage or loss concerned.

## **Subdivision 3 Miscellaneous**

### **38 Absent inmates taken to be in custody**

- (1) This section applies to an inmate who is absent from a correctional centre in any of the following circumstances:
  - (a) while performing community service work or other work outside a correctional centre, as referred to in section 6 (2),
  - (b) while being transferred from one correctional centre to another, as referred to in section 23 or 41C,
  - (c) while at a hospital or other place referred to in section 24, or while being transferred between a correctional centre and such a hospital or place,
  - (d) while absent from a correctional centre in accordance with a local leave order,
  - (e) while absent from a correctional centre in accordance with a local leave permit,
  - (f) while absent from a correctional centre in accordance with an interstate leave permit,
  - (g) while being transferred from one part of a correctional centre to another part of the correctional centre located on separate premises.
- (2) An inmate who is absent from a correctional centre in any of the circumstances referred to in subsection (1) is taken to be in custody as follows:
  - (a) if unescorted, the inmate is taken to be in the custody of the governor of the correctional centre from which he or she is absent,
  - (b) if escorted by a correctional officer employed in a correctional centre, the inmate is taken to be in the custody of the governor of the correctional centre in which the correctional officer is employed,
  - (c) if escorted by a correctional officer not employed in a correctional centre, the

inmate is taken to be in the custody of the designated officer.

(3) An inmate is not taken to be absent from a correctional centre merely because the inmate is in some other part of a correctional complex of which the correctional centre forms part.

(4) In this section:

**correctional officer** includes:

- (a) a person employed on a temporary basis within the Department to perform some or all of the duties of a correctional officer, and
- (b) a person holding an authority under section 240 to perform escort duties.

**designated officer** means the person for the time being holding or acting in the position within the Department designated by the Commissioner for the purposes of this section.

### 39 Powers of arrest

(1) A police officer or correctional officer may, with or without a warrant, arrest an inmate:

- (a) who has contravened, or has manifested an intention to contravene, a condition of a local leave order, local leave permit or interstate leave permit, or
- (b) whose local leave order, local leave permit or interstate leave permit has been revoked, or
- (c) who has not returned to a correctional centre at the expiry of the period specified in a local leave order, local leave permit or interstate leave permit, or
- (d) who has escaped from custody.

(2) A police officer who arrests an inmate under subsection (1):

- (a) in the case of an inmate who has escaped from custody—is to take the inmate before an authorised justice to be dealt with according to law, or
- (b) in any other case—is to convey the inmate to the nearest appropriate correctional centre.

(3) A correctional officer who arrests an inmate under subsection (1):

- (a) in the case of an inmate who has escaped from custody—is to take the inmate to a police officer, or before an authorised justice to be dealt with according to law, or
- (b) in any other case—is to convey the inmate to the nearest appropriate correctional

centre.

- (4) If an inmate is taken before an authorised justice under subsection (2) (a) or (3) (a), the authorised justice may, by warrant, commit the inmate to the custody of:
  - (a) the person from whose custody the inmate escaped, or
  - (b) a correctional centre to be held pending the return of the inmate to the custody of that person, or
  - (c) any other person with lawful authority to hold the inmate in custody.
- (5) Subsection (4) does not limit the powers of an authorised justice to deal with an inmate according to law.
- (6) A warrant under subsection (4) is sufficient authority:
  - (a) for any police officer or correctional officer to convey the inmate to the person specified in the warrant, or to the correctional centre specified in the warrant, and to deliver the inmate into the custody of that person or the governor of that correctional centre, and
  - (b) for the governor of the correctional centre to keep the inmate in his or her custody pending the person's return to the custody of the person from whose custody the inmate escaped.
- (7) In this section:

**authorised justice** has the same meaning as in the [Search Warrants Act 1985](#).

#### **40 Certain unlawful absences not to affect length of sentence**

- (1) This section applies to an inmate who is unlawfully absent from a correctional centre during the term of a sentence:
  - (a) otherwise than by reason of having escaped from lawful custody, and
  - (b) otherwise than by reason of having failed to return to a correctional centre at the expiry of the period specified in a local leave permit or interstate leave permit, and
  - (c) otherwise than by reason of having failed to return to a correctional centre following the revocation of a periodic detention order, home detention order or parole order,and so applies whether or not the inmate is taken, while absent, to be in the custody of the governor of the correctional centre.
- (2) For the purpose only of calculating how much of the sentence the inmate has served,



the inmate is taken to have been in lawful custody for the whole of that absence.

#### **41 Transfer of inmates to or through ACT**

An inmate who is in the Australian Capital Territory:

- (a) while being transferred from one correctional centre to another under this Act, or
- (b) while being transferred to a hospital or other place for medical attention, or
- (c) while absent from a correctional centre in accordance with a local leave order or local leave permit,

remains in the lawful custody of the governor of the correctional centre from which the inmate is transferred or absent.

### **Division 3A Juvenile inmates**

#### **41A Definitions**

In this Division:

**adult correctional centre** means a correctional centre that is not a juvenile correctional centre.

**juvenile inmate** means an inmate who is under the age of 21 years.

**section 28 juvenile inmate** means a juvenile inmate who has been transferred to a juvenile correctional centre pursuant to an order under section 28 of the [Children \(Detention Centres\) Act 1987](#).

#### **41B Custody of section 28 juvenile inmates**

Subject to this Act, a section 28 juvenile inmate is to be held in custody in a juvenile correctional centre.

#### **41C Transfers to and from juvenile correctional centres**

- (1) The Commissioner may order that a juvenile inmate be transferred from an adult correctional centre to a juvenile correctional centre for any reason specified in the order.
- (2) The Minister may order that a juvenile inmate be transferred from a juvenile correctional centre to an adult correctional centre if:
  - (a) the Commissioner, in the case of a juvenile inmate who is of or above the age of 18 years, or
  - (b) the Review Council, in the case of a juvenile inmate who is under the age of 18 years,

recommends to the Minister that the inmate should be transferred.

- (3) A recommendation for the transfer of a juvenile inmate from a juvenile correctional centre to an adult correctional centre may not be made unless the Commissioner or Review Council, as the case may be, is satisfied that:
- (a) the inmate wishes to be transferred, or
  - (b) the inmate's behaviour is or has been such that he or she should be transferred, or
  - (c) it is in the inmate's best interests that he or she be transferred, or
  - (d) the association of the inmate with other juvenile inmates at the juvenile correctional centre constitutes, or is likely to constitute, a threat to:
    - (i) the personal safety of any other person, or
    - (ii) the security of the juvenile correctional centre, or
    - (iii) good order and discipline within the juvenile correctional centre.
- (4) Subsection (2) does not limit the operation of section 23 (1) in relation to juvenile inmates who are of or above the age of 18 years.

**Note—**

Section 23 (2) limits the operation of section 23 (1) in relation to juvenile inmates who are under the age of 18 years.

**41D Procedure to be followed by Review Council as to transfer of juvenile inmate to adult correctional centre**

- (1) On the application of the Commissioner, the Review Council is to conduct an inquiry for the purpose of deciding whether or not to recommend the transfer of a juvenile inmate from a juvenile correctional centre to an adult correctional centre, as referred to in section 41C (2) (b).
- (2) In conducting an inquiry under this section, the Review Council is not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate.
- (3) The Review Council must cause notice of any hearing in relation to an inquiry under this section to be given to the Commissioner and to the juvenile inmate to whom the inquiry relates.
- (4) If the inmate so wishes, the Review Council must allow the juvenile inmate to be present, and to be heard, at the hearing.
- (5) The juvenile inmate may be represented by a legal practitioner chosen by the inmate or, if the Review Council so approves, by some other person chosen by the inmate.

- (6) The Commissioner may be represented by a legal practitioner or by some other person.
- (7) For the purposes of an inquiry under this section, the Review Council must co-opt a person who is:
- (a) a Children's Magistrate or former Children's Magistrate, or
  - (b) a legal practitioner of at least 7 years' standing who has experience as an advocate on behalf of children,
- unless such a person is already a member of the Review Council and is available for the inquiry.
- (8) A person who is co-opted to the Review Council under subsection (7):
- (a) may be co-opted:
    - (i) as a community member, if the Review Council, as constituted for the purposes of the inquiry, includes a judicial member, or
    - (ii) as a judicial member, if the Review Council, as constituted for the purposes of the inquiry, does not include some other judicial member, and
  - (b) is taken, for the purposes of the inquiry, to be a judicial member or community member, as the case may be, and has, in relation to the inquiry, all of the powers and immunities of such a member.
- (9) Division 2 of Part 9 applies to the conduct of an inquiry by the Review Council under this section.

## **Division 4 Prisoners received from Australian Capital Territory**

### **42 Definitions**

- (1) In this Division:

**Australian Capital Territory Act** means the *Removal of Prisoners Act 1968* of the Australian Capital Territory.

**Australian Capital Territory warrant** means a warrant issued under the Australian Capital Territory Act.

**authorised person, constable, court, magistrate** and **order** have the same meanings as they have in the Australian Capital Territory Act.

**prisoner** means a person who is liable to undergo imprisonment or other detention in custody under a law in force in the Australian Capital Territory.

- (2) For the purposes of this Division, a reference to an order of a court or magistrate

includes a reference to a warrant issued by a court or magistrate, other than an Australian Capital Territory warrant.

#### **43 Application of Division**

This Division does not apply to a person who is the subject of a direction by the Attorney-General of the Australian Capital Territory under section 6A of the Australian Capital Territory Act.

#### **44 Conveyance and detention of prisoners from ACT**

- (1) If a constable has a prisoner in custody in accordance with the terms of an Australian Capital Territory warrant, it is lawful for the constable to hold and deal with the prisoner in accordance with those terms.
- (2) It is the duty of the governor of a correctional centre or any other officer doing duty at a correctional centre to accept custody of any prisoner the subject of an Australian Capital Territory warrant.
- (3) The prisoner is to be held in custody in a correctional centre for so long as is necessary for the order of the court or magistrate referred to in the Australian Capital Territory warrant to be executed in accordance with that warrant.
- (4) Nothing in this section prevents the early release of a prisoner by reason of the operation of any law of the Commonwealth, or of the Australian Capital Territory, relating to the release of prisoners.
- (5) Until released from custody or delivered into the custody of a constable under an Australian Capital Territory warrant, a prisoner may be dealt with as if the prisoner's sentence were a sentence passed under a law of New South Wales.
- (6) Subsection (5) is subject to the provisions of the Australian Capital Territory Act.

#### **45 Return of prisoners to ACT**

- (1) If a constable presents to a governor of a correctional centre an Australian Capital Territory warrant in respect of a prisoner held in custody in the correctional centre under this Division:
  - (a) for the delivery of the prisoner into the custody of the constable, and
  - (b) for the conveyance of the prisoner to the Australian Capital Territory,the governor of the correctional centre must deliver the prisoner into the custody of the constable.
- (2) The warrant is sufficient authority for the constable to convey the prisoner in custody to the Australian Capital Territory.

#### 46 Evidentiary provision

A document purporting to be an Australian Capital Territory warrant and to be under the hand of an authorised person is admissible in any proceedings and is in all courts exercising jurisdiction in New South Wales and on all occasions evidence of the particulars stated in the document.

### Division 5 Prisoners received from Norfolk Island

#### 47 Definitions

(1) In this Division:

**authorised person, constable, court, magistrate** and **order** have the same meanings as they have in the Norfolk Island Act.

**Norfolk Island Act** means the *Removal of Prisoners Act 2004* of Norfolk Island.

**Norfolk Island warrant** means a warrant issued under the Norfolk Island Act.

**prisoner** means a person who is liable to undergo imprisonment or other detention in custody under a law in force in Norfolk Island.

(2) For the purposes of this Division, a reference to an order of a court or magistrate includes a reference to a warrant issued by a court or magistrate, other than a Norfolk Island warrant.

#### 47A Application of Division

This Division does not apply to a person who is the subject of a direction under section 9 of the Norfolk Island Act.

#### 48 Conveyance and detention of prisoners from Norfolk Island

(1) If a constable has a prisoner in custody in accordance with the terms of a Norfolk Island warrant, it is lawful for the constable to hold and deal with the prisoner in accordance with those terms.

(2) It is the duty of the governor of a correctional centre or any other officer doing duty at a correctional centre to accept custody of any prisoner the subject of a Norfolk Island warrant.

(3) The prisoner is to be held in custody in a correctional centre for so long as is necessary for the order of the court or magistrate referred to in the Norfolk Island warrant to be executed in accordance with that warrant.

(4) Nothing in this section prevents the early release of a prisoner by reason of the operation of any law of the Commonwealth, or of any law in force in Norfolk Island, relating to the release of prisoners.

(5) Until released from custody or delivered into the custody of a constable under a Norfolk Island warrant, a prisoner may be dealt with as if the prisoner's sentence were a sentence passed under a law of New South Wales.

(6) Subsection (5) is subject to the provisions of the Norfolk Island Act.

#### **49 Return of prisoners to Norfolk Island**

(1) If a constable presents to a governor of a correctional centre a Norfolk Island warrant in respect of a prisoner held in custody in the correctional centre under this Division:

(a) for the delivery of the prisoner into the custody of the constable, and

(b) for the conveyance of the prisoner to Norfolk Island,

the governor of the correctional centre must deliver the prisoner into the custody of the constable.

(2) The warrant is sufficient authority for the constable to convey the prisoner in custody to Norfolk Island.

#### **50 Evidentiary provision**

A document purporting to be a Norfolk Island warrant and to be signed by an authorised person is admissible in any proceedings and is in all courts exercising jurisdiction in New South Wales and on all occasions evidence of the particulars stated in the document.

### **Division 6 Correctional centre discipline**

#### **51 Definitions**

In this Division:

**correctional centre offence** means any act or omission by an inmate:

(a) that occurs while the inmate is within a correctional centre or correctional complex or is taken to be in the custody of the governor of a correctional centre, and

(b) that is declared by the regulations to be a correctional centre offence for the purposes of this Division.

**withdrawable privilege** means a privilege or amenity that is declared by the regulations to be a withdrawable privilege for the purposes of this Division.

#### **52 Hearing of charges by governor**

(1) If it is alleged that an inmate of a correctional centre has committed a correctional centre offence, the governor of the correctional centre may charge the inmate with the offence and conduct an inquiry into the allegation.

- (2) The following provisions apply to any such inquiry:
- (a) the inquiry must be conducted with as little formality and technicality, and with as much expedition, as fairness to the inmate charged, the requirements of this Act and the regulations and the proper consideration of the charge permit,
  - (b) the governor is not bound by the rules of evidence, but may inform himself or herself of any matter in such manner as the governor thinks fit,
  - (c) the inmate is entitled to be heard at any hearing during the inquiry and to examine and cross-examine witnesses,
  - (d) except as provided by paragraph (e), the inmate is not entitled to be represented by a legal practitioner or by any other person,
  - (e) the governor must allow a person (other than a legal practitioner) to represent or assist the inmate if the governor is satisfied:
    - (i) that the inmate does not sufficiently understand the nature of the inquiry, or
    - (ii) that the inmate does not understand English or is otherwise unable to properly represent himself or herself during the inquiry,
  - (f) if the inmate refuses or fails to attend at any hearing during the inquiry, the governor may hear and determine the matter in the inmate's absence,
  - (g) evidence is not to be given on oath or by affidavit at any hearing during the inquiry,
  - (h) the governor may allow any correctional officer or other person to be present, and to be heard, at any hearing during the inquiry,
  - (i) the governor may transfer the conduct of an inquiry to the governor of another correctional centre to which the inmate has been transferred.
- (3) The regulations may make further provision for or with respect to the making of any such charge and the conduct of any such inquiry.

### **53 Penalties governor may impose**

- (1) If, after conducting an inquiry, the governor is satisfied beyond reasonable doubt that the inmate is guilty of a correctional centre offence, the governor may impose one (but not more than one) of the following penalties:
- (a) reprimand and caution,
  - (b) deprivation, for up to 56 days, of such withdrawable privileges as the governor may determine,

- (c) confinement to a cell for up to 7 days, with or without deprivation of withdrawable privileges,
  - (d) cancellation of any right to receive payments under section 7 for up to 14 days, but to the extent only to which those payments are additional to the payments made at the base rate to inmates generally or to inmates of a class to which the inmate belongs.
- (2) If, after conducting an inquiry, the governor is satisfied beyond reasonable doubt that the inmate is guilty of a correctional centre offence, but is of the opinion that a penalty should not be imposed:
- (a) the governor may dismiss the charge, or
  - (b) the governor may defer imposing a penalty on condition that the inmate be of good behaviour for a specified period (not exceeding 2 months) and, if the condition is complied with, dismiss the charge after the end of that period.
- (3) If, after conducting an inquiry, the governor is not satisfied beyond reasonable doubt that the inmate is guilty of a correctional centre offence, the governor must dismiss the charge.
- (4) A penalty imposed on an inmate by the governor may be revoked by the governor or by the Commissioner.

#### **54 Reference of offences to Visiting Magistrate**

- (1) The governor may refer a correctional centre offence with which an inmate is charged to a Visiting Magistrate for hearing and determination if the governor considers that, because of the serious nature of the offence, it should be referred to a Visiting Magistrate.
- (2) A charge may be referred to a Visiting Magistrate without any inquiry being conducted by the governor, or may be so referred during or after any such inquiry.

#### **55 Hearing of charges by Visiting Magistrate**

- (1) This section applies to proceedings on a charge that is referred to a Visiting Magistrate under this Division.
- (2) Subject to this section:
- (a) the *Criminal Procedure Act 1986* applies to and in respect of the proceedings in the same way as it applies to and in respect of proceedings on a court attendance notice issued for a summary offence before a Local Court, and
  - (b) any order or decision that is made by the Visiting Magistrate in or in connection with any such proceedings is taken to have been made under that Act.



- (3) In its application to the proceedings, the *Criminal Procedure Act 1986* is subject to such modifications as are prescribed by the regulations and to such other modifications as the Visiting Magistrate considers appropriate.
- (4) An inmate is entitled to be represented by a legal practitioner in the proceedings.
- (5) Any hearing in the proceedings is to be held:
- (a) in the correctional centre at which the inmate is in custody, or
  - (b) if the Visiting Magistrate is satisfied that it is in the interests of the administration of justice for it to be held elsewhere—at any other place appointed by the Visiting Magistrate (an **appointed place**).
- (5A) If a Visiting Magistrate appoints an appointed place for the holding of any hearing in the proceedings, the Visiting Magistrate may do any of the following:
- (a) direct that the inmate must appear before the Visiting Magistrate by way of audio visual link from the correctional centre at which the inmate is in custody,
  - (b) direct that any other inmate who gives evidence or makes a submission in the hearing is to do so by way of audio visual link from the correctional centre at which that inmate is in custody,
  - (c) direct that any person other than an inmate who gives evidence or makes a submission is to do so by way of audio visual link from any place within New South Wales nominated by the Visiting Magistrate.
- (5B) The Visiting Magistrate must not make a direction referred to in subsection (5A) if:
- (a) the necessary audio visual facilities are unavailable or cannot reasonably be made available, or
  - (b) the Visiting Magistrate is satisfied that the direction would be unfair to a party to the proceedings.
- (5C) Facilities are to be made available for private communication between an inmate appearing by way of audio visual link under this section and the inmate's representative in the proceedings if the inmate's representative attends the hearing at the appointed place.
- (5D) Any place at which a person appears, gives evidence or makes a submission by way of audio visual link under this section is taken to be part of the appointed place.
- (5E) Subsection (5D) has effect, for example, for the purposes of the laws relating to evidence, procedure, contempt of court or perjury.
- (5F) Subsection (5D) also has the effect that any offence committed at the place at which a person appears, gives evidence or makes a submission under this section by way of

audio visual link is to be taken to have been committed at the appointed place.

- (5G) Sections 5D, 20A, 20B and 20D–20F of the *Evidence (Audio and Audio Visual Links) Act 1998* apply, with such modifications as the Visiting Magistrate may direct, to proceedings in which a person appears, gives evidence or makes a submission by way of audio visual link under this section as they apply to the appearance, giving evidence or making of a submission by way of audio visual link in a proceeding before a NSW court under that Act.
- (5H) Nothing in this section prevents a direction under section 5BB (1) of the *Evidence (Audio and Audio Visual Links) Act 1998* being made in the proceedings.
- (6) If the inmate is transferred to another correctional centre, the Visiting Magistrate may transfer the proceedings to the Visiting Magistrate for the other correctional centre.

## **56 Penalties Visiting Magistrate may impose**

- (1) If, after hearing the charge, the Visiting Magistrate is satisfied beyond reasonable doubt that the inmate is guilty of the correctional centre offence, the Visiting Magistrate may make an order imposing one (but not more than one) of the following penalties:
- (a) reprimand and caution,
  - (b) deprivation, for up to 90 days, of such withdrawable privileges as the Visiting Magistrate may determine,
  - (c) confinement to a cell for up to 28 days, with or without deprivation of withdrawable privileges,
  - (d) cancellation of any right to receive payments under section 7 for up to 14 days, but to the extent only to which those payments are additional to the payments made at the base rate to inmates generally or to inmates of a class to which the inmate belongs,
  - (e) extension, by up to 6 months at a time, of:
    - (i) the term of the inmate's sentence, and
    - (ii) in the case of an offence occurring during a non-parole period of the inmate's sentence, the non-parole period of the sentence,
  - (f) imposition of a sentence of imprisonment for a period not exceeding 6 months.
- (2) If, after hearing the charge, the Visiting Magistrate is satisfied beyond reasonable doubt that the inmate is guilty of the correctional centre offence, but is of the opinion that a penalty should not be imposed, the Visiting Magistrate may dismiss the charge.
- (3) If, after hearing the charge, the Visiting Magistrate is not satisfied beyond reasonable

doubt that the inmate is guilty of the correctional centre offence, the Visiting Magistrate must dismiss the charge.

- (4) To avoid doubt, a Visiting Magistrate making an order referred to in subsection (1) (f) is a person exercising criminal jurisdiction for the purposes of the definition of **court** in section 3 (1) of the *Crimes (Sentencing Procedure) Act 1999*.

#### **56A Penalty for possession of a mobile phone**

- (1) The governor or Visiting Magistrate dealing with a charge relating to a correctional centre offence arising out of the possession of a mobile phone or any part of it, a mobile phone SIM card or any part of it, or a mobile phone charger or any part of it may order that an inmate be deprived, for up to 6 months, of such withdrawable privileges as the governor or Visiting Magistrate may determine if satisfied beyond reasonable doubt that the inmate is guilty of the offence.
- (2) To avoid doubt, if a penalty is imposed under this section in respect of a correctional centre offence, a governor or Visiting Magistrate must not also impose a penalty referred to in section 53 or 56, as the case may be, in respect of the same correctional centre offence.

#### **57 Drug tests for inmates**

- (1) This section applies to a correctional centre offence arising out of:
- (a) the result of a test showing the presence of a drug in a non-invasive sample taken from or provided by an inmate, or
  - (b) an inmate refusing or failing to provide, or enable to be taken, from the inmate a non-invasive sample when required to do so by a correctional officer of or above the rank of Assistant Superintendent.
- (2) The governor or Visiting Magistrate dealing with a charge relating to an offence to which this section applies may order that an inmate be deprived, for up to 6 months, of such withdrawable privileges as the governor or Visiting Magistrate may determine if satisfied beyond reasonable doubt that the inmate is guilty of the offence.
- (3) The governor or Visiting Magistrate is not to make such an order if the inmate establishes that the drug:
- (a) was administered on and in accordance with the prescription of a registered medical practitioner or registered dentist, or
  - (b) was lawfully supplied by, and taken in accordance with the instructions of, a registered medical practitioner, registered dentist or registered nurse, or
  - (c) was taken or administered in such form or preparation as may be allowed by the regulations, or

(d) was present in a quantity that does not exceed the quantity (if any) prescribed by the regulations, or

(e) was not a drug within the meaning of this Act at the time it was taken by or administered to the inmate.

### **58 Certain offences may be dealt with by Local Court**

If, during proceedings on a charge relating to a correctional centre offence, the Visiting Magistrate is of the opinion that the act or omission giving rise to the offence constitutes an offence for which criminal proceedings can and should be taken before a court, the Visiting Magistrate must terminate the proceedings and order that the inmate be brought before a Local Court to be dealt with according to law.

### **59 Compensation for property damage**

- (1) If an inmate causes any loss of or damage to property as a result of committing a correctional centre offence, the governor or Visiting Magistrate may, whether or not a penalty is imposed for the offence, order that the inmate pay to the Crown (or, if the property is owned by some other person, to that other person) a specified amount as compensation for the loss or damage.
- (2) The maximum amount of compensation that the governor may order an inmate to pay is \$500.
- (3) Compensation that an inmate is ordered to pay under this section is payable out of any money held by the governor on behalf of the inmate or out of any other money otherwise payable to the inmate under this Act or the regulations.

### **60 Cumulative punishments**

If:

- (a) an inmate is charged with 2 or more correctional centre offences, and
- (b) the charges are determined together or arise out of a single incident,

any cumulative penalties imposed for those offences must not, in respect of any particular kind of penalty, exceed the maximum penalty that may be imposed in relation to a single correctional centre offence.

### **61 Record of punishments for correctional centre offences**

- (1) If a penalty is imposed on an inmate in relation to a correctional centre offence, the governor must cause the following particulars to be recorded:
  - (a) the nature and date of the offence,
  - (b) the name of the inmate,

- (c) the date of sentence,
  - (d) the penalty imposed,
  - (e) any order for the payment of compensation.
- (2) The record must be kept at the correctional centre concerned and made available for inspection by such persons as the Commissioner considers appropriate.
- (3) The regulations may make provision for or with respect to the disposal of any such record.

## **62 Appeals against decisions of Visiting Magistrates**

- (1) An appeal against a penalty imposed by a Visiting Magistrate under section 56 (1) (e) or (f) may be made to the District Court under Part 3 of the *Crimes (Local Courts Appeal and Review) Act 2001* as if that penalty were a sentence arising from a court attendance notice dealt with under Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.
- (2) The *Crimes (Local Courts Appeal and Review) Act 2001* applies to an appeal arising under subsection (1) with such modifications as are made by or in accordance with the regulations under that Act.
- (3) The regulations may make provision for or with respect to the lodging and determination of appeals under this section.
- (4) Except as otherwise provided by this section, a decision of a Visiting Magistrate to impose a penalty on an inmate in proceedings under this Division is final and is not liable to be challenged, appealed against, quashed or called into question by any court.

## **63 Double jeopardy**

- (1) For the purpose of determining whether proceedings for a criminal offence may be brought for the act or omission giving rise to a correctional centre offence, the decision of a Visiting Magistrate in proceedings for the correctional centre offence is taken to be the decision of a court in proceedings for a criminal offence.
- (2) Proceedings for a correctional centre offence are not to be commenced or continued under this Division if proceedings for a criminal offence have been commenced in a court for the act or omission giving rise to the correctional centre offence.

## **64 False or misleading statements**

- (1) A person must not, in or in connection with any proceedings under this Division, make any statement that the person knows to be false or misleading in a material particular.

Maximum penalty: 5 penalty units.

(2) This section does not apply to a statement verified by statutory declaration.

#### **65 Offences may be dealt with by governor of any correctional centre**

A correctional centre offence may be dealt with under this Division by the governor of a correctional centre, or by the Visiting Magistrate for a correctional centre, even though the offence was committed, or is alleged to have been committed, while the inmate was in another correctional centre or correctional complex or in the custody of the governor of another correctional centre.

### **Division 7 Classification of serious offenders**

#### **66 Application of Division**

This Division applies to any proposal for a recommendation by the Review Council under section 197 that a serious offender be given a security classification that would allow the offender to become eligible for unescorted leave of absence under a local leave permit or interstate leave permit (a **low security classification**).

#### **67 Formulation of Review Council's initial intention**

- (1) As soon as practicable after a proposal is made that the Review Council recommend a low security classification for a serious offender, the Review Council is (subject to and in accordance with the regulations) required to give a preliminary notice of its intention to any victim of the offender whose name is recorded in the Victims Register.
- (2) The preliminary notice:
  - (a) must state that a proposal for such a recommendation has been made, and
  - (b) must state that there will be an opportunity for victims to make submissions to the Review Council about the making of such a recommendation, and
  - (c) must specify a period of at least 14 days during which a victim may lodge with the Executive Officer and Registrar of the Review Council a notice of intention to make submissions to the Review Council.

#### **68 Submissions by victims**

A victim who receives a notice under section 67 may make a written submission to the Review Council about the proposed recommendation referred to in the notice.

#### **69 Review Council to consider all submissions**

The Review Council must consider all submissions made in accordance with this Division and must disregard all other submissions.

## **70 Decision following review**

- (1) After reviewing all the reports, documents, submissions and other information placed before it in relation to a serious offender, the Review Council must decide whether or not to recommend a low security classification for the offender.
- (2) If the Review Council decides not to recommend a low security classification, the Review Council must cause the reasons for its decision to be recorded in its minutes.

## **71 Submissions by State**

- (1) The State may at any time make submissions to the Review Council concerning the making of a low security classification for a serious offender.
- (2) If the State does so, the Review Council is not to make a final decision concerning the classification of the offender until it has taken any such submission into account.
- (3) The regulations may make provision for or with respect to submissions by the State under this section, including provisions relating to the application of this Division in connection with any such submission.
- (4) The powers of the State under this section may be exercised, subject to the regulations, by any agent of the State.

## **Division 8 Miscellaneous**

### **72 Custody of inmates**

- (1) While held in custody in a correctional centre, an inmate is taken to be in the custody of the governor of the correctional centre to which the inmate has been committed or (if the inmate has been transferred to another correctional centre in accordance with section 23 or 41C) the correctional centre to which the inmate has been transferred.
- (2) An inmate does not cease to be in the custody of the governor of a correctional centre merely because the inmate is for the time being held in custody in some other part of a correctional complex (other than another correctional centre) of which the correctional centre forms part.
- (3) Despite any other provision of this Act, an inmate is not to be held in a police station or court cell complex for more than 7 days at a time.

### **72A Medical attention**

An inmate must be supplied with such medical attendance, treatment and medicine as in the opinion of a medical officer is necessary for the preservation of the health of the inmate, of other inmates and of any other person.

### **73 Compulsory medical treatment**

- (1) A medical practitioner (whether that practitioner is a medical officer or not) may carry out medical treatment on an inmate without the inmate's consent if the Chief Executive Officer, Corrections Health Service is of the opinion, having taken into account the cultural background and religious views of the inmate, that it is necessary to do so in order to save the inmate's life or to prevent serious damage to the inmate's health.
- (2) Medical treatment carried out on an inmate under this section is, for all purposes, taken to have been carried out with the inmate's consent.
- (3) Nothing in this section relieves a medical practitioner from liability in respect of the carrying out of medical treatment on an inmate, being a liability to which the medical practitioner would have been subject had the treatment been carried out with the inmate's consent.
- (4) If the Chief Executive Officer, Corrections Health Service is not a medical practitioner, the reference to the Chief Executive Officer, Corrections Health Service in subsection (1) is taken to be a reference to a person, designated by the Chief Executive Officer for the purposes of that subsection, who is a medical practitioner.

### **74 Notice to coroner of inmate's death**

- (1) The governor of a correctional centre must give written notice to a coroner immediately after becoming aware of the death of any inmate who is in the custody of the governor.
- (2) For the purposes of the [Coroners Act 1980](#), the receipt of such a notice from the governor has the same effect as the receipt of information of a death from a police officer.

### **75 Confiscation of property**

- (1) The Commissioner may confiscate any property (including any money) that is unlawfully in the possession of an inmate.
- (2) Property that is confiscated under this section becomes the property of the State, to be disposed of as the Commissioner may direct.
- (3) The regulations may provide for the circumstances in which property is taken to be unlawfully in the possession of an inmate.

### **76 Sale of unclaimed property**

- (1) The Commissioner may direct that any unclaimed property found within a correctional centre be sold or otherwise disposed of as the Commissioner may direct.



- (2) The proceeds of sale of unclaimed property are to be dealt with as if they were unclaimed money held by the Commissioner.

#### **77 Attendance of inmates before courts and court officers**

- (1) If an appropriate authority is satisfied that:
  - (a) it is necessary that an inmate should attend before it for the purposes of any legal proceeding, inquest or inquiry, and
  - (b) the absence of the inmate may prejudice the rights of a party,the authority may make an order directing the governor of the correctional centre in which the inmate is held to cause the inmate to be produced at the court or other place at which the proceeding, inquest or inquiry is being, or is to be, held.
- (2) Such an order is sufficient authority for the governor to cause the inmate to be produced in accordance with the order.
- (3) An inmate produced in accordance with such an order is taken to be in lawful custody while in the actual custody of the governor, a correctional officer, a sheriff's officer or a police officer.
- (4) It is the duty of the person having actual custody of the inmate to return the inmate to the correctional centre from which the inmate was produced as soon as the appropriate authority permits.

- (5) In this section:

**appropriate authority** means:

- (a) a court, or
- (b) a coroner, or
- (c) the Independent Commission Against Corruption, or
- (d) a Royal Commission, or
- (e) the Victims Compensation Tribunal, or
- (f) the senior administrative officer (such as the clerk or registrar) of a court, or
- (g) a person prescribed by the regulations for the purposes of this definition.

**correctional officer** includes:

- (a) a person employed on a temporary basis within the Department to perform some or all of the duties of a correctional officer, and

(b) a person holding an authority under section 240 to perform escort duties.

**court** includes the following:

- (a) the Children's Court,
- (b) the Federal Court of Australia,
- (c) the Family Court of Australia,
- (d) the Federal Magistrates Court of Australia,
- (e) the Dust Diseases Tribunal,
- (f) any other court or body prescribed by the regulations for the purposes of this definition.

### **78 Use of dogs in maintaining good order and security**

- (1) With the approval of the governor of a correctional centre, a correctional officer may use a dog to assist in maintaining the good order and security of the correctional centre and any correctional complex of which the correctional centre forms part.
- (2) Without limiting subsection (1), such an approval may be given to the use of a dog for any of the following purposes:
  - (a) the carrying out of searches within a correctional centre or correctional complex for any reason,
  - (b) the tracking of an escaped inmate,
  - (c) the escorting of inmates while they are being moved from one place to another,
  - (d) the disarming of inmates,
  - (e) the patrolling of correctional centres and correctional complexes,
  - (f) the assisting of a police officer in the execution of the police officer's functions.
- (3) At the request of the Director-General of the Department of Juvenile Justice, a correctional officer may use a dog to assist in the detection of drugs in a detention centre within the meaning of the *Children (Detention Centres) Act 1987*.
- (4) A correctional officer is not personally liable for injury or damage caused by the use of a dog that is under the correctional officer's control if that use was in accordance with the governor's approval.
- (5) Subsection (4) does not apply if injury or damage occurs as a result of anything commanded to be done by a correctional officer maliciously and without reasonable and probable cause.

- (6) This section applies to a person employed as a custodian of inmates by the management company for a managed correctional centre in the same way as it applies to a correctional officer.
- (7) Nothing in this section limits the power of a correctional officer to use a dog under any other Act or law.

## **79 Regulations**

The regulations may make provision for or with respect to the following matters:

- (a) the management, control, administration, supervision and inspection of correctional centres and correctional complexes,
- (b) the procedure to be followed when admitting an inmate into a correctional centre, including the procedure for accepting or refusing custody of property in an inmate's possession when the inmate is admitted,
- (c) the classification of inmates into different categories and the separation of inmates by reference to the categories into which they have been classified,
- (d) the procedure to be followed when releasing an inmate from a correctional centre, including the procedure for returning property accepted from an inmate when the inmate was admitted into the correctional centre,
- (e) the physical, psychological and spiritual welfare of inmates while in custody and following their release,
- (f) the kind of work that a convicted inmate may be directed to carry out under section 6 and the circumstances in which such a direction may be given,
- (g) the expenditure of money (or money's worth) by inmates,
- (h) the circumstances in which an inmate may lawfully acquire or retain possession of property within a correctional centre,
- (h1) the forfeiture and disposal of an inmate's abandoned or unclaimed property (including money), or of unhygienic or otherwise dangerous property (including money) received from, or sent to, an inmate,
- (h2) the seizure, forfeiture and disposal of property brought into a correctional centre in contravention of this Act, the regulations or any other law,
- (i) visits to inmates, including:
  - (i) the days and times that visits may be allowed, and
  - (ii) the maximum number of persons who may visit an inmate at the same time, and

- (iii) the classes of persons who may be prohibited from visiting inmates, and
- (iv) the conditions that must be observed by persons intending to visit an inmate before such a visit will be allowed, and
- (v) the procedures to be observed by visitors and inmates during visits,
- (j) the making and receiving of telephone calls by inmates,
- (k) the sending and receiving of letters and parcels by inmates, including the circumstances in which letters and parcels may be opened for inspection or confiscated,
- (l) the procedures to be followed by an inmate when applying for a local leave permit or interstate leave permit, and the circumstances under which such a permit may be issued,
- (m) the procedures to be followed by an inmate, and the facilities to be provided to an inmate, for the purpose of enabling the inmate to make a complaint to the governor of the correctional centre or to any other person or body,
- (n) the observance by inmates of religious rites and obligations,
- (o) the acquisition by inmates of education and vocational training,
- (p) the provision to inmates of medical, surgical and dental treatment,
- (q) the distribution of condoms to inmates,
- (r) the circumstances in which a body search may be conducted on an inmate, the procedures to be followed in conducting a body search and the persons by whom, or in whose presence, a body search is to be conducted,
- (s) the circumstances in which a correctional officer may use force against an inmate, and the keeping of records of the occasions on which force is so used,
- (t) the circumstances in which a correctional officer may use firearms, and the keeping of records of the occasions on which firearms are so used,
- (u) the equipment that may be used to restrain an inmate, and the circumstances in which, and the maximum periods for which, an inmate may be restrained by means of such equipment,
- (v) the circumstances in which an inmate may be tested for drugs or alcohol, the use of a non-invasive sample provided by, or taken from, an inmate for the purposes of a test for drugs or alcohol and the nature of the tests to be used,
- (v1) analyses in connection with any such tests and the admission of certificates relating to the results of any such analyses as prima facie evidence in any proceedings for a

correctional centre offence (within the meaning of section 51) being dealt with under this Act by a governor or Visiting Magistrate,

- (w) (Repealed)
- (x) the appointment of medical officers for correctional centres,
- (x1) the appointment of ministers of religion and other spiritual advisors for correctional centres,
- (y) the functions of correctional officers and other staff employed within a correctional centre or correctional complex,
- (z) the form of any warrants issued for the purposes of this Part.

## **Part 3 Imprisonment by way of periodic detention**

### **Division 1 Preliminary**

#### **80 Definitions**

In this Part:

**attendance order** means an order directing an offender to participate in any activity, as referred to in section 84 (1) (a).

**offender** means a person in respect of whom a periodic detention order is in force.

**work order** means an order directing an offender to carry out community service work, as referred to in section 84 (1) (b).

#### **81 Obligations of offender**

The obligations of an offender while serving a sentence by way of periodic detention are:

- (a) to comply with such requirements of this Part and the regulations as apply to the offender, and
- (b) to comply with the requirements of any directions given to the offender under this Part, and
- (c) to inform the governor responsible for the periodic detention centre to which the offender is for the time being required to report of any change in the offender's residential address.

#### **82 Duration of periodic detention order**

- (1) Unless sooner revoked, an offender's periodic detention order expires:
  - (a) at the end of the term of the sentence to which it relates, or

(b) when the offender is released on parole,  
whichever occurs first.

(2) Any detention period or part of a detention period during which an offender is in custody (whether in relation to the offence concerned or otherwise and whether as an inmate of a correctional centre or otherwise) is taken to have been served by the offender in accordance with this Part.

(3) Nothing in this section affects the operation of section 89.

## **Division 2 Administration of periodic detention orders**

### **83 Duty to report to periodic detention centre**

(1) An offender must report to a periodic detention centre at the beginning of each detention period:

- (a) in accordance with the requirements of the offender's periodic detention order, as varied from time to time under section 85, or
- (b) if otherwise directed by the Commissioner, in accordance with the Commissioner's directions.

(2) If the regulations prescribe standards of cleanliness and sobriety to be complied with by an offender when reporting to a periodic detention centre, the offender complies with this section only if he or she complies with those standards.

### **84 Participation in activity or work**

(1) The Commissioner may make an order directing an offender:

- (a) to participate in any activity that the Commissioner considers conducive to the offender's welfare or training, or
- (b) to carry out such community service work as the Commissioner considers suitable,

during any one or more detention periods.

(1A) An offender is not required to carry out community service work that the offender is not capable of carrying out.

(2) Such an order may direct the offender to report to a periodic detention centre or to some other place approved by the Commissioner.

(3) If:

- (a) an attendance order or work order directs an offender to report to some place other than a periodic detention centre for the purpose of participating in an

activity or carrying out community service work, and

(b) either:

(i) the activity or community service work is not available there, or

(ii) it is impracticable for the offender to participate in the activity or carry out the community service work there,

the offender must report to such other place as the offender is directed to by the person identified in the order in that regard, and must do so in accordance with the directions of that person.

- (4) The Commissioner may make an order exempting an offender from serving the whole or any part of a detention period in a periodic detention centre if the offender is the subject of an attendance order or work order in force in respect of the whole or any part of that period.
- (5) An offender who is absent from a detention centre during any detention period by virtue of an attendance order or work order is taken to have served the detention period in accordance with this Part.

#### **85 Variation of day, time and place for periodic detention**

- (1) On the application of the offender or otherwise, the Commissioner may make an order varying any one or more of the following:
  - (a) the times at which an offender's detention period begins and ends,
  - (b) the days comprising an offender's detention period,
  - (c) the periodic detention centre to which an offender must report,either in relation to one or more specified detention periods or in relation to all remaining detention periods to be served by the offender.
- (2) An order referred to in subsection (1) (a) must not be made so as to vary the number of hours for which an offender must attend a periodic detention centre during any detention period.
- (3) An order referred to in subsection (1) (b) must not be made so as to vary the number of detention periods to be served by an offender in relation to any particular sentence.
- (4) Immediately after making an order under this section in relation to an offender, the Commissioner must cause written notice of the terms of the order to be given to the offender.

## **86 Transfer of unruly offenders**

- (1) If an offender behaves in such a manner as to disturb the peace and good order of a periodic detention centre, the governor responsible for the periodic detention centre may order that the offender be transferred to a correctional centre for the remainder of the detention period.
- (2) An order under this section has effect according to its terms.
- (3) This section is subject to such provisions of the regulations as are made for the purposes of this section.

## **87 Leave of absence for failing to report**

- (1) The Commissioner may grant an offender leave of absence for one or more detention periods:
  - (a) for health reasons, or
  - (b) on compassionate grounds, or
  - (c) on the ground that the offender is in custody, or
  - (d) for any other reason the Commissioner thinks fit.
- (2) Leave of absence under this section may be granted either before or after the detention period to which it relates.
- (3) Subject to subsections (4), (5) and (6), an application for leave of absence in respect of a detention period must be made before the time the offender is due to report for that period.
- (4) An offender who is unable to report for a detention period:
  - (a) must cause a telephone call advising of the offender's inability to report to be made, to such telephone number as the Commissioner may from time to time determine, before the time at which the offender is due to report, and
  - (b) must cause a document setting out the reasons for the offender's inability to report to be given to the governor responsible for the relevant periodic detention centre within 7 days after the date on which the offender is due to report.
- (5) If the reasons for the offender's inability to report include illness or injury, a certificate from a medical practitioner:
  - (a) indicating the nature of the illness or injury, and
  - (b) stating that the nature or extent of the illness or injury is such as to justify the offender's inability to report,



is to be given to the Commissioner in addition to or instead of the document referred to in subsection (4) (b).

- (6) Subject to subsection (5), an offender who complies with subsection (4) (a) and (b) is taken to have applied for leave of absence under subsection (3).

#### **88 Leave of absence for reporting late**

- (1) The Commissioner may grant an offender leave of absence for part or all of a detention period for which the offender has reported late if the Commissioner is satisfied that the offender has a reasonable excuse for having reported late.
- (2) An application for leave of absence made by an offender who reports late for a detention period must be made before the expiry of 7 days after the beginning of that period unless, in the particular circumstances of the case, the Commissioner allows further time for the application.
- (3) If leave of absence is granted for part of a detention period, the Commissioner may direct the offender to serve an equivalent period of time to that for which leave is granted:
- (a) immediately before the beginning, or at the end, of a detention period specified by the Commissioner, or
  - (b) as part of an additional detention period to be served by the offender.

#### **89 Failure to report or reporting late extends term of sentence**

- (1) The sentence to be served by an offender who fails to report for one or more detention periods (whether or not leave of absence is granted) is, by this subsection, extended by one week for each detention period for which the offender fails to report.
- (2) The sentence to be served by an offender who reports late for one or more detention periods (otherwise than where leave of absence is granted) is, by this subsection, extended by one week for each detention period for which the offender reports late.
- (3) The sentence to be served by an offender:
- (a) who reports late for one or more detention periods, and
  - (b) who is granted leave of absence subject to a requirement that an equivalent period of time to that for which leave is granted is to be served as part of an additional detention period,
- is, by this subsection, extended by one week for each additional detention period necessary to accommodate the total period of time directed to be served by all such directions given in relation to that sentence.
- (4) The sentence to be served by an offender who fails to report, or who reports late, for

one or more detention periods (otherwise than where leave of absence is granted) is, by this subsection, further extended by one week for each detention period for which the offender fails to report or reports late.

- (5) An offender's sentence may not be extended by subsection (4) by more than 6 weeks.
- (6) Any extension by subsection (4) of an offender's sentence is in addition to any extension by subsection (1), (2) or (3) of that sentence with respect to the same failure to report or lateness in reporting.
- (7) In this section, a reference to the extension of an offender's sentence is a reference to:
  - (a) the extension of the term of the sentence, and
  - (b) if the relevant failure to report or reporting late occurs during a non-parole period of the sentence, the extension of the non-parole period of the sentence.
- (8) If an offender has failed to report for a detention period but during that detention period is taken into custody (whether in relation to the offence concerned or otherwise and whether as an inmate of a correctional centre or otherwise), the offender is for the purposes of this section taken to have reported late for that detention period without leave of absence.

#### **90 Commissioner may grant exemptions from extension of sentence**

- (1) The Commissioner may make an order exempting an offender from the operation of section 89 (1), (2), (3) or (4) with respect to any one or more of the detention periods for which the offender has failed to report or has reported late.
- (2) The Commissioner must not refuse an application for an exemption made by the offender unless:
  - (a) the offender has been given written notice of the Commissioner's proposal to refuse the application, and
  - (b) the offender has been given a reasonable opportunity to make submissions, either orally or in writing, as to why the exemption should be granted, and
  - (c) the Commissioner has taken any such submissions into consideration.

#### **91 Leave of absence at direction of Commissioner**

- (1) The Commissioner may direct an offender to take leave of absence for one or more detention periods if of the opinion that:
  - (a) the presence of the offender in a periodic detention centre, or
  - (b) the participation of the offender in any activity under an attendance order, or

(c) the carrying out by the offender of any community service work under a work order,

would constitute a threat to the personal safety or health of the offender or any other person.

(2) In particular, a direction may be given under this section if the offender or some other offender is suffering from an infectious disease.

## **92 Commissioner may grant exemptions for health reasons or on compassionate grounds**

(1) For health reasons or on compassionate grounds, the Commissioner may order that one or more detention periods yet to be served by an offender be regarded as having been served if satisfied that the offender is unlikely to be able to serve them within a reasonable time.

(2) In determining what is a reasonable time, the Commissioner must have regard to the number of detention periods yet to be served and the likely duration of the offender's inability to serve them.

(3) Any detention period to which an order under this section relates is taken to have been served by the offender in accordance with this Part.

## **93 Appeal to Parole Board from Commissioner's refusal to grant leave of absence**

(1) On the application of an offender in respect of whom:

(a) leave of absence for one or more detention periods has been refused under section 87, or

(b) leave of absence for part or all of a detention period has been refused under section 88,

the Parole Board may direct that leave of absence be granted in respect of all or any of those detention periods, or part or all of the detention period, as the case requires.

(2) The application may not be made later than 21 days after the date on which the original application for leave of absence was refused.

(3) Subject to any order of the Parole Board to the contrary, the making of an application under this section does not stay the operation of section 89 (1), (2), (3) or (4) with respect to any detention period to which the application relates.

(4) An application under this section is only to be considered by the Parole Board if it is satisfied that the application is not an abuse of process.

(5) Leave of absence is taken to have been granted for each detention period (or part of a detention period) for which the Parole Board makes a direction under this section.

## 94 Directions

- (1) An authorised officer may give directions to an offender (being directions not inconsistent with this Act or the regulations) for the purpose of enforcing the offender's obligations with respect to periodic detention.
- (2) In this section, **authorised officer** means the Commissioner, the governor responsible for the periodic detention centre attended by the offender or any correctional officer employed within that periodic detention centre.

## Division 3 Offences

### 95 Offences

- (1) An offender who:
  - (a) fails to comply with an attendance order or work order, or
  - (b) fails to report to a periodic detention centre in accordance with an order under section 85 (1) (c) varying the periodic detention centre to which the offender must report, or
  - (c) disobeys a direction under section 84 (3) or 94 (1), or
  - (d) escapes or attempts to escape from lawful custody,is guilty of an offence.  
Maximum penalty: 10 penalty units or imprisonment for 12 months, or both.
- (2) An offender who commits an offence against discipline is liable to be punished:
  - (a) by caution or reprimand, or
  - (b) by deprivation of specified amenities or privileges for up to 4 detention periods.
- (3) If an offender is punished for an offence against discipline in accordance with subsection (2), the offender is not liable to any further proceedings for the offence.
- (4) In this section, **offence against discipline** means any act or omission by an offender:
  - (a) that occurs while the offender is within a periodic detention centre or is taken to be in the custody of the governor responsible for a periodic detention centre, and
  - (b) that is declared by the regulations to be an offence against discipline for the purposes of this Division.

## **96 Defences to prosecution for certain offences**

- (1) If an offender is prosecuted for an offence of failing to comply with an attendance order or work order, it is a sufficient defence if the offender satisfies the court:
  - (a) that the offender had a reasonable excuse for failing to comply with the order, and
  - (b) that, before the offender was so required to comply or as soon as practicable afterwards, the offender had made that excuse known to the governor responsible for the periodic detention centre to which the offender had previously been required to report.
- (2) If an offender is prosecuted for an offence involving an order under section 85 (1) (a), (b) or (c), it is a sufficient defence if the offender satisfies the court that written notice of the terms of the order was not given to the offender in sufficient time to enable the offender to comply with the order.
- (3) If an offender is prosecuted for an offence of failing to report to a periodic detention centre in accordance with an order under section 85 (1) (c), it is a sufficient defence if the offender satisfies the court:
  - (a) that the offender had a reasonable excuse for failing to report in compliance with the order, and
  - (b) that, before the offender was so required to report or as soon as practicable afterwards, the offender had made that excuse known to the governor responsible for the periodic detention centre to which the order required the offender to report.
- (4) If an offender is prosecuted for an offence involving a direction under this Part, it is a sufficient defence if the offender satisfies the court:
  - (a) that the direction was not communicated to the offender in sufficient time to enable the offender to comply with the direction, or
  - (b) that the offender:
    - (i) was complying with a provision of this Part or the regulations, and
    - (ii) could not simultaneously comply with both the direction and that provision, or
  - (c) that the offender:
    - (i) was complying with some other direction under this Part, and
    - (ii) could not simultaneously comply with both directions.
- (5) If an offender is prosecuted for an offence involving a provision of this Part or the regulations, it is a sufficient defence if the offender satisfies the court that the

offender:

- (a) was complying with a direction under this Part, and
- (b) could not simultaneously comply with the direction and with that provision.

## **97 Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Part or the regulations, being an offence prescribed by the regulations for the purposes of this section.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) If the penalty prescribed for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence.
- (4) Payment in accordance with this section is not to be regarded as an admission of liability for the purposes of, nor is in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (5) The regulations:
  - (a) may prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) may prescribe the penalty payable for the offence if dealt with under this section, and
  - (c) may prescribe different penalties for different offences or classes of offences.
- (6) The penalty prescribed under this section in respect of an offence is not to exceed 2 penalty units.
- (7) This section does not limit the operation of this or any other Act in relation to proceedings that may be taken in respect of offences.
- (8) In this section, **authorised officer** means the Commissioner or any person authorised by the Commissioner for the purposes of this section.

## **Division 4 Miscellaneous**

### **98 Application of Part 2 to periodic detention**

- (1) This section applies to an offender:
  - (a) while held in custody in a periodic detention centre for the purpose of serving the

offender's sentence, or

- (b) while held in custody in a correctional centre to which the offender has been transferred to serve the remainder of a detention period, or
- (c) while attending at a place outside a periodic detention centre in accordance with the requirements of an attendance order or work order, or
- (d) while travelling between a periodic detention centre and a place outside a periodic detention centre, or between different places outside a periodic detention centre, in accordance with the requirements of an attendance order or work order.

(2) Subject to this Part:

- (a) the regulations may apply any of the provisions of Part 2 (subject to any modifications prescribed by the regulations), and the provisions of any regulations made under that Part, to and in respect of an offender to whom this section applies, and
- (b) any provision of Part 2 or of the regulations under that Part that is so applied has effect as if it formed part of this Part.

## 99 Custody of offenders

- (1) While held in custody in a periodic detention centre, an offender is taken to be in the custody of the governor responsible for the centre or (if the offender is required to report to some other periodic detention centre in accordance with section 85 (1) (c)) of the governor responsible for the periodic detention centre to which the offender is required to report.
- (2) An offender who is outside a periodic detention centre by virtue of an attendance order or work order is taken to be in the custody of the governor responsible for the periodic detention centre in which the offender would, but for the order, be held in custody.

## 100 Community committees

- (1) The Minister may, by notification published in the Gazette, establish such committees (**community committees**) as the Minister thinks fit.
- (2) A community committee is to operate in respect of a particular geographical area specified in the notification establishing the committee.
- (3) A community committee is to consist of a person nominated by the Commissioner, who is to be chairperson of the committee, and such other persons as the Minister may appoint.
- (4) The functions of a community committee are to make recommendations to the

Commissioner:

- (a) as to the nature and extent of the community service work that may be performed by offenders under work orders, and
- (b) as to any other matter referred to it by the Commissioner.

### **101 Regulations**

The regulations may make provision for or with respect to the following matters:

- (a) the management, control, administration, supervision and inspection of periodic detention centres,
- (b) the procedure to be followed when admitting an offender into a periodic detention centre, including the procedure for accepting or refusing custody of property in an offender's possession when the offender is admitted,
- (c) the procedures to be followed by an offender when applying for leave of absence under section 87 or 88, and the circumstances under which such leave of absence may be granted,
- (d) the procedures to be followed by an offender when applying for an exemption under section 90 or 92, and the circumstances under which such an exemption may be granted,
- (e) the procedures to be followed by an offender when making an appeal under section 93,
- (f) the circumstances in which an offender may be tested for drugs or alcohol, the use of a non-invasive sample provided by, or taken from, an offender for the purposes of a test for drugs or alcohol and the nature of the tests to be used,
- (g) the circumstances under which an offender may be required to submit to a medical examination by a medical officer,
- (h) the declaration of offences against discipline,
- (i) the day-to-day routine of offenders, including the performance of community service work within and outside a periodic detention centre,
- (j) the service of notices on an offender.

## **Part 4 Imprisonment by way of home detention**

### **102 Definition**

In this Part:

***offender*** means a person in respect of whom a home detention order is in force.



### **103 Conditions governing home detention**

- (1) A home detention order is subject to the following conditions:
  - (a) the standard conditions imposed by the regulations,
  - (b) any additional conditions imposed by the sentencing court,
  - (c) any additional conditions imposed by the Parole Board under this section.
- (2) The Parole Board may from time to time, by notice given to the offender:
  - (a) impose additional conditions on a home detention order, or
  - (b) vary or revoke any additional conditions imposed by it on a home detention order.
- (3) This section does not permit the Parole Board:
  - (a) to revoke any standard conditions imposed by the regulations or any additional conditions imposed by the sentencing court, or
  - (b) to impose any additional conditions, or vary any additional conditions imposed by it, so as to be inconsistent with any standard conditions imposed by the regulations or any additional conditions imposed by the sentencing court.

### **104 Obligations of offender**

The obligations of an offender while serving a sentence by way of home detention are:

- (a) to comply with such requirements of this Part and the regulations as apply to the offender, and
- (b) to comply with the requirements of any conditions to which the offender's home detention order is subject.

### **105 Duration of home detention order**

Unless sooner revoked, an offender's home detention order expires:

- (a) at the end of the term of the sentence to which it relates, or
- (b) when the offender is released on parole,

whichever occurs first.

### **106 Regulations**

The regulations may make provision for or with respect to the following matters:

- (a) the standard conditions to be imposed on home detention orders, including:
  - (i) conditions relating to an offender's employment while the home detention order is

in force, and

- (ii) conditions relating to the performance of community service work,
- (b) the manner in which an offender's failure to comply with the offender's obligations under a home detention order may be dealt with,
- (c) the service of notices on an offender.

## **Part 5 Community service work and other work performed by offenders**

### **Division 1 Performance of community service work under community service orders**

#### **Subdivision 1 Preliminary**

##### **107 Definitions**

In this Division:

**assigned officer**, in relation to an offender, means:

- (a) the probation and parole officer or other person for the time being assigned by the Commissioner to administer the offender's community service order, or
- (b) any other person exercising the functions of an assigned officer in accordance with the regulations.

**offender** means a person in respect of whom a community service order is in force.

**relevant maximum period**, in relation to a community service order, means:

- (a) 12 months from the date on which the order was made, if the required number of hours under the order (disregarding any increase under section 113) is less than 300, or
- (b) 18 months from the date on which the order was made, if the required number of hours under the order (disregarding any increase under section 113) is 300 or more,

or, if that period is extended under section 114, the period as so extended.

**required number of hours**, in relation to a community service order, means the number of hours of community service work that the offender to whom the order relates is required by the order to perform.

**supervisor** means any person appointed in accordance with the regulations to supervise offenders in the performance of community service work.

### **108 Conditions governing community service work**

A community service order is subject to the following conditions:

- (a) the standard conditions imposed by the regulations,
- (b) any additional conditions imposed by the sentencing court.

### **109 Obligations of offender**

The obligations of an offender under a community service order are:

- (a) to comply with such requirements of this Part and the regulations as apply to the offender, and
- (b) to comply with the requirements of any conditions to which the offender's community service order is subject, and
- (c) to comply with the requirements of any directions given to the offender under this Part, and
- (d) to inform the offender's assigned officer of any change in the offender's residential address.

### **110 Duration of community service order**

Unless sooner revoked, a community service order remains in force:

- (a) until the offender has performed community service work in accordance with the offender's obligations under the order for the required number of hours, or
- (b) until the expiry of the relevant maximum period, or
- (c) in the case of a community service order under section 79 of the *Fines Act 1996*, until the order is revoked or satisfied in accordance with that Act,

whichever first occurs.

## **Subdivision 2 Administration of community service orders**

### **111 Assignment of officer by Commissioner**

On receiving a copy of a community service order sent under section 93 of the *Crimes (Sentencing Procedure) Act 1999* or section 80 of the *Fines Act 1996*, the Commissioner must assign a probation and parole officer or, if the regulations so provide, a person other than a probation and parole officer, to administer the order.

### **112 Performance of community service work**

- (1) An offender:

- (a) must perform, for the required number of hours, such community service work as the offender's assigned officer directs, and
  - (b) while performing that work, must comply with the directions of the offender's assigned officer and of the offender's supervisors from time to time.
- (2) In the case of a community service order that recommends that the work to be performed by the offender should include:
- (a) the removal or obliteration of graffiti from buildings, vehicles, vessels and places, and
  - (b) the restoration of the appearance of buildings, vehicles, vessels and places consequent on the removal or obliteration of graffiti from them,
- the work performed by the offender must, if practicable, include such work.
- (3) Any work that the offender is directed to perform must be performed by the offender:
- (a) at such times as the offender's assigned officer directs, and
  - (b) in such manner as is satisfactory to the offender's assigned officer.
- (4) If the regulations prescribe standards of cleanliness and sobriety to be complied with by an offender when reporting for community service work, the offender complies with this section only if he or she complies with those standards.

### **113 Increase in hours of community service work**

- (1) The Commissioner may from time to time direct that an offender's required number of hours be increased if of the opinion:
- (a) that the offender has failed, without reasonable excuse, to comply with the offender's obligations under the order, and
  - (b) that the offender's failure to comply with those obligations was trivial in nature or that there are good reasons for excusing the offender's failure to comply with those obligations.
- (2) An offender's required number of hours, as increased under this section, must not be increased so as to exceed the required number of hours specified in the offender's community service order by more than 10 hours.
- (3) On the application of the offender, a Local Court may review such a direction and, following the review, may confirm or revoke the direction.

## **Subdivision 3 Miscellaneous**

### **114 Extension of period of community service order**

- (1) An application for an extension of the relevant maximum period for an offender's community service order may be made to a Local Court by the offender, or by the offender's assigned officer, on the grounds that it would (having regard to circumstances that have arisen since the relevant community service order was made) be in the interests of justice to extend that period.
- (2) Such an application may be made even if the relevant maximum period for the community service order has expired.
- (3) If satisfied that the applicant has established the grounds on which the application is made, the Local Court:
  - (a) may extend the relevant maximum period for the offender's community service order, and
  - (b) in that event, must cause notice of the extension to be sent to the offender's assigned officer.

### **115 Revocation of community service orders**

- (1) An application for the revocation of an offender's community service order may be made to the sentencing court, to a court of like jurisdiction or to a court that is superior to the sentencing court.
- (2) The application may be made:
  - (a) by the offender's assigned officer, on the grounds that the offender has failed, without reasonable excuse, to comply with the offender's obligations under the order, or
  - (b) by the offender, or by the offender's assigned officer, on the grounds that it would (having regard to circumstances that have arisen since the relevant community service order was made) be in the interests of justice to revoke the order.
- (2A) The application cannot be made later than one month after the expiry of the relevant maximum period for the order.
- (2B) For the purpose only of determining an application under this section, a community service order is taken to be in force even if the relevant maximum period has expired.
- (3) If satisfied that the applicant has established the grounds on which the application is made, the court may revoke the offender's community service order and (if it considers it appropriate to do so) deal with the offender in any manner in which it could have dealt with the offender had the order not been made.

- (4) An offender on whom a penalty is imposed as a consequence of the revocation of a community service order under this section has the same rights of appeal as if the penalty had been imposed when the offender was convicted of the offence to which the penalty relates.
- (5) A court that revokes an offender's community service order under this section must cause notice of the revocation to be sent to the offender's assigned officer.
- (6) For the purposes of this section:
  - (a) failure by an offender to perform the required number of hours of community service work under a community service order within the relevant maximum period for the order is taken to constitute failure by the offender to comply with the offender's obligations under the order, and
  - (b) failure by an offender to comply with the offender's obligations under one community service order (the **primary failure**) is taken to constitute failure by the offender to comply with the offender's obligations under every other community service order that is in force when the primary failure occurs.

#### **116 Summonses and warrants for attendance**

- (1) The court to which an offender's assigned officer makes an application:
  - (a) for the extension of the period for which the offender's community service order is to remain in force, or
  - (b) for the revocation of the offender's community service order,may call on the offender to appear before it.
- (2) If the offender fails to appear, the court may:
  - (a) issue a warrant for the offender's arrest, or
  - (b) authorise an authorised officer to issue a warrant for the offender's arrest.
- (3) If, however, at the time the assigned officer makes the application referred to in subsection (1), the court is satisfied that the location of the offender is unknown, the court may immediately:
  - (a) issue a warrant for the offender's arrest, or
  - (b) authorise an authorised officer to issue a warrant for the offender's arrest.
- (4) In this section:

**authorised officer** has the same meaning as it has in the [Criminal Procedure Act 1986](#).

## 117 Regulations

The regulations may make provision for or with respect to the following matters:

- (a) the management, control, administration and supervision of community service orders,
- (b) the standard conditions to be imposed on community service orders, including conditions relating to the performance of community service work,
- (c) the procedure to be followed when an offender reports to carry out community service work,
- (d) the performance of community service work by an offender,
- (e) the circumstances in which an offender may be tested for drugs or alcohol, the use of a non-invasive sample provided by, or taken from, an offender for the purposes of a test for drugs or alcohol and the nature of the tests to be used,
- (f) the service of notices on an offender,
- (g) the functions of supervisors and assigned officers appointed or employed for the purposes of this Division,
- (h) the form of any warrants issued for the purposes of this Division.

## Division 2 General provisions concerning community service work and other work performed by offenders

### 118 Definitions

In this Division:

**community service work** means:

- (a) community service work performed by an offender while in full-time detention, and
- (b) community service work performed by an offender under a periodic detention order, and
- (c) community service work performed by an offender under a home detention order, and
- (d) community service work performed by an offender under a community service order, and
- (e) other work performed by an offender outside a correctional centre in accordance with section 6 (2).

**offender** means a person who is required to perform community service work:

- (a) while in full-time detention, or
- (b) under a periodic detention order, or
- (c) under a home detention order, or
- (d) under a community service order.

**person involved**, in relation to community service work, includes any person (including a corporation):

- (a) for whose benefit that work is performed, or
  - (b) who directs or supervises that work, specifies its terms or conditions or controls it, or
  - (c) who owns or occupies the premises or land on which that work is performed,
- but does not include the offender by whom the work is performed.

**119 Restrictions on directions regarding work to be performed**

- (1) An offender must not be directed to carry out community service work if, in performing the work, the offender would take the place of any other person who would otherwise be employed in that work as a regular employee.
- (2) As far as practicable, a person giving directions to an offender:
  - (a) must avoid any conflict with the offender's religious beliefs, and
  - (b) in the case of an offender performing community service work under a community service order, must avoid any interference with the times (if any) at which the offender normally works or attends a school or other educational establishment.

**120 Act or omission of offender performing community service work**

- (1) No act or omission of an offender by whom community service work is performed gives rise to civil liability on the part of any person involved in that work if the act or omission occurs in the course of that work.
- (2) A civil action that would, but for subsection (1), lie against a person involved in community service work lies instead against the Crown.
- (3) Subsections (1) and (2) do not have effect if the act or omission concerned was, or was a necessary part of, an act or omission that was expressly required by the person involved in that work but neither approved nor required by the Commissioner.

**121 Act or omission of person involved in community service work**

- (1) No act or omission of a person involved in community service work gives rise to civil liability towards the offender by whom the work is performed on the part of the person



so involved if the act or omission occurs in the course of that work.

- (2) A civil action that would, but for subsection (1), lie against a person involved in community service work lies instead against the Crown.
- (3) Subsections (1) and (2) do not have effect if:
  - (a) the work concerned was not work approved by the Commissioner, or
  - (b) the act or omission concerned was, or was a necessary part of, an act or omission intended to cause injury, loss or damage.

## **122 (Repealed)**

## **123 Disclosure of material facts about health**

An offender in respect of whom a community service order is in force has, while the order is in force, a duty to disclose as soon as possible to the Commissioner:

- (a) any medical, physical or mental condition of which the offender is aware (being a condition of a kind that the offender is aware substantially increases the risk to the offender of injury in performing work of any kind), and
- (b) any substantial change in that condition.

## **124 Settlement of claims**

The Commissioner may, on behalf of the Crown, settle any action that lies against the Crown because of this Division, and may do so on such terms as he or she thinks fit.

# **Part 6 Parole**

## **Division 1 Release on parole**

### **125 Application of Part**

This Part applies to:

- (a) an offender who is serving a sentence by way of full-time detention, and
- (b) an offender who is serving a sentence by way of periodic detention, and
- (c) an offender who is serving a sentence by way of home detention.

### **126 Eligibility for release on parole**

- (1) Offenders may be released on parole in accordance with this Part.
- (2) An offender is eligible for release on parole only if:
  - (a) the offender is subject to at least one sentence for which a non-parole period has

been set, and

(b) the offender has served the non-parole period of each such sentence and is not subject to any other sentence.

(3) Nothing in this Part authorises the release of an offender who is required to be kept in custody in relation to an offence against a law of the Commonwealth.

### **127 Parole order necessary for release**

An offender who is eligible for release on parole may not be released on parole except in accordance with a parole order directing the release of the offender.

### **128 Conditions governing parole**

(1) A parole order is subject to the following conditions:

(a) the standard conditions imposed by the regulations,

(b) any additional conditions imposed by the sentencing court (including any conditions that are, under section 51 (1AA) of the *Crimes (Sentencing Procedure) Act 1999*, taken to be included in the order),

(c) any additional conditions imposed by the Parole Board under this section.

(2) The Parole Board may from time to time, by written notice given to the offender:

(a) impose additional conditions on a parole order, or

(b) vary or revoke any additional conditions imposed by it or by the sentencing court on a parole order.

(3) The conditions of a parole order may include conditions requiring that the offender to whom the order relates be subject to supervision prescribed by the regulations, during the period specified by or under the order or the regulations.

(4) This section does not permit the Parole Board:

(a) to revoke any standard conditions imposed by the regulations, or

(b) to impose any additional conditions, or vary any additional conditions imposed by it or by the sentencing court, so as to be inconsistent with any standard conditions imposed by the regulations.

### **128A Conditions of parole as to non-association and place restriction**

(1) The conditions to which a parole order is subject may include either or both of the following:

(a) provisions prohibiting or restricting the offender from associating with a specified

person,

(b) provisions prohibiting or restricting the offender from frequenting or visiting a specified place or district.

(2) A condition referred to in subsection (1) (a) or (b) is suspended:

(a) while the offender is in lawful custody (otherwise than while unescorted as referred to in section 38 (2) (a)), and

(b) while the offender is under the immediate supervision of a public servant employed within the Department of Juvenile Justice pursuant to a condition of leave imposed under section 24 of the *Children (Detention Centres) Act 1987*.

(3) An offender does not contravene a prohibition or restriction as to his or her association with a specified person:

(a) if the offender does so in compliance with an order of a court, or

(b) if, having associated with the person unintentionally, the offender immediately terminates the association.

(4) An offender does not contravene a requirement not to frequent or visit a specified place or district if the offender does so in compliance with an order of a court.

(5) In this section, **associate with** means:

(a) to be in company with, or

(b) to communicate with by any means (including post, facsimile, telephone and email).

### **129 Obligations of offender**

The obligations of an offender while on release on parole are:

(a) to comply with such requirements of this Part and the regulations as apply to the offender, and

(b) to comply with the requirements of any conditions to which the offender's parole order is subject, and

(c) to inform the Parole Board of any change in the offender's residential address.

### **130 Revocation of parole order before release**

The Parole Board may, by order in writing and in such circumstances as may be prescribed by the regulations, revoke a parole order at any time before the offender to whom the order relates is released under the order.

### **131 Release under parole order**

- (1) An offender's parole order is sufficient warrant for any person having custody of the offender to release the offender in accordance with the terms of the order.
- (2) An offender who is released on parole under this Part is to be released from custody on the day specified in the relevant parole order in that regard (the **parole date**).
- (3) An inmate may be released from custody:
  - (a) at any time on the parole date, or
  - (b) if the parole date is a Saturday, Sunday or public holiday and the offender so requests, at any time during the next day that is not a Saturday, Sunday or public holiday.

#### **131A Reasons for parole decisions**

- (1) If the Parole Board makes a decision under this Part:
  - (a) that an offender should be released on parole, or
  - (b) that an offender should not be released on parole,the Parole Board must cause the reasons for its decision to be recorded in its minutes.
- (2) In giving those reasons, the Parole Board must, in the case of a decision made under Division 2, have regard to the following:
  - (a) the principle and matters referred to in section 135 and, if the decision relates to a serious offender to whom section 154 applies, the matters referred to in that section,
  - (b) such other matters that the Parole Board is, under this Act or the regulations, required to take into account in making the decision.

### **132 Sentence continues to run while offender on parole**

An offender who, while serving a sentence, is released on parole in accordance with the terms of a parole order is taken to continue serving the sentence during the period:

- (a) that begins when the offender is released, and
- (b) that ends when the sentence expires or (if the parole order is sooner revoked) when the parole order is revoked.

### **133 Parole order not invalidated by failure to comply with procedural requirements**

A parole order is not invalid merely because of a failure by the Parole Board or a court to comply with any procedural requirement imposed by or under this Act.

## **Division 2 Parole orders for sentences of more than 3 years**

### **Subdivision 1 General**

#### **134 Application of Division**

This Division applies to the making of a parole order for a sentence of more than 3 years for which a non-parole period has been set.

#### **135 General duty of Parole Board**

- (1) The Parole Board may not make a parole order for an offender unless it has decided that the release of the offender is appropriate, having regard to the principle that the public interest is of primary importance.
- (2) In making a decision under this section, the Parole Board must have regard to the following matters:
  - (a) any relevant comments made by the sentencing court,
  - (b) the offender's antecedents,
  - (c) the likely effect on any victim of the offender, and on any such victim's family, of the offender being released on parole,
  - (d) any report prepared by or on behalf of the Crown in relation to the granting of parole to the offender,
  - (e) any report required by the regulations to be furnished to the Parole Board in relation to the granting of parole to the offender,
  - (f) the offender's conduct to date while serving his or her sentence, including:
    - (i) the attitudes expressed by the offender, and
    - (ii) the offender's willingness to participate in rehabilitation programs,
  - (g) the availability to the offender of family, community or government support,
  - (h) the likelihood that, if granted parole, the offender will be able:
    - (i) to benefit from participation in a rehabilitation program, and
    - (ii) to adapt to normal lawful community life,
  - (i) any special circumstances of the case,
  - (j) such other matters as the Parole Board considers relevant.

## **Subdivision 2 Offenders other than serious offenders**

### **136 Application of Subdivision**

This Subdivision applies to offenders who are not serious offenders.

### **137 Consideration by Parole Board**

- (1) The Parole Board must consider whether or not an offender should be released on parole:
  - (a) at least 60 days before the day on which the offender becomes eligible for release on parole, and
  - (b) if the offender is not released on parole on or after that day, within each successive year following that day (unless the offender is no longer eligible for release on parole), and
  - (c) if the offender is released on parole on or after that day but the parole order is revoked and a further parole order is not subsequently made, within each successive year following that revocation (unless the offender is no longer eligible for release on parole).
- (2) Despite subsection (1) (a), the Parole Board may defer consideration of an offender's case to a day less than 60 days (but not less than 21 days) before the day on which the offender becomes eligible for release on parole if it is of the opinion that it is unable to make a decision because it has not been furnished with a report required to be made to it or there are other relevant matters requiring further consideration.
- (3) Despite subsection (1) (c):
  - (a) the Parole Board is not required to consider the case of an offender whose parole has been revoked until the offender is returned to the correctional centre system following revocation of the parole order, and
  - (b) if the offender is unlawfully at large for the whole of one or more years following the revocation, the Parole Board may decline to consider the offender's case at all in relation to that year or those years.
- (4) In any case, the Parole Board may decline to consider the case of an offender for up to 3 years at a time after it last considered the grant of parole to the offender under this Subdivision.

### **138 Decision of Parole Board**

- (1) Immediately following its consideration of whether an offender should be released on parole, the Parole Board:
  - (a) must make an order directing the release of the offender on parole on:

- (i) the day on which the offender becomes eligible for release on parole (the **earliest parole date**) or a specified day occurring not later than 7 days after the earliest parole date, or
- (ii) if the order is made after the earliest parole date, a specified day occurring not later than 7 days after the order is made, or

(b) must cause notice that the Parole Board does not intend to make a parole order (a **notice of refusal of parole**) to be served on the offender.

(1A) In determining a day on which to release a violent offender under subsection (1) (a), the Parole Board must take into account the potential trauma to a victim and the victim's family if the offender is released on the anniversary of the commission of the offence against the victim.

(1B) For the purposes of this section, a **violent offender** means an offender who is serving a sentence for an offence involving violence against a person, including any type of sexual assault referred to in clause 6 of Schedule 1 to the [Victims Support and Rehabilitation Act 1996](#).

(2) Nothing in subsection (1) affects the power of the Parole Board to amend or repeal an order as referred to in section 43 (2) of the [Interpretation Act 1987](#).

### **139 Notice of refusal of parole**

A notice of refusal of parole:

- (a) must be in writing, and
- (b) must set a date (occurring as soon as practicable, but not earlier than 14 days, after the date on which the notice is served) on which the Parole Board will meet for the purpose of reconsidering whether the offender should be released on parole, and
- (c) must require the offender to notify the Secretary of the Parole Board, not later than 7 days before the date set, if the offender intends to make submissions to the Parole Board about being released on parole, and
- (d) must be accompanied by copies of the reports and other documents intended to be used by the Parole Board in deciding whether or not the offender should be released on parole.

### **140 Review by Parole Board**

- (1) If an offender duly notifies the Secretary of the Parole Board that the offender intends to make submissions to the Parole Board, the Chairperson of the Parole Board must convene a meeting of the Parole Board, on the date set by the notice of refusal of parole, to conduct a hearing for the purpose of reconsidering whether the offender should be released on parole.

- (2) At that hearing, or at a hearing conducted at a subsequent meeting (which is, if practicable, to be held before the offender is eligible for release on parole) the offender may make submissions to the Parole Board with respect to being released on parole.

#### **141 Decision following review**

- (1) After reviewing all the reports, documents and other information placed before it, the Parole Board must decide:
- (a) whether or not the offender should be released on parole, or
  - (b) whether, for reasons specified by the Parole Board in its minutes, the question of whether or not the offender should be released on parole should be deferred.
- (2) The question of whether or not the offender should be released on parole:
- (a) may be deferred once only, and
  - (b) may not be deferred for more than 2 months.
- (3) If the Parole Board decides that the offender should be released on parole, the Parole Board must make an order directing the release of the offender on parole on:
- (a) the day on which the offender becomes eligible for release on parole (the **earliest parole date**) or a specified day occurring not later than 7 days after the earliest parole date, or
  - (b) if the order is made after the earliest parole date, a specified day occurring not later than 7 days after the order is made.
- (3A) In determining a day on which to release a violent offender under subsection (3), the Parole Board must take into account the potential trauma to a victim and the victim's family if the offender is released on the anniversary of the commission of the offence against the victim.
- (3B) For the purposes of this section, a **violent offender** means an offender who is serving a sentence for an offence involving violence against a person, including any type of sexual assault referred to in clause 6 of Schedule 1 to the [Victims Support and Rehabilitation Act 1996](#).
- (4) If the Parole Board decides that the offender should not be released on parole, the Parole Board:
- (a) (Repealed)
  - (b) must cause notice that it does not intend to make a parole order to be served on the offender.



## **Subdivision 3 Serious offenders**

### **142 Application of Subdivision**

This Subdivision applies to serious offenders.

### **143 Preliminary consideration by Parole Board**

- (1) The Parole Board must give preliminary consideration as to whether or not a serious offender should be released on parole:
  - (a) at least 60 days before the day on which the offender becomes eligible for release on parole, and
  - (b) if the offender is not released on parole on or after that day, within each successive year following that day (unless the offender is no longer eligible for release on parole), and
  - (c) if the offender is released on parole on or after that day but the parole order is revoked and a further parole order is not subsequently made, within each successive year following that revocation (unless the offender is no longer eligible for release on parole).
- (2) Despite subsection (1) (a), the Parole Board may defer giving preliminary consideration of a serious offender's case to a day less than 60 days (but not less than 21 days) before the day on which the offender becomes eligible for release on parole if it is of the opinion that it is unable to complete its preliminary consideration because it has not been furnished with a report required to be made to it or there are other relevant matters requiring further consideration.
- (3) Despite subsection (1) (c):
  - (a) the Parole Board is not required to give preliminary consideration in the case of a serious offender whose parole has been revoked until the offender is returned to the correctional centre system following revocation of the parole order, and
  - (b) if the offender is unlawfully at large for the whole of one or more years following the revocation, the Parole Board may decline to consider the offender's case at all in relation to that year or those years.
- (4) In any case, the Parole Board may decline to consider the case of a serious offender for up to 3 years at a time after it last considered the grant of parole to the offender under this Subdivision.

### **144 Formulation of Parole Board's initial intention**

On or immediately after giving its preliminary consideration as to whether or not a serious offender should be released on parole, the Parole Board must formulate and record its

initial intention either:

- (a) to make a parole order in relation to the offender, or
- (b) not to make such a parole order.

**145 Notice to victims of initial intention to make parole order**

- (1) As soon as practicable after formulating its initial intention to make a parole order, the Parole Board is (subject to and in accordance with the regulations) required to give a preliminary notice of its intention to victims of the offender whose names are recorded in the Victims Register.
- (2) The preliminary notice:
  - (a) must give an indication of the Parole Board's initial intention, and
  - (b) must state that there will be an opportunity for victims to make submissions to the Parole Board about the making of a parole order, and
  - (c) must specify a period of at least 14 days during which a victim may lodge with the Secretary of the Parole Board a notice of intention to make submissions to the Parole Board.
- (3) If a victim duly lodges with the Secretary of the Parole Board a notice of intention to make submissions, the Parole Board:
  - (a) subject to and in accordance with the regulations, must give notice to the offender that it proposes to give the offender an opportunity to make submissions about the making of a parole order in relation to the offender, and
  - (b) must set a date (occurring as soon as practicable) on which the Parole Board will conduct a hearing for the purpose of receiving and considering both offender submissions and victim submissions, and
  - (c) must notify the offender and any such victim of the date, time and place for the hearing.
- (4) The notice referred to in subsection (3) (a):
  - (a) must give an indication of the Parole Board's initial intention to make a parole order, but must indicate that this intention could be reversed, and
  - (b) must specify a period of at least 14 days during which a notice of intention to make submissions to the Parole Board may be lodged with the Secretary of the Parole Board by the offender.
- (5) In circumstances where preliminary notice need not be given of its initial intention to make a parole order, the Parole Board may, subject to section 152, proceed

immediately to confirm its initial intention.

**146 Notice to offender of initial intention not to make parole order**

- (1) As soon as practicable after formulating its initial intention not to make a parole order, the Parole Board must give a preliminary notice of its intention to the offender.
- (2) The preliminary notice:
  - (a) must give an indication of the Parole Board's initial intention, and
  - (b) must state that there will be an opportunity for the offender to make submissions to the Parole Board about the making of a parole order, and
  - (c) must specify a period of at least 14 days during which the offender may lodge with the Secretary of the Parole Board a notice of intention to make submissions to the Parole Board, and
  - (d) must be accompanied by copies of the reports and other documents intended to be used by the Parole Board in deciding whether the offender should be released on parole.
- (3) If a serious offender duly lodges with the Secretary of the Parole Board a notice of intention to make submissions, the Parole Board:
  - (a) subject to and in accordance with the regulations, must give notice to all victims of the offender whose names are recorded in the Victims Register that it proposes to give them an opportunity to make submissions about the making of a parole order in relation to the offender, and
  - (b) must set a date (occurring as soon as practicable) on which the Parole Board will conduct a hearing for the purpose of receiving and considering both offender submissions and victim submissions, and
  - (c) must notify the offender, and any victim who duly lodges a notice of intention to make submissions, of the date, time and place for the hearing.
- (4) The notice referred to in subsection (3) (a):
  - (a) must give an indication of the Parole Board's initial intention not to make a parole order, but must indicate that this intention could be reversed, and
  - (b) must specify a period of at least 14 days during which a victim may lodge with the Secretary of the Parole Board a notice of intention to make submissions to the Parole Board.

**147 Submissions by offender and victims**

- (1) At any hearing notified under section 145 or 146, both the offender and any victim

who duly lodges a notice of intention to make submissions are entitled to be present and to have a reasonable opportunity to make relevant submissions.

- (2) The Parole Board may postpone or adjourn a hearing for any reason that seems appropriate to it.
- (3) Submissions may be made in either or both of the following ways:
  - (a) they may be made in writing, and presented to the Parole Board either in advance of or at the hearing,
  - (b) they may be made orally.

#### **148 Principles on which Parole Board's final decision to be made**

- (1) The Parole Board is to make its final decision as to whether or not to make a parole order on the following principles:
  - (a) that the Parole Board will confirm its initial intention to make a parole order if there are no victim submissions or if it is not required to seek victim submissions,
  - (b) that the Parole Board will reconsider its initial intention to make a parole order if there are victim submissions, and will in that event take into account any offender submissions,
  - (c) that the Parole Board will confirm its initial intention not to make a parole order if there are no offender submissions,
  - (d) that the Parole Board will reconsider its initial intention not to make a parole order if there are offender submissions, and will in that event take into account any victim submissions.
- (2) The Parole Board must consider all submissions made in accordance with this Subdivision and must disregard all other submissions.

#### **149 Decision following review**

- (1) After reviewing all the reports, documents, submissions and other information placed before it, the Parole Board must decide:
  - (a) whether or not the offender should be released on parole, or
  - (b) whether, for reasons specified by the Parole Board in its minutes, the question of whether or not the offender should be released on parole should be deferred.
- (2) The question of whether or not the offender should be released on parole:
  - (a) may be deferred once only, and
  - (b) may not be deferred for more than 2 months.

- (3) If the Parole Board decides that the offender should be released on parole, it must make an order directing the release of the offender on parole on a day specified in accordance with section 151.
- (4) If the Parole Board decides that the offender should not be released on parole, the Parole Board:
  - (a) (Repealed)
  - (b) must cause notice that it does not intend to make a parole order to be served on the offender.

#### **150 Decision where no review**

- (1) The Parole Board must confirm its initial intention to make a parole order if there are no victim submissions or if it is not required to seek victim submissions.
- (2) The Parole Board must confirm its initial intention not to make a parole order if there are no offender submissions.
- (3) If the Parole Board confirms its initial intention to make a parole order, it must make an order directing the release of the offender on parole on a day specified in accordance with section 151.
- (4) If the Parole Board confirms its initial intention not to make a parole order:
  - (a) (Repealed)
  - (b) it must cause notice that it does not intend to make a parole order to be served on the offender.

#### **151 Day of release**

- (1) The day of release to be specified in a parole order under section 149 or 150 is to be:
  - (a) a specified date that is more than 7 and less than 14 days after the order is made, or
  - (b) if this would result in the offender being released before the day on which the offender becomes eligible for parole, a specified day occurring not later than 7 days after the day on which the offender becomes eligible for parole.
- (1A) In determining a day on which to release a violent offender under subsection (1), the Parole Board must take into account the potential trauma to a victim and the victim's family if the offender is released on the anniversary of the commission of the offence against the victim.
- (1B) For the purposes of this section, a **violent offender** means an offender who is serving a sentence for an offence involving violence against a person, including any

type of sexual assault referred to in clause 6 of Schedule 1 to the *Victims Support and Rehabilitation Act 1996*.

- (2) If an application is made to the Court of Criminal Appeal within 7 days after a parole order is made, the order is suspended:
  - (a) until the application is dealt with by the Court or the application is withdrawn, or
  - (b) if the direction of the Court of Criminal Appeal includes a requirement that the Parole Board reconsider its decision in the light of the direction, until the Parole Board revokes the order or confirms it with or without modifications.
- (3) Any such suspension automatically lapses at the end of the period of 28 days after the date on which a direction referred to in subsection (2) (b) is given if during that period the Parole Board neither revokes the parole order nor confirms it with or without modifications.

#### **152 Reasons to be provided for rejection of Review Council's advice**

- (1) If the Parole Board rejects the advice of the Review Council concerning the release on parole of a serious offender, the Parole Board must state in writing its reasons for rejecting that advice.
- (2) The Parole Board must forward a copy of those reasons to the Review Council.
- (3) The Review Council may make submissions to the Parole Board concerning the rejection of its advice within 21 days of that rejection.
- (4) The Parole Board is not to make a final decision concerning the release of the offender during the period referred to in subsection (3).

#### **153 Submissions by State**

- (1) The State may at any time make submissions to the Parole Board concerning the release on parole of a serious offender.
- (2) If the State does so, the Parole Board is not to make a final decision concerning the release of the offender until it has taken any such submission into account.
- (3) The regulations may make provision for or with respect to submissions by the State under this section, including provisions relating to the application of this Subdivision in connection with any such submission.
- (4) The powers of the State under this section may be exercised, subject to the regulations, by any agent of the State.

#### **154 Matters to be considered concerning certain serious offenders**

- (1) This section applies to a serious offender whose sentence for life is the subject of a

determination under Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999*.

- (2) The Parole Board, in exercising its functions under this Part in relation to a serious offender to whom this section applies:
  - (a) must have regard to and give substantial weight to any relevant recommendations, observations and comments made by the sentencing court, and
  - (b) must give consideration to adopting or giving effect to any such recommendations, observations and comments and to the intention of the sentencing court when making them, and
  - (c) to the extent that it declines to adopt or give effect to any such recommendations, observations and comments, must state its reasons for doing so,and must, in particular, have regard to the need to preserve the safety of the community.

#### **154A Serious offenders the subject of non-release recommendations**

- (1) Section 143 does not require the Parole Board to give preliminary consideration as to whether or not a serious offender the subject of a non-release recommendation should be released on parole unless an application for that purpose is made to the Parole Board by or on behalf of the offender.
- (2) An application under this section must be lodged with the Secretary of the Parole Board.
- (3) After considering the application, the Parole Board may make an order directing the release of the offender on parole if, and only if, the Parole Board:
  - (a) is satisfied (on the basis of a report prepared by the Chief Executive Officer of the Corrections Health Service) that the offender:
    - (i) is in imminent danger of dying, or is incapacitated to the extent that he or she no longer has the physical ability to do harm to any person, and
    - (ii) has demonstrated that he or she does not pose a risk to the community, and
  - (b) is further satisfied that, because of those circumstances, the making of such an order is justified.
- (4) In this section ***serious offender the subject of a non-release recommendation*** means a serious offender:
  - (a) who is serving a sentence for which a determination has been made under clause 4 of Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999*, and

- (b) who is the subject of a non-release recommendation within the meaning of that Schedule, as in force from time to time.

## **Subdivision 4 Applications to Court of Criminal Appeal**

### **155 Application to Court of Criminal Appeal by offender**

(1) If:

- (a) the Parole Board decides that an offender should not be released on parole, and
- (b) the offender alleges that the decision of the Parole Board has been made on the basis of false, misleading or irrelevant information,

the offender may, in accordance with rules of court, apply to the Court of Criminal Appeal for a direction to be given to the Parole Board as to whether the information was false, misleading or irrelevant.

- (2) The Court of Criminal Appeal may give such directions with respect to the information as it thinks fit.
- (3) An application under this section is to be considered by the Court of Criminal Appeal if and only if it is satisfied that the application is not an abuse of process and that there appears to be sufficient evidence to support the application.

### **156 Application to Court of Criminal Appeal by State**

(1) If:

- (a) the Parole Board decides that a serious offender should be released on parole, and
- (b) the Attorney General or the Director of Public Prosecutions alleges that the decision of the Parole Board has been made on the basis of false, misleading or irrelevant information,

the Attorney General or the Director of Public Prosecutions may, in accordance with rules of court, apply to the Court of Criminal Appeal for a direction to be given to the Parole Board as to whether the information was false, misleading or irrelevant.

- (2) The Court of Criminal Appeal may give such directions with respect to the information as it thinks fit.

### **157 Appearance in person of offender**

- (1) At the hearing or determination of an application under this Subdivision, an offender is not entitled to appear in person, except by leave of the Court of Criminal Appeal.
- (2) The power of the Court of Criminal Appeal to grant an offender leave to appear in person at the hearing or determination of an application under this Subdivision may



be exercised by any Judge of that Court, but no appeal lies to that Court against the refusal of a Judge of that Court to grant leave to appear.

### **Division 3 Parole orders for sentences of 3 years or less**

#### **158 Effect of parole orders made by court**

- (1) A parole order made by a court under section 50 of the *Crimes (Sentencing Procedure) Act 1999* in relation to a sentence is conditional on the offender being eligible for release on parole in accordance with section 126 of this Act at the end of the non-parole period of the sentence.
- (2) If the offender is not eligible for release at that time, the offender is entitled to be released on parole as soon as the offender becomes so eligible.
- (3) This section does not authorise the release on parole of an offender who is also serving a sentence of more than 3 years for which a non-parole period has been set unless the offender is entitled to be released under Division 2.

#### **159 Making of parole orders by Parole Board**

- (1) The Parole Board may make an order directing the release of an offender on parole if:
  - (a) the offender is subject to a sentence of 3 years or less, being a sentence for which a non-parole period has been set, and
  - (b) there is no parole order in force with respect to the offender under this Act, under the *Crimes (Sentencing Procedure) Act 1999* or under a law of some other State or Territory.
- (2) Division 2 applies to the making of a parole order under this section.

### **Division 4 Parole orders in exceptional circumstances**

#### **160 Parole orders in exceptional circumstances**

- (1) The Parole Board may make an order directing the release of an offender on parole who (but for this section) is not otherwise eligible for release on parole if the offender is dying or if the Parole Board is satisfied that it is necessary to release the offender on parole because of exceptional extenuating circumstances.
- (2) The Parole Board is not required to consider an application for a parole order under this section, or to conduct a hearing, if it decides not to grant such an application.
- (3) Divisions 2 and 3 do not apply to a parole order under this section.
- (4) This section does not apply in respect of an offender serving a sentence for life.

## **Division 5 Miscellaneous**

### **161 Regulations**

The regulations may make provision for or with respect to the following matters:

- (a) the management, control, administration and supervision of parole orders,
- (b) the standard conditions to be imposed on parole orders,
- (c) the service of notices on an offender,
- (d) the functions of probation and parole officers appointed or employed for the purposes of this Part.

## **Part 7 Revocation and reinstatement by Parole Board of certain orders**

### **Division 1 Periodic detention orders**

#### **162 Conduct of inquiry into suspected breach of obligations**

- (1) If the Parole Board has reason to suspect that an offender has failed to comply with the offender's obligations under a periodic detention order, the Parole Board may, whether or not the order has expired, conduct an inquiry into the matter.
- (2) The offender to whom the periodic detention order relates may make submissions to the Parole Board in relation to the matters under inquiry.

#### **163 Revocation of periodic detention order**

- (1) The Parole Board may make an order (a **revocation order**) revoking a periodic detention order:
  - (a) if it is satisfied that the offender has failed to comply with the offender's obligations under the order, or
  - (b) if the offender fails to appear before the Parole Board when called on to do so under section 180, or
  - (c) if the offender has applied for the order to be revoked.
- (1A) The Parole Board may revoke an offender's periodic detention order on the application of the Commissioner if it is satisfied that health reasons or compassionate grounds exist that justify its revocation.
- (1B) If a periodic detention order is revoked under subsection (1A), the Parole Board may, on the application of the Commissioner, make such of the orders sought by the Commissioner in relation to the offender as it considers appropriate.

(1C) The Parole Board must revoke a periodic detention order that it has reinstated under section 168A (1A) if, at any time during the remainder of the term of the sentence to which the order relates (including any period during which the offender is released on parole under a parole order), the offender is sentenced to a term of imprisonment by way of full-time detention that is to be served consecutively (or partly consecutively) with the sentence to which the order relates.

(2) The Parole Board must revoke an offender's periodic detention order on the application of the Commissioner if the Parole Board is satisfied that:

(a) the offender:

(i) has failed to report for 3 or more detention periods, whether during the same sentence of imprisonment or during different sentences of imprisonment being served consecutively (or partly consecutively) and whether any of the failures to report occurred before or after a reinstatement of the offender's periodic detention order under section 164A or 168A, and

(ii) has not had a periodic detention order reinstated previously under section 164A or 168A following revocation for failure to report for 3 or more detention periods, whether under this subsection or any other law, or

(b) the offender:

(i) has failed to report for at least 1 detention period, and

(ii) has had a periodic detention order reinstated previously under section 164A or section 168A following revocation for failure to report for 3 or more detention periods, whether under this subsection or any other law,

and the Parole Board is satisfied that the failures to report occurred otherwise than on leave of absence and are not the subject of an exemption under section 90.

(2A) An application under subsection (2) must be made:

(a) if the Commissioner is satisfied that:

(i) an offender has failed to report for 3 or more consecutive detention periods, and

(ii) the offender has failed to apply for, or been refused, leave of absence with respect to each of the detention periods referred to in subparagraph (i), and

(iii) the offender's periodic detention order has not previously been reinstated under section 164A or 168A following revocation for failure to report for 3 or more detention periods, whether under subsection (2) or any other law, or

(b) if the Commissioner is satisfied that:

- (i) an offender has failed to report for at least 1 detention period, and
- (ii) the offender has failed to apply for, or been refused, leave of absence with respect to the detention period referred to in subparagraph (i), and
- (iii) the offender's periodic detention order has previously been reinstated under section 164A or 168A following revocation for failure to report for 3 or more detention periods, whether under subsection (2) or any other law.

(2B) For the purposes of subsection (2A) (a), one detention period is taken to be consecutive with another:

- (a) even if they each relate to different sentences of imprisonment being served by way of periodic detention, and
- (b) even if there is a period between them that is not a detention period because it includes the whole or any part of Christmas Day, Good Friday or Easter Sunday.

(2C) For the purposes of this section:

- (a) an offender is taken to have failed to report for a detention period if, by the time that period ends, the offender has failed to report to the periodic detention centre or other place to which he or she is currently required to report, and
- (b) an offender is taken to have failed to apply for leave of absence for a detention period if, by the time the offender is due to report for that period, the offender has neither made an application for leave of absence nor, in the case of an inability to report, caused a telephone call to be made as referred to in section 87 (4) (a).

**Note—**

Paragraph (a) makes it clear that an offender is not taken to have failed to report if the offender merely reports late (reporting late is dealt with in section 88, in relation to the granting of leave of absence, and section 89, in relation to extension of the term of the offender's sentence). Paragraph (b) makes it clear that an offender's failure to apply for leave of absence in relation to a failure to report for a detention period is ascertainable as soon as the detention period begins.

(3) The Parole Board may refuse to revoke an offender's periodic detention order on the grounds referred to in subsection (2) if it is satisfied:

- (a) that the offender:
  - (i) applied for, and ought to have been granted, leave of absence, or
  - (ii) applied for, and ought to have been granted, an exemption under section 90, with respect to one or more detention periods, and
- (b) that the total number of detention periods for which the offender has failed to report would, had the leave or exemption been granted, be less than 3,

and, in that event, leave of absence is taken to have been granted with respect to the detention periods referred to in paragraph (a).

- (3A) A decision as to whether or not an offender's periodic detention order is to be revoked on the grounds referred to in subsection (2) is to be made at the meeting of the Parole Board at which the matter is first raised unless the Parole Board determines that deferral is necessary to allow it to obtain further information.
- (3B) A matter may not be deferred under subsection (3A) for more than 2 months from the date of the meeting at which the matter was first raised.
- (4) A revocation order may be made:
- (a) whether or not the offender has been called on to appear before the Parole Board, and
  - (b) whether or not the Parole Board has held an inquiry.
- (5) A revocation order must state the reason for which it is made.

#### **164 Effect of revocation order**

- (1) A revocation order takes effect, or is taken to have taken effect, on the date on which it is made or on such earlier date as the Parole Board thinks fit.
- (2) The earliest date on which the revocation order may take effect is the date of the first occasion on which it appears to the Parole Board that the offender failed to comply with the offender's obligations under the periodic detention order.
- (3) If an offender is not taken into custody until after the day on which the revocation order takes effect:
- (a) the term of the offender's sentence, and
  - (b) if the order takes effect during a non-parole period of the sentence, the non-parole period of the sentence,
- are, by this subsection, extended by the number of days the person was at large after the order took effect.

#### **164A Parole Board may reinstate revoked periodic detention order**

- (1) If:
- (a) an offender's periodic detention order has been revoked under this Division or under section 179, and
  - (b) the offender has, since that revocation, served at least 3 months of the offender's sentence by way of full-time detention,

the Parole Board may, on the application of the offender and subject to Part 5 of the *Crimes (Sentencing Procedure) Act 1999*, make an order reinstating the offender's revoked periodic detention order in respect of the remaining balance of the offender's sentence.

- (2) Before making an order referred to in subsection (1), the Parole Board must refer the offender to the Probation and Parole Service for assessment as to the suitability of the offender for periodic detention.
- (3) Part 5 of the *Crimes (Sentencing Procedure) Act 1999* applies to and in respect of the Parole Board and the offender in relation to the making of a periodic detention order under this section in the same way as it applies to and in respect of a court and an offender in relation to the making of a periodic detention order under that Act.
- (4) The Parole Board may not make an order under subsection (1) if the offender is subject to a sentence of imprisonment by way of full-time detention that is yet to commence.

#### **165 Parole Board may order home detention**

- (1) This section applies if the Parole Board revokes a periodic detention order and, at the time that the revocation order takes effect, the remainder of the term of the sentence to which the periodic detention order relates (including any period during which the offender is eligible to be released on parole) is 18 months or less.
- (2) The Parole Board may make an order directing that the remainder of the term of the sentence (excluding any period during which the offender is released on parole under a parole order) is to be served by way of home detention.
- (3) However, the Parole Board may not make an order under subsection (2) if the offender is subject to a sentence of imprisonment by way of full-time detention that is yet to commence.
- (4) Subject to subsection (5), Part 6 of the *Crimes (Sentencing Procedure) Act 1999* applies to and in respect of the Parole Board and the offender in relation to the making of a home detention order under this section in the same way as it applies to and in respect of a court and an offender in relation to the making of a home detention order under that Act.
- (5) The reference of an offender for assessment in relation to the making of a home detention order under this section is to be made after, and not before, the periodic detention order referred to in subsection (1) is revoked.

#### **165AA Release of offender pending assessment for home detention**

- (1) On referring an offender for assessment in relation to the making of a home detention order under section 165, the Parole Board may make an order (a **temporary release**

**order**) releasing the offender from custody, subject to such supervision as is prescribed by the regulations, pending the Board's decision as to whether or not to make the home detention order.

- (2) An offender's temporary release order:
  - (a) may be revoked by the Parole Board at any time, and
  - (b) must be revoked by the Parole Board when it makes its decision as to whether or not to make a home detention order under section 165 in respect of the offender.
- (3) The sentence to be served by the offender in respect of whom a temporary release order is made is, by this section, extended:
  - (a) by the period for which the offender is absent from custody pursuant to the order, and
  - (b) in the case of an offender for whom a warrant is issued under section 181 (1A), by the period between the issue of the warrant and the offender being taken into custody under the warrant.
- (4) In this section, a reference to the extension of an offender's sentence is a reference to:
  - (a) the extension of the term of the sentence, and
  - (b) if the offender was released from custody during a non-parole period of the sentence, the extension of the non-parole period of the sentence.

**165A Conditions of home detention as to non-association and place restriction**

- (1) The conditions to which a home detention order under section 165 is subject may include either or both of the following:
  - (a) provisions prohibiting or restricting the offender from associating with a specified person,
  - (b) provisions prohibiting or restricting the offender from frequenting or visiting a specified place or district.
- (2) A condition referred to in subsection (1) (a) or (b) is suspended while the offender is in lawful custody.
- (3) An offender does not contravene a prohibition or restriction as to his or her association with a specified person:
  - (a) if the offender does so in compliance with an order of a court, or
  - (b) if, having associated with the person unintentionally, the offender immediately terminates the association.

- (4) An offender does not contravene a requirement not to frequent or visit a specified place or district if the offender does so in compliance with an order of a court.
- (5) In this section, **associate with** means:
  - (a) to be in company with, or
  - (b) to communicate with by any means (including post, facsimile, telephone and email).

## **Division 2 Home detention orders**

### **166 Conduct of inquiry into suspected breach of obligations**

- (1) If the Parole Board has reason to suspect that an offender has failed to comply with the offender's obligations under a home detention order, the Parole Board may, whether or not the order has expired, conduct an inquiry into the matter.
- (2) The offender to whom the home detention order relates may make submissions to the Parole Board in relation to the matters under inquiry.

### **167 Revocation of home detention order**

- (1) The Parole Board may make an order (a **revocation order**) revoking a home detention order:
  - (a) if it is satisfied that the offender has failed to comply with the offender's obligations under the order, or
  - (b) if the offender fails to appear before the Parole Board when called on to do so under section 180, or
  - (c) if the offender has applied for the order to be revoked, or
  - (d) if a person with whom the offender resides during the period of the offender's home detention has withdrawn in writing, in the form prescribed by the regulations, his or her consent to the continued operation of the home detention order.
- (2) A revocation order may be made:
  - (a) whether or not the offender has been called on to appear before the Parole Board, and
  - (b) whether or not the Parole Board has held an inquiry.
- (3) A revocation order must state the reason for which it is made.
- (4) If it is satisfied that the offender has failed to comply with the offender's obligations under a home detention order but is not of the opinion that the order should be



revoked, the Parole Board may instead impose further conditions on the order, or vary any of the existing conditions of the order, in accordance with section 103.

(5) This section does not apply to an offender's failure to comply with the offender's obligations under a home detention order if that failure has been dealt with in accordance with the regulations referred to in section 106.

(6) The Parole Board must revoke a home detention order:

(a) that it has made under section 165, or

(b) that it has reinstated under section 168A (1),

if, at any time during the remainder of the term of the sentence to which the order relates (including any period during which the offender is released on parole under a parole order), the offender is sentenced to a term of imprisonment by way of full-time detention that is to be served consecutively (or partly consecutively) with the sentence to which the order relates.

#### **168 Effect of revocation order**

(1) A revocation order takes effect, or is taken to have taken effect, on the date on which it is made or on such earlier date as the Parole Board thinks fit.

(2) The earliest date on which a revocation order may take effect is the date of the first occasion on which it appears to the Parole Board that the offender failed to comply with the offender's obligations under the home detention order.

(3) If an offender is not taken into custody until after the day on which the revocation order takes effect:

(a) the term of the offender's sentence, and

(b) if the order takes effect during a non-parole period of the sentence, the non-parole period of the sentence,

are, by this subsection, extended by the number of days the person was at large after the order took effect.

#### **168A Parole Board may reinstate revoked home detention order or prior revoked periodic detention order**

(1) If:

(a) an offender's home detention order has been revoked under this Division or section 179, and

(b) the offender has, since that revocation, served at least 3 months of the offender's sentence by way of full-time detention,

the Parole Board may, on the application of the offender and subject to Part 6 of the *Crimes (Sentencing Procedure) Act 1999*, make an order reinstating the offender's revoked home detention order in respect of the remaining balance of the offender's sentence.

- (1A) In the case of an offender whose home detention order was made under section 165 following revocation of a periodic detention order under Division 1, the Parole Board may instead, on the application of the offender and subject to Part 5 of the *Crimes (Sentencing Procedure) Act 1999*, make an order reinstating the revoked periodic detention order in respect of the remaining balance of the offender's sentence.
- (2) Before making an order referred to in subsection (1) or (1A), the Parole Board must refer the offender to the Probation and Parole Service for assessment as to the suitability of the offender for home detention or periodic detention, as the case requires.
- (3) Parts 5 and 6 of the *Crimes (Sentencing Procedure) Act 1999* apply to and in respect of the Parole Board and the offender in relation to the making of a periodic detention order or home detention order under this section in the same way as they apply to and in respect of a court and an offender in relation to the making of a periodic detention order or home detention order under that Act.
- (4) The Parole Board may not make an order under subsection (1) or (1A) if the offender is subject to a sentence of imprisonment by way of full-time detention that is yet to commence.

## **Division 3 Parole orders**

### **169 Conduct of inquiry into suspected breach of obligations or medical recovery**

- (1) If the Parole Board has reason to suspect that an offender has failed to comply with the offender's obligations under a parole order, the Parole Board may, whether or not the order has expired, conduct an inquiry into the matter.
- (1A) In the case of an offender who has been granted parole on the grounds that he or she is in imminent danger of dying or is incapacitated to the extent that he or she no longer has the physical ability to do harm to any person, as referred to in section 154A (3), the Parole Board may also conduct an inquiry if it suspects that those grounds no longer exist.
- (2) The offender to whom the parole order relates may make submissions to the Parole Board in relation to the matters under inquiry.
- (3) The Parole Board is not required to inquire into a possible contravention of a parole order made by a court unless the offender to whom the order relates is required by the conditions of the order to be supervised.

### **170 Revocation of parole order**

- (1) The Parole Board may make an order (a **revocation order**) revoking a parole order:
  - (a) if it is satisfied that the offender has failed to comply with the offender's obligations under the order, or
    - (a1) in the case of an offender who has been granted parole on the grounds that he or she is in imminent danger of dying or is incapacitated to the extent that he or she no longer has the physical ability to do harm to any person, as referred to in section 154A (3), if it is satisfied that those grounds no longer exist, or
  - (b) if the offender fails to appear before the Parole Board when called on to do so under section 180, or
  - (c) if the offender has applied for the order to be revoked.
- (2) A revocation order may be made:
  - (a) whether or not the offender has been called on to appear before the Parole Board, and
  - (b) whether or not the Parole Board has held an inquiry.
- (3) A revocation order must state the reason for which it is made.
- (4) If it is satisfied that the offender has failed to comply with the offender's obligations under a parole order but is not of the opinion that the order should be revoked, the Parole Board may instead impose further conditions on the order, or vary any of the existing conditions of the order, in accordance with section 128.

### **171 Effect of revocation order**

- (1) A revocation order takes effect, or is taken to have taken effect, on the date on which it is made or on such earlier date as the Parole Board thinks fit.
- (2) The earliest date on which a revocation order may take effect is the date of the first occasion on which it appears to the Parole Board that the offender failed to comply with the offender's obligations under the parole order.
- (3) If an offender is not taken into custody until after the day on which the revocation order takes effect, the term of the offender's sentence is, by this subsection, extended by the number of days the person was at large after the order took effect.

### **172 Request by State to revoke parole order**

The Attorney General or the Director of Public Prosecutions may request the Parole Board to exercise its powers to revoke a parole order in relation to a serious offender on the ground that the order has been made on the basis of false, misleading or irrelevant

information.

## **Division 4 Post-revocation procedures and rights of appeal**

### **173 Notice of revocation**

- (1) The Parole Board must cause a notice (a **revocation notice**) to be served on an offender if the Parole Board revokes the offender's periodic detention order, home detention order or parole order.
  - (1A) A revocation notice must be served:
    - (a) as soon as practicable after the revocation of the order concerned, unless paragraph (b) applies, or
    - (b) if the Parole Board issues a warrant under section 181 in relation to the offender, as soon as practicable after the warrant has been executed.
  - (2) A revocation notice:
    - (a) must be in the form prescribed by the regulations, and
    - (b) must set a date (occurring not earlier than 14, nor later than 28, days after the date on which it is served) on which the Parole Board is to meet:
      - (i) for the purpose of reconsidering the revocation of the periodic detention order, home detention order or parole order, and
      - (ii) for the purpose of reconsidering the date specified by the notice as the date on which the revocation order takes effect, if that date is an earlier date than the date on which the revocation order was made, and
    - (c) must require the offender to notify the Secretary of the Parole Board, not later than 7 days before the date so set, if the offender intends to make submissions to the Parole Board in relation to the reconsideration of those matters, and
    - (d) must be accompanied by:
      - (i) a copy of the revocation order by which the periodic detention order, home detention order or parole order was revoked, and
      - (ii) copies of the reports and other documents used by the Parole Board in making the decision to revoke the periodic detention order, home detention order or parole order and, if appropriate, the decision to specify the earlier day.

### **174 Review of revocation**

- (1) If an offender duly notifies the Secretary of the Parole Board that the offender intends to make submissions to the Parole Board, the Chairperson of the Parole Board must

convene a meeting of the Parole Board, on the date set by the revocation notice, to conduct a hearing for either or both of the following purposes, as the case requires:

- (a) for the purpose of reconsidering the revocation of the periodic detention order, home detention order or parole order, or
- (b) for the purpose of reconsidering the date specified by the notice as the date on which the revocation order takes effect, if that date is an earlier date than the date on which the revocation order was made.

(2) At the hearing, or at a hearing conducted at a subsequent meeting, the offender may make submissions to the Parole Board with respect to the revocation of the periodic detention order, home detention order or parole order.

### **175 Decision after review**

(1) After reviewing all the reports, documents and other information placed before it, the Parole Board must decide whether or not:

- (a) to rescind the revocation of the periodic detention order, home detention order or parole order concerned, or
- (b) to rescind or vary the specification of the earlier day.

(1A) Despite subsection (1) (a) and (b), the Parole Board:

(a) may not rescind the revocation of a periodic detention order of an offender who has failed to apply for, or been refused, leave of absence with respect to 3 or more detention periods unless it is satisfied that it would be manifestly unjust not to do so, and

(b) may not rescind the revocation of:

- (i) a periodic detention order that it has revoked under section 163 (1C), or
- (ii) a home detention order that it has revoked under section 167 (6),

unless it is satisfied that the order has been revoked on the basis of false, misleading or irrelevant information.

(2) If the Parole Board rescinds the revocation of a periodic detention order because it is satisfied:

(a) that the offender:

- (i) applied for, and ought to have been granted, leave of absence, or
- (ii) applied for, and ought to have been granted, an exemption under section 90, with respect to one or more detention periods, and

(b) that the total number of detention periods for which the offender has failed to report would, had the leave or exemption been granted, be less than 3,

leave of absence is taken to have been granted with respect to the detention periods referred to in paragraph (a).

- (3) A decision under this section has effect according to its terms even if the periodic detention order, home detention order or parole order concerned has expired.
- (4) If the Parole Board rescinds the revocation of the periodic detention order, home detention order or parole order concerned, any other periodic detention order, home detention order or parole order consequentially revoked under section 179 is revived and has effect as if it had not been revoked.
- (5) If the Parole Board rescinds the revocation of the periodic detention order, home detention order or parole order concerned, the Parole Board must cause the reasons for its decision to be recorded in its minutes.

## **Division 5 Applications to Court of Criminal Appeal**

### **176 Application to Court of Criminal Appeal by offender**

- (1) If:
  - (a) the Parole Board revokes a periodic detention order, home detention order or parole order, and
  - (b) the offender to whom the periodic detention order, home detention order or parole order relates alleges that the order has been revoked on the basis of false, misleading or irrelevant information,the offender may, in accordance with rules of court, apply to the Court of Criminal Appeal for a direction to be given to the Parole Board as to whether the information was false, misleading or irrelevant.
- (2) The Court of Criminal Appeal may give such directions with respect to the information as it thinks fit.
- (3) An application under this section is to be considered by the Court of Criminal Appeal if and only if it is satisfied that the application is not an abuse of process and that there appears to be sufficient evidence to support the application.

### **177 Application to Court of Criminal Appeal by State**

- If:
- (a) the Parole Board refuses or fails within 28 days after a request by the Attorney General or the Director of Public Prosecutions under section 172 to revoke a parole

order in relation to a serious offender, and

- (b) the Attorney General or the Director of Public Prosecutions alleges that the parole order has been made on the basis of false, misleading or irrelevant information,

the Attorney General or the Director of Public Prosecutions may, in accordance with rules of court, apply to the Court of Criminal Appeal for a direction to be given to the Parole Board as to whether the information was false, misleading or irrelevant and the Court of Criminal Appeal may give such directions with respect to the information as it thinks fit.

### **178 Appearance in person of offender**

- (1) At the hearing or determination of an application under this Division, an offender is not entitled to appear in person, except by leave of the Court of Criminal Appeal.
- (2) The power of the Court of Criminal Appeal to grant an offender leave to appear in person at the hearing or determination of an application under this Division may be exercised by any Judge of that Court, but no appeal lies to that Court against the refusal of a Judge of that Court to grant leave to appear.

## **Division 6 Miscellaneous**

### **179 Consequential revocation of other orders**

- (1) If:
- (a) an offender's periodic detention order, home detention order or parole order is revoked under this Part, or
  - (b) an offender is sentenced to imprisonment for more than one month,
- the Parole Board may revoke any or all of the other periodic detention orders, home detention orders or parole orders that are in force, or are yet to come into force, in relation to the offender.
- (2) Divisions 1, 2 and 3 do not apply to the revocation of a periodic detention order, home detention order or parole order under this section, except as provided by subsection (4).
- (3) No appeal lies against the revocation of a periodic detention order, home detention order or parole order under this section.
- (4) Section 165 applies to a periodic detention order revoked under this section in the same way as it applies to a periodic detention order revoked under Division 1 of this Part.

### **179A Revocation of first of consecutive home detention orders—Parole Board to seek new**

**assessment**

(1) If:

- (a) an offender's home detention order is revoked under this Part, and
- (b) the offender is the subject of one or more other home detention orders yet to come into force (being an order or orders that the Parole Board has declined to revoke),

the Parole Board must refer the offender to the Probation and Parole Service for assessment as to the suitability of the offender for home detention in accordance with Part 6 of the *Crimes (Sentencing Procedure) Act 1999* before the other order (or, if more than one, the first order that would commence) comes into force.

(2) If, following the assessment, the Parole Board determines that the offender is not suitable for home detention, the Board must revoke the offender's next home detention order.

(3) Divisions 1, 2 and 3 do not apply to the revocation of a home detention order under this section.

(4) No appeal lies against a revocation of a home detention order under this section.

**180 Offenders to attend Parole Board when called on**

(1) For the purposes of an inquiry under this Part, the Parole Board:

- (a) may call on an offender to appear before it and, if the offender does not appear, may issue a warrant for the offender's arrest, or
- (b) if of the opinion that the offender will not appear if called on to do so, may, without calling on the offender to appear before it, issue a warrant for the offender's arrest.

(2) A warrant under this section:

- (a) is to be signed by a judicial member of the Parole Board (as referred to in section 183 (2) (a)) or the Secretary of the Parole Board, and
- (b) is sufficient authority for a police officer to arrest the offender named in the warrant, to convey the offender to the place specified in the warrant and to deliver the offender into the custody of the Parole Board.

(3) The regulations may make provision for or with respect to the form of any warrants issued for the purposes of this section.

**181 Warrants committing offenders to correctional centres**

(1) If the Parole Board:



- (a) revokes a periodic detention order, home detention order or parole order, or
  - (b) decides not to make a home detention order under section 165 with respect to an offender the subject of a temporary release order under section 165AA,
- it may issue a warrant committing the offender to a correctional centre to serve the remainder of the sentence to which the order relates by way of full-time detention.
- (1A) If the Parole Board revokes a temporary release order under section 165AA, it may issue a warrant committing the offender to a correctional centre pending the Board's decision as to whether or not to make a home detention order under section 165.
  - (2) A warrant under this section is to be signed by a judicial member of the Parole Board as referred to in section 183 (2) (a).
  - (3) A warrant under this section is sufficient authority:
    - (a) for any police officer to arrest, or to have custody of, the offender named in the warrant, to convey the offender to the correctional centre specified in the warrant and to deliver the offender into the custody of the governor of that correctional centre, and
    - (b) for the governor of the correctional centre specified in the warrant to have custody of the offender named in the warrant for the remainder of the sentence to which the warrant relates, or pending the Board's decision as to whether or not to make a home detention order under section 165, as the case requires.
  - (4) The regulations may make provision for or with respect to the form of any warrants issued for the purposes of this section.

### **182 Functions may be exercised after order has expired**

The Parole Board may exercise any function under this Part in relation to a periodic detention order, home detention order or parole order, even if the order has expired.

## **Part 8 The Parole Board**

### **Division 1 Constitution and functions**

#### **183 Constitution of Parole Board**

- (1) There is constituted by this Act a Parole Board.
- (2) The Parole Board is to consist of the following members:
  - (a) at least 4 (referred to as **judicial members**) are to be judicially qualified persons appointed by the Governor,
  - (b) at least one is to be a police officer appointed by the Commissioner of Police,

- (c) at least one is to be an officer of the Probation and Parole Service appointed by the Commissioner of Corrective Services,
- (d) one is to be the Secretary of the Parole Board,
- (e) at least 10 (referred to as **community members**) are to be persons, appointed by the Governor, who reflect as closely as possible the composition of the community at large.

(3) For the purposes of this Act:

- (a) the members referred to in subsection (2) (a) and (e) are referred to as **appointed members**, and
- (b) the members referred to in subsection (2) (b) and (c) are referred to as **official members**, and
- (c) the members referred to in subsection (2) (b)-(e) are referred to as **non-judicial members**.

(4) Schedule 1 has effect with respect to the constitution and procedure of the Parole Board.

#### **184 Divisions of Parole Board**

- (1) The Chairperson may from time to time constitute Divisions of the Parole Board and dissolve any Division so constituted.
- (2) A Division is to consist of:
  - (a) one judicial member, and
  - (b) at least one community member, and
  - (c) either or both of the following:
    - (i) the Secretary of the Parole Board,
    - (ii) one or more official members.
- (3) The Chairperson may delegate to a Division any of the functions of the Parole Board.
- (4) For the purpose of its exercise of any function so delegated, a Division is taken to be the Parole Board.

#### **185 Functions of Parole Board**

The Parole Board has the functions conferred or imposed on it by or under this or any other Act or law.

## **Division 2 Inquiries**

### **186 Power to require attendance of witnesses and production of documents**

- (1) A judicial member may, by instrument in writing, require any person on whom the instrument is served personally or by post:
  - (a) to appear before the Parole Board for the purpose of giving evidence, or
  - (b) to produce to the Parole Board any document (including a document in the custody or under the control of the person and in the possession of or the property of the Crown) that is relevant to any proceedings of the Parole Board,  
at a time, date and place specified in the instrument.
- (2) A judicial member may require a person who appears before the Parole Board to be sworn for the purpose of giving evidence on oath and may administer an oath accordingly.
- (3) If a document is produced to the Parole Board, the Parole Board may take possession of the document for such period as it considers necessary for the purposes of the proceedings before it.
- (4) This section does not require a person to produce to the Parole Board any document the production of which the Minister certifies in writing:
  - (a) may endanger an offender or any other person, or
  - (b) may otherwise be contrary to the public interest.

### **187 Examination by judicial member**

- (1) A judicial member may require a person (including an officer or employee of the Crown) who appears before the Parole Board to answer a question that is reasonably related to the proceedings before the Parole Board.
- (2) A natural person is not excused from answering a question put to the person by a judicial member on the ground that the answer tends to incriminate the person.
- (3) If a person claims, before answering such a question, that the answer tends to incriminate the person, neither the question nor the answer is admissible in evidence against the person in criminal proceedings, other than proceedings for an offence under section 188 (c) or on a charge of perjury in respect of the answer.

### **188 Offences**

A person must not:

- (a) refuse, fail or neglect to comply with a requirement under section 186 or 187, except

to the extent to which the person is lawfully excused from complying with the requirement, or

- (b) produce any document, knowing it to be false or misleading in a material particular, in purported compliance with a requirement under section 186, or
- (c) make an unsworn statement, knowing it to be false or misleading in a material particular, when appearing before the Parole Board.

Maximum penalty: 5 penalty units.

### **189 Misconduct before Parole Board**

- (1) A person must not, during a hearing at a meeting of the Parole Board:
  - (a) wilfully insult any member of the Parole Board, or
  - (b) wilfully misbehave during the hearing, or
  - (c) wilfully and without lawful excuse interrupt the hearing, or
  - (d) wilfully and without lawful excuse disobey a direction of the judicial member presiding at the hearing.

Maximum penalty: 10 penalty units.

- (2) The judicial member presiding at the hearing may direct a person who does any such thing to leave the place where the hearing is being conducted.

### **190 Rights of parties making submissions**

- (1) At any meeting of the Parole Board at which any person (including the State) is entitled under this Act to make submissions to the Parole Board, the person:
  - (a) may be represented by a legal practitioner or, with the consent of the Parole Board, by any other person, and
  - (b) may call and examine any witness who attends, including any witness called by the Parole Board, and
  - (c) may produce documents and exhibits to the Parole Board, and
  - (d) may give evidence on oath, and
  - (e) may otherwise adduce, orally or in writing, to the Parole Board such matters, and address the Parole Board on such matters, as are relevant to the proceedings before the Parole Board.
- (2) However, victims or their representatives are not entitled:

- (a) to call or examine witnesses at a hearing under Subdivision 3 of Division 2 of Part 6, or
- (b) without the approval of the Parole Board:
  - (i) to give evidence on oath, or
  - (ii) to otherwise adduce any matter orally to the Parole Board or to address the Parole Board on any matter.
- (3) Subsection (2) (b) (ii) does not require a victim of a serious offender or his or her representative to obtain the approval of the Parole Board to make an oral submission to the Parole Board under section 147 (3).

### **191 Witnesses' expenses**

A person who is required to appear or give evidence before the Parole Board (other than an offender in respect of whom the proceedings are being held) is entitled to be paid such allowances and expenses (if any) as the Minister may determine in respect of the person.

## **Division 3 Miscellaneous**

### **192 Report to Minister**

- (1) As soon as practicable after 31 December in each year, the Parole Board must furnish to the Minister for presentation to Parliament a report giving information as to the Parole Board's activities during that year and setting out statistical information as to:
  - (a) the number of cases considered by the Parole Board, and
  - (b) the number of persons released on parole under this Act, and
  - (c) the number of parole orders amended, varied or revoked by the Parole Board, and
  - (d) the number of existing licences (within the meaning of the repealed *Sentencing Act 1989*) amended, varied or revoked by the Parole Board, and
  - (e) such other matters as the Parole Board considers appropriate.
- (2) The Parole Board:
  - (a) must report to the Minister on the release of any offender, if the question of whether the offender should be released is referred by the Minister to the Parole Board, and
  - (b) may report to the Minister on whether the detention of a person under section 39 of the *Mental Health (Criminal Procedure) Act 1990* should be continued or not.

### **192A Minister to table report**

- (1) The Minister must, as soon as practicable after receiving the report referred to in section 192 (1), lay a copy of the report or cause it to be laid before both Houses of Parliament.
- (2) If a House of Parliament is not sitting when the Minister seeks to comply with subsection (1), the Minister must present copies of the report to the Clerk of the House of Parliament.
- (3) A report presented to the Clerk of a House of Parliament:
  - (a) is taken on presentation, and for all purposes, to have been laid before the House of Parliament, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) for all purposes is taken to be a document published by order or under the authority of the House, and
  - (d) on the first sitting day of the House after receipt of the report by the Clerk, must be recorded:
    - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, or
    - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly.

### **193 Information concerning offenders and correctional centres**

- (1) Any person who is a member of the Parole Board, or is authorised in writing by the Parole Board in that behalf, is entitled to free and unfettered access at all reasonable times to any offender confined in a correctional centre:
  - (a) whose release on parole is being considered by the Parole Board, or
  - (b) whose case has been referred to the Parole Board by the Minister, or
  - (c) in respect of whom a non-parole period is applicable, or
  - (d) who is being held under section 39 of the *Mental Health (Criminal Procedure) Act 1990*, or
  - (e) who is a licensee (within the meaning of the repealed *Sentencing Act 1989*) or a person whose existing licence (within the meaning of the repealed *Sentencing Act 1989*) has been revoked,and it is the duty of the governor of the correctional centre to provide any such person

with facilities for communicating with or observing any such offender.

- (2) The Commissioner of Corrective Services or the Commissioner of Police must, if so requested by the Parole Board, supply to the Parole Board reports on the conduct and character of:
  - (a) any offender referred to in subsection (1), and
  - (b) any offender who is for the time being subject to a parole order.
- (3) If any offender referred to in subsection (2) was formerly a person detained in a detention centre, within the meaning of the *Children (Detention Centres) Act 1987*, the Director-General of the Department of Juvenile Justice must, if requested by the Parole Board, supply to the Parole Board a report on the conduct and character of the offender while as a person detained in a detention centre.
- (4) The Director-General of the Department of Health must, if requested by the Parole Board:
  - (a) arrange for psychological, medical or psychiatric examinations to be carried out on any offender referred to in subsection (2), and
  - (b) supply to the Parole Board all reports on the result of any such examination.
- (5) In any report on an offender supplied to the Parole Board under this section, there must be included such information available to the person supplying the report as may be of assistance to the Parole Board in considering the case of the offender to whom the report relates.

#### **194 Security of certain information**

Nothing in this Act or the regulations requires a person to be provided with a copy of a report or another document (or any part of the report or document) if its provision to the person may, in the opinion of a judicial member:

- (a) adversely affect the security, discipline or good order of a correctional centre, or
- (b) endanger the person or any other person, or
- (c) jeopardise the conduct of any lawful investigation, or
- (d) prejudice the public interest.

## **Part 9 The Serious Offenders Review Council**

### **Division 1 Constitution and functions**

#### **195 Constitution of Review Council**

- (1) There is constituted by this Act the Serious Offenders Review Council.
- (2) The Review Council is to consist of at least 8, but not more than 14 members, of whom:
  - (a) 3 are to be judicially qualified persons (referred to as **judicial members**), appointed by the Governor, and
  - (b) 2 members are to be officers of the Department (referred to as **official members**), appointed by the Commissioner, and
  - (c) the remainder (referred to as **community members**) are to be persons who reflect as closely as possible the composition of the community at large, appointed by the Governor.
- (3) For the purposes of this Act:
  - (a) the members referred to in subsection (2) (a) and (c) are referred to as **appointed members**, and
  - (b) the members referred to in subsection (2) (b) and (c) are referred to as **non-judicial members**.
- (4) Schedule 2 has effect with respect to the constitution and procedure of the Review Council.

#### **196 Divisions of Review Council**

- (1) The Chairperson may from time to time constitute Divisions of the Review Council and dissolve any Division so constituted.
- (2) A Division is to consist of a judicial member, a community member and an official member.
- (3) The Chairperson may delegate to a Division any of the functions of the Review Council.
- (4) For the purpose of its exercise of any function so delegated, a Division is taken to be the Review Council.

#### **197 Functions of Review Council**

- (1) The Review Council has such functions as are conferred on it by or under this or any



other Act or law.

(2) In particular, the Review Council has the following functions:

- (a) to provide advice and make recommendations to the Commissioner with respect to the following:
  - (i) the security classification of serious offenders,
  - (ii) the placement of serious offenders,
  - (iii) developmental programs provided for serious offenders,
- (b) to provide reports and advice to the Parole Board concerning the release on parole of serious offenders,
- (c) to prepare and submit reports to the Supreme Court with respect to applications under Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999*,
- (d) to review segregated and protective custody directions under Division 2 of Part 2,
- (d1) to make recommendations to the Minister with respect to the transfer of juvenile inmates from juvenile correctional centres to adult correctional centres under Division 3A of Part 2,
- (e) to provide reports and advice to the Minister and to such other persons or bodies as may be prescribed by the regulations,
- (f) to perform such other functions as may be prescribed by the regulations in relation to the management of serious offenders and other offenders.

(3) The Review Council may delegate any function which it has under Division 2 (Segregated and protective custody) of Part 2 to the Chairperson or to a judicial member nominated by the Chairperson.

### **198 Matters to be considered in relation to certain advisory functions**

- (1) When exercising its functions under section 197 (2) (a) in relation to a serious offender, the Review Council must consider the public interest and any other relevant matters.
- (2) In the case of its function under section 197 (2) (a) (i), the Review Council must also consider, in accordance with the regulations:
  - (a) any submissions made by the State, and
  - (b) any submissions made by victims of the serious offender,before advising or recommending that a serious offender should be given a less stringent security classification if it appears to the Review Council that the new

classification would allow the offender to become eligible for unescorted leave of absence under a local leave permit or interstate leave permit.

- (3) Without limiting the generality of the meaning of public interest in subsection (1), the Review Council is to take into account the following matters when considering the public interest:
- (a) the protection of the public, which is to be paramount,
  - (b) the nature and circumstances of the offence,
  - (c) the reasons and recommendations of the sentencing court,
  - (d) the criminal history and family background of the offender,
  - (e) the time the offender has served in custody and the time the offender has yet to serve in custody,
  - (f) the offender's conduct while in custody, including the offender's conduct during previous imprisonment, if applicable,
  - (g) the attitude of the offender,
  - (h) the position of and consequences to any victim of the offender, including the victim's family,
  - (i) the need to maintain public confidence in the administration of criminal justice,
  - (j) the need to reassure the community that serious offenders are in secure custody as long as it is appropriate,
  - (k) the rehabilitation of the offender and the re-entry of the offender into the community as a law-abiding citizen,
  - (l) the availability to the offender of family, departmental and other support,
  - (m) such other factors as are prescribed by the regulations.

### **199 Matters to be considered in relation to offenders serving existing life sentences**

- (1) This section applies to an offender serving an existing life sentence (as referred to in Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999*) or a sentence for which a determination has been made under that Schedule.
- (2) The Review Council, in exercising its functions under section 197 (2) (b) and (c), and under any other prescribed provisions of this Act or the regulations, in relation to an offender to whom this section applies:
- (a) must have regard to and give substantial weight to any relevant recommendations, observations and comments made by the sentencing court,

and

- (b) must give consideration to adopting or giving effect to any such recommendations, observations and comments and to the intention of the sentencing court when making them, and
  - (c) to the extent that it declines to adopt or give effect to any such recommendations, observations and comments, must state its reasons for doing so,
- and must, in particular, have regard to the need to preserve the safety of the community.

## **Division 2 Inquiries**

### **200 Power to require attendance of witnesses and production of documents**

- (1) A judicial member may, by instrument in writing, require any person on whom the instrument is served personally or by post:
  - (a) to appear before the Review Council for the purpose of giving evidence, or
  - (b) to produce to the Review Council any document (including a document in the custody or under the control of the person and in the possession of or the property of the Crown) that is relevant to any proceeding of the Review Council,at a time, date and place specified in the instrument.
- (2) A judicial member may require a person who appears before the Review Council to be sworn for the purpose of giving evidence on oath and may administer an oath accordingly.
- (3) If a document is produced to the Review Council at an inquiry, the Review Council may take possession of the document for such period as it considers necessary for the purposes of the proceedings before it.
- (4) This section does not require a person to produce to the Review Council at an inquiry any document the production of which the Minister certifies in writing:
  - (a) may endanger an offender or any other person, or
  - (b) may otherwise be contrary to the public interest.

### **201 Examination by judicial member**

- (1) A judicial member may require a person (including an officer or employee of the Crown) who appears before the Review Council to answer a question that is reasonably related to the proceedings before the Review Council.
- (2) A natural person is not excused from answering a question put by a judicial member

on the ground that the answer tends to incriminate the person.

- (3) If a person claims, before answering such a question, that the answer tends to incriminate the person, neither the question nor the answer is admissible in evidence against the person in criminal proceedings, other than proceedings for an offence against section 202 (c) or on a charge of perjury in respect of the answer.

## **202 Offences**

A person must not:

- (a) refuse, fail or neglect to comply with a requirement under section 200 or 201, except to the extent to which the person is lawfully excused from complying with the requirement, or
- (b) produce any document, knowing it to be false or misleading in a material particular, in purported compliance with a requirement under section 200, or
- (c) make an unsworn statement, knowing it to be false or misleading in a material particular, when appearing before the Review Council.

Maximum penalty: 5 penalty units.

## **203 Misconduct before Review Council**

- (1) A person must not, during a hearing before the Review Council:
- (a) wilfully insult any member of the Review Council, or
  - (b) wilfully misbehave during the hearing, or
  - (c) wilfully and without lawful excuse interrupt the hearing, or
  - (d) wilfully and without lawful excuse disobey a direction of the judicial member presiding at the hearing.

Maximum penalty: 10 penalty units.

- (2) The judicial member presiding at the hearing may direct a person who does any such thing to leave the place where the hearing is being conducted.

## **204 Rights of parties making submissions**

At any hearing before the Review Council at which any person is entitled under this Act to make submissions to the Review Council, the person:

- (a) may be represented by a legal practitioner or, with the consent of the Review Council, by any other person, and
- (b) may call and examine any witness who attends, including any witness called by the

Review Council, and

- (c) may give evidence on oath, and
- (d) may produce documents and exhibits to the Review Council, and
- (e) may otherwise adduce, orally or in writing, to the Review Council such matters, and address the Review Council on such matters, as are relevant to the proceedings before the Review Council.

#### **205 Witnesses' expenses**

A person who is required to appear or give evidence before the Review Council at an inquiry is entitled to be paid such allowances and expenses (if any) as the Minister may determine in respect of the person.

### **Division 3 Serious Offenders Management Committee**

#### **206 Establishment of Management Committee**

- (1) The Review Council may establish, and appoint the members of, a Serious Offenders Management Committee (the **Management Committee**) and, subject to this section, delegate to that Committee such of its functions as the Review Council determines.
- (2) The Management Committee is to be constituted by a Chairperson (being one of the official members of the Review Council) and such number of officers of the Department as may be determined by the Review Council.
- (3) The Review Council is to determine the quorum for a meeting of the Management Committee.
- (4) The Chairperson of the Management Committee is to determine the procedure for the calling of meetings of the Management Committee and for the conduct of business at those meetings.

#### **207 Establishment of Management Committee subcommittees**

- (1) The Chairperson of the Management Committee may establish subcommittees of the Management Committee for the purpose of assisting it in the exercise of its functions.
- (2) The procedure for the calling of meetings of a subcommittee and for the conduct of business at those meetings is to be determined by the Chairperson of the Management Committee or (subject to any determination of the Chairperson) by the subcommittee.

#### **208 Delegation to Management Committee of Review Council functions**

- (1) The functions of the Review Council that may be delegated to the Management Committee include (but are not limited to) the following:

- (a) the functions relating to the security classification and management of serious offenders,
  - (b) the functions relating to the review of developmental programs provided for such offenders.
- (2) The Review Council may not delegate to the Management Committee its functions relating to:
- (a) the submission of reports to the Supreme Court with respect to applications under Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999*, or
  - (b) the submission of reports to, or representation before, the Parole Board.

## **Division 4 Miscellaneous**

### **209 Annual reports**

- (1) As soon as practicable after 31 December in each year, the Review Council must furnish to the Minister for presentation to Parliament a report giving information as to the Review Council's activities during that year.
- (2) If a House of Parliament is not sitting when the Minister seeks to comply with subsection (1), the Minister must present copies of the report to the Clerk of the House of Parliament.
- (3) A report presented to the Clerk of a House of Parliament:
  - (a) is taken on presentation, and for all purposes, to have been laid before the House of Parliament, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) for all purposes is taken to be a document published by order or under the authority of the House, and
  - (d) on the first sitting day of the House after receipt of the report by the Clerk, must be recorded:
    - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, or
    - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly.

### **209A Security of certain information**

Nothing in this Act or the regulations requires a person to be provided with a copy of a report or another document (or any part of the report or document) if its provision to the

person may, in the opinion of a judicial member:

- (a) adversely affect the security, discipline or good order of a correctional centre, or
- (b) endanger the person or any other person, or
- (c) jeopardise the conduct of any lawful investigation, or
- (d) prejudice the public interest.

## **Part 10 The Inspector-General**

### **Division 1 Appointment of Inspector-General and staff**

#### **210 Inspector-General**

- (1) The Governor may appoint an Inspector-General of Corrective Services.
- (2) The following persons are not eligible to be appointed as Inspector-General:
  - (a) a person who is or has within the previous 3 years been employed as an officer or temporary employee of the Department,
  - (b) a person who is to any extent responsible for the management of, or who is employed at or in connection with, a correctional centre or periodic detention centre,
  - (c) a person who has, or who has at any time had, any interest in a management agreement.
- (3) Schedule 3 has effect with respect to the Inspector-General.

#### **211 Staff**

- (1) Such staff as may be necessary to assist the Inspector-General may be employed under Part 2 of the [Public Sector Management Act 1988](#).
- (2) The Inspector-General may engage consultants for the purposes of giving expert advice.
- (3) The Inspector-General may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of the Department, any other government department or a public or local authority.
- (4) For the purposes of this Act, a person who is a member of staff referred to in subsection (1) or whose services are made use of under this section is taken to be an officer of the Inspector-General.

## Division 2 Functions of Inspector-General

### 212 Definitions

In this Division:

**Department** includes a correctional centre or periodic detention centre.

**officer of the Department** includes a correctional officer or a person employed for the purposes of a management agreement.

### 213 Principal functions of Inspector-General

- (1) The principal functions of the Inspector-General are (subject to this Part):
- (a) to investigate the Department's operations and the conduct of the Department's officers, and
  - (b) to investigate and attempt to resolve complaints made by any person relating to matters within the Department's administration, and
  - (c) to encourage the mediation and informal resolution of complaints relating to matters within the Department's administration, and
  - (d) to train Official Visitors, and
  - (e) to examine reports of Official Visitors referred to the Inspector-General by the Minister and to investigate or comment on those reports, and
  - (f) to examine reports received from monitors appointed under section 242 and to investigate or comment on those reports, and
  - (g) to examine reports received from community advisory councils appointed under section 243 and make recommendations to the Minister in relation to those reports, and
  - (h) to investigate any matter within the administration of the Department if directed to do so by the Minister, and
  - (i) to promote integrity and professionalism among the Department's officers, and
  - (j) to assess the effectiveness and appropriateness of the procedures of the Department, and
  - (k) to provide independent monitoring and auditing of contracts entered into between the Department and private contractors, and
  - (l) to oversee contracts for community-based post-release services, and
  - (m) to make recommendations to the Minister on ways in which the procedures of the



Department can be improved, and

(n) to facilitate coronial inquiries into deaths in correctional centres.

- (2) The functions of the Inspector-General relating to the investigation of complaints may be exercised:
  - (a) on the Inspector-General's own initiative, or
  - (b) at the request of the Minister, or
  - (c) in response to a complaint made to the Inspector-General, or
  - (d) in response to a reference by the Ombudsman, the Independent Commission Against Corruption or any other agency.
- (3) The Inspector-General has such other functions as are conferred or imposed on the Inspector-General by or under this or any other Act or law.
- (4) The Inspector-General may delegate to any officer of the Inspector-General the exercise of any of the Inspector-General's functions, other than this power of delegation.

#### **214 Limitations on Inspector-General's functions**

- (1) The Inspector-General's functions are not exercisable in relation to the following matters:
  - (a) any matter that is the subject of a special inquiry referred to in section 230,
  - (b) any complaint about the conduct of a public authority that is listed in Schedule 1 to the *Ombudsman Act 1974* as being excluded from the operation of that Act,
  - (c) any complaint about a decision, procedure or member of the Parole Board or the Review Council.
- (2) Subsection (1) (b) does not affect the power of the Inspector-General to recommend the taking of disciplinary action or criminal proceedings against any of the Department's officers.
- (3) If the Inspector-General receives a complaint that falls within the charter of any of the Department's investigation units, the Inspector-General:
  - (a) must refer the complaint to the investigation unit, unless directed to deal with the complaint by the Minister, and
  - (b) if so directed, must notify the Commissioner of that fact.
- (4) Nothing in subsection (3) prevents the Inspector-General from:

- (a) monitoring the way in which a complaint is dealt with by an investigation unit within the Department, or
- (b) recommending that the Minister direct investigation of a complaint by the Inspector-General or another investigative body, or
- (c) requiring a copy of any report prepared by an investigation unit in relation to a complaint referred to it by the Inspector-General and making recommendations in relation to the report.

## **215 Powers of Inspector-General**

- (1) For the purpose of exercising the Inspector-General's functions, the Inspector-General:
  - (a) may at any time visit and examine any of the Department's premises, and
  - (b) may require any of the Department's officers to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Department's operations or the conduct of the Department's officers, and
  - (c) may require any of the Department's officers to attend before the Inspector-General to answer questions or produce documents or other things about any matter relating to the Department's operations or the conduct of the Department's officers, and
  - (d) may refer any matter relating to the Department's operations or the conduct of the Department's officers to any of the Department's investigation units or to any other appropriate agency for consideration or action, and
  - (e) may recommend the taking of disciplinary action or criminal proceedings against any of the Department's officers, and
  - (f) may undertake systematic inspections of correctional centres and periodic detention centres.
- (2) For the purpose of exercising the Inspector-General's functions, the Inspector-General:
  - (a) is entitled to be given full access to all of the Department's records and to take or have copies made of any of them, and
  - (b) is entitled to be given full access to all offenders held in custody by officers of the Department and to question those offenders and obtain information from them.
- (3) The Inspector-General has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of the Inspector-General's functions.
- (4) Any specific powers conferred on the Inspector-General by this Act are not taken to

limit by implication the generality of this section.

### **216 Discretion of Inspector-General to investigate complaints**

- (1) The Inspector-General may, at any time and for any reason, decide not to investigate a complaint or to discontinue the investigation of a complaint.
- (2) Without limiting the generality of subsection (1), the Inspector-General may decide not to investigate a complaint or to discontinue the investigation of a complaint if the Inspector-General considers:
  - (a) that the complaint is frivolous, vexatious or not in good faith, or
  - (b) that the subject-matter of the complaint is trivial, or
  - (c) that the conduct complained of occurred at too remote a time to justify investigation, or
  - (d) that an alternative and satisfactory means of redress is or has been available to the complainant, or
  - (e) that the complainant has no interest or an insufficient interest in the conduct complained of.
- (3) This section does not apply to any matter that is referred to the Inspector-General for investigation or other action under Part 5 of the *Independent Commission Against Corruption Act 1988*.

## **Division 3 Relationship of Inspector-General with other agencies**

### **217 Relationship with Ombudsman regarding investigations**

- (1) The Inspector-General must not investigate a matter that could become the subject of a complaint under the *Ombudsman Act 1974* unless the Inspector-General has entered into arrangements with the Ombudsman under this section.
- (2) The Inspector-General and the Ombudsman may enter into arrangements regarding:
  - (a) matters the subject of a complaint, inquiry, investigation or other action under the *Ombudsman Act 1974* about which the Ombudsman will notify the Inspector-General, and
  - (b) matters about which the Inspector-General will notify the Ombudsman that could be made the subject of such a complaint, inquiry, investigation or other action, and
  - (c) the handling of such complaints, inquiries, investigations or other matters by the Inspector-General that could be dealt with by the Ombudsman under that Act.

- (3) The Inspector-General and the Ombudsman are empowered and required to exercise their functions in conformity with any relevant arrangements entered into under this section.

### **218 Relationship with ICAC regarding investigations**

- (1) The Inspector-General has the same duty to report to the Independent Commission Against Corruption (the **Commission**) any matter that the Inspector-General suspects on reasonable grounds concerns or may concern corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* as the principal officer of a public authority has under section 11 of that Act.
- (2) The Inspector-General must not exercise functions in relation to any such matter unless authorised to do so by arrangements entered into under this section.
- (3) The Inspector-General and the Commission may enter into arrangements regarding:
  - (a) matters about which the Commission will notify the Inspector-General where the Commission suspects that an officer of the Department is or may be guilty of misconduct, and
  - (b) the handling of matters by the Inspector-General that may involve misconduct of an officer of the Department and that could be dealt with by the Commission under the *Independent Commission Against Corruption Act 1988*.
- (4) The Inspector-General and the Commission are empowered and required to exercise their functions in conformity with any relevant arrangements entered into under this section.

### **219 Functions of Inspector-General under *Protected Disclosures Act 1994***

A reference in the *Protected Disclosures Act 1994* to the principal officer of a public authority includes, where the public authority concerned is the Department, a reference to the Inspector-General.

## **Division 4 Miscellaneous**

### **220 Reports of Inspector-General**

- (1) The Inspector-General must make an annual report in writing to the Minister on the operations of the Inspector-General and must make such other reports to the Minister as the Minister requires.
- (2) The annual report is to be furnished to the Minister as soon as practicable after 30 June in each year.
- (3) The Minister must, as soon as practicable after receiving the annual report, lay a copy of the report or cause it to be laid before both Houses of Parliament.

- (4) If a House of Parliament is not sitting when the Minister seeks to comply with subsection (3), the Minister must present copies of the report to the Clerk of the House of Parliament.
- (5) A report presented to the Clerk of a House of Parliament:
  - (a) is taken on presentation, and for all purposes, to have been laid before the House of Parliament, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) for all purposes is taken to be a document published by order or under the authority of the House, and
  - (d) on the first sitting day of the House after receipt of the report by the Clerk, must be recorded:
    - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, or
    - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly.

## **221 Obstruction of Inspector-General**

A person must not:

- (a) without reasonable excuse, wilfully obstruct, hinder, resist or threaten the Inspector-General, or any officer of the Inspector-General, in the exercise of the Inspector-General's functions under this Act, or
- (b) without reasonable excuse, refuse or wilfully fail to comply with any lawful requirement of the Inspector-General or an officer of the Inspector-General, or
- (c) wilfully make any statement that is false or misleading in a material particular to the Inspector-General, or any officer of the Inspector-General, in the exercise of the Inspector-General's functions under this Act.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

## **222 Review of Part**

- (1) The Minister is to review this Part to evaluate the Inspector-General's contribution to the operation of the State's correctional system.
- (2) The review is to be undertaken as soon as possible after 12 June 2002.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament before 12 June 2003.

### **223 Expiration of position of Inspector-General**

- (1) A person must not be appointed to the position of Inspector-General after 1 October 2003.
- (2) A person who holds the office of Inspector-General immediately before 1 October 2003 ceases to hold office on that day.
- (3) Subsections (1) and (2) do not have effect if before 1 October 2003 an Act of Parliament, or a resolution of both Houses of Parliament, provides that those subsections do not have effect.

## **Part 11 Administration**

### **Division 1 Correctional complexes, correctional centres and periodic detention centres**

#### **224 Correctional complexes**

- (1) The Governor may, by proclamation, declare any premises specified or described in the proclamation to be a correctional complex for the purposes of this Act.
- (2) The Governor may, by the proclamation by which any premises are declared to be a correctional complex or by a subsequent proclamation, give a name to the correctional complex.
- (3) The Governor may, by proclamation, vary or revoke any proclamation under this section.

#### **225 Correctional centres**

- (1) The Governor may, by proclamation, declare any premises specified or described in the proclamation to be a correctional centre for the purposes of this Act.
- (2) The Governor may, by the proclamation by which any premises are declared to be a correctional complex or by a subsequent proclamation, declare any part of the correctional complex to be a correctional centre for the purposes of this Act.
- (3) The Governor may, by the proclamation by which any premises or any part of a correctional complex is declared to be a correctional centre or by a subsequent proclamation, give a name to the correctional centre.
- (4) The Governor may, by proclamation, vary or revoke any proclamation under this section.

#### **225A Juvenile correctional centres**

- (1) The Governor may, by the proclamation by which any premises are declared to be a

correctional centre or by a subsequent proclamation, declare the correctional centre to be a juvenile correctional centre for the purposes of this Act.

- (2) The Governor may, by the proclamation by which any correctional centre is declared to be a juvenile correctional centre or by a subsequent proclamation, give a name to the juvenile correctional centre.
- (3) The Governor may, by proclamation, vary or revoke any proclamation under this section.

## **226 Periodic detention centres**

- (1) The Governor may, by the proclamation by which any premises are declared to be a correctional centre or by a subsequent proclamation, declare the correctional centre to be a periodic detention centre for the purposes of this Act.
- (2) The Governor may, by the proclamation by which any correctional centre is declared to be a periodic detention centre or by a subsequent proclamation, give a name to the periodic detention centre.
- (3) A proclamation by which a correctional centre is declared to be a periodic detention centre must identify some other correctional centre (not being a periodic detention centre) whose governor is to be responsible for the periodic detention centre.
- (4) The Governor may, by proclamation, vary or revoke any proclamation under this section.

## **Division 2 Supervision of correctional centres**

### **227 Visiting Magistrates**

- (1) For each correctional complex, correctional centre and periodic detention centre there is to be a Visiting Magistrate, being a Magistrate appointed by the Chief Magistrate.
- (2) A Visiting Magistrate has the functions conferred or imposed on a Visiting Magistrate by or under this or any other Act or law.
- (3) A Visiting Magistrate may at any time visit the correctional complex, correctional centre or periodic detention centre for which he or she is appointed.

### **228 Official Visitors**

- (1) For each correctional complex, correctional centre and periodic detention centre there is to be at least one Official Visitor appointed by the Minister.
- (2) Notice of any such appointment must be published in the Gazette.
- (3) The following persons are not eligible to be Official Visitors:

- (a) any person who is employed as an officer or temporary employee in the Department,
  - (b) any person who is to any extent responsible for the management of, or who is employed at or in connection with, a correctional centre or periodic detention centre,
  - (c) any person who has an interest in a management agreement,
  - (d) any person who has not made a declaration under clause 4 of Schedule 4.
- (4) An Official Visitor for a correctional complex, correctional centre or periodic detention centre:
- (a) unless prevented by illness or other sufficient cause, must visit the complex or centre at least once each month:
    - (i) for the purpose of giving interviews to correctional officers and other members of staff employed in the Department at the complex or centre, and
    - (ia) for the purpose of giving interviews to offenders held in custody at the complex or centre, and
    - (ii) for the purpose of examining the complex or centre, and
  - (b) may visit the complex or centre at any other time unless, in the opinion of the governor, a visit would be undesirable for reasons of security, and
  - (c) must, in accordance with the regulations, receive and deal with complaints, and
  - (d) must, in accordance with the regulations, report at least once every 6 months to the Minister, and
  - (e) has and may exercise such other functions as may be prescribed by the regulations.
- (5) The Minister may refer a report received under this section to the Inspector-General for investigation or comment.
- (6) Schedule 4 has effect with respect to Official Visitors.

## **229 Powers of Judges and Magistrates to visit and examine**

Any Judge of the Supreme Court or District Court, and any Magistrate, may at any time visit and examine any correctional complex, correctional centre or periodic detention centre.

## **230 Special inquiries**

- (1) The Minister may direct that an inquiry be conducted into any matter relating to the



security, good order, control or management of a correctional complex, correctional centre or periodic detention centre.

- (2) The inquiry is to be conducted by the Visiting Magistrate for the correctional complex, correctional centre or periodic detention centre or by such other person as the Minister may appoint.
- (3) For the purpose of conducting such an inquiry:
  - (a) the person appointed to conduct the inquiry has and may exercise the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the *Royal Commissions Act 1923*, and
  - (b) the provisions of that Act (except for section 13 and Division 2 of Part 2) apply, with any necessary adaptations:
    - (i) to and in respect of the inquiry, and
    - (ii) to or in respect of any witness or person summoned by or appearing before the person so appointed.
- (4) It is a reasonable excuse for the purposes of section 11 (2) (a) of the *Royal Commissions Act 1923*, as applied by subsection (3) of this section, for a natural person:
  - (a) to refuse or fail to answer a question put to the person at an inquiry, or
  - (b) to refuse or fail to produce a document or other thing that the person is required to produce at an inquiry,that the answer to the question, or the production of the document or other thing, tends to incriminate the person.
- (5) The person appointed to conduct the inquiry:
  - (a) is not bound by the rules of evidence, but may inform himself or herself on any matter in such manner as the person thinks appropriate, and
  - (b) may, in respect of a matter not dealt with by or under this Act, give directions as to the procedure to be followed at or in connection with the inquiry.

## **Division 3 Staff**

### **231 Staff generally**

The following staff are to be appointed or employed under the *Public Sector Management Act 1988*:

- (a) the Commissioner,

- (b) governors of correctional centres,
- (c) correctional officers,
- (d) probation and parole officers,
- (e) the Secretary and staff of the Parole Board,
- (f) the Executive Officer and Registrar and staff of the Review Council,
- (g) such other staff as are necessary for the purposes of this Act.

### **232 Commissioner**

- (1) The Commissioner:
  - (a) has the care, direction, control and management of all correctional complexes, correctional centres and periodic detention centres, and
  - (b) has all other functions conferred or imposed on the Commissioner by or under this or any other Act or law.
- (2) In the exercise of the functions referred to in subsection (1) (a) and (b), the Commissioner is subject to the direction and control of the Minister.
- (3) The Commissioner may delegate to any person any of the Commissioner's functions, other than this power of delegation.
- (4) Sections 10 (2), 11 (3), 12 and 17 (4) do not limit the power of the Commissioner to delegate functions under those sections.

### **233 Governors of correctional centres**

- (1) The governor of a correctional centre:
  - (a) has the care, direction, control and management of the correctional centre and of any periodic detention centre for which the governor is responsible as referred to in section 226 (3), and
  - (b) has all other functions conferred or imposed on the governor by or under this or any other Act or law.
- (2) In the exercise of the functions referred to in subsection (1) (a) and (b), the governor is subject to the direction and control of the Commissioner.
- (3) The governor of a correctional centre may delegate to any person any of the governor's functions, other than this power of delegation and other than any function delegated to the governor by the Commissioner.

### **234 Commissioned and non-commissioned correctional officers**

- (1) There are two classifications of correctional officers, as follows:
  - (a) commissioned correctional officers (being correctional officers of or above the rank of Assistant Superintendent),
  - (b) non-commissioned correctional officers (being correctional officers below the rank of Assistant Superintendent).
- (2) The Governor may issue commissions to commissioned correctional officers.
- (3) A commission is taken to have been resigned by a commissioned officer on his or her dismissal, resignation or termination of service.
- (4) A correctional officer of or above the rank of Assistant Superintendent, whether or not the officer has been issued with a commission, is taken to have been commissioned as an officer of the relevant rank as from the date of the officer's appointment to that rank.
- (5) The regulations may make provision for or with respect to the ranking of correctional officers and the awarding of medals to correctional officers and other members of staff of the Department.

### **235 Functions of correctional officers**

- (1) The functions of the various ranks and classes of correctional officers are to be as determined from time to time by the Commissioner.
- (2) Commissioned correctional officers must at all times exercise their functions in connection with the administration and management of correctional complexes, correctional centres and periodic detention centres in such manner as the Commissioner, having regard to current circumstances, may from time to time direct.

#### **235A Acquisition or use of assumed identity**

Nothing in this or any other Act authorises a person employed in the Department of Corrective Services or a correctional officer to acquire or use an assumed identity that would represent him or her to be any of the following:

- (a) a social worker,
- (b) a medical practitioner or medical researcher,
- (c) a psychologist,
- (d) a drug and alcohol counsellor,
- (e) any other health worker,

- (f) a legal practitioner,
- (g) a member of the clergy,
- (h) an Official Visitor.

### **235B Commissioner's instructions**

The Commissioner may issue (and from time to time amend or revoke) instructions, not inconsistent with this Act or the regulations, or with the [Public Sector Management Act 1988](#) or the regulations made under that Act, to the staff of the Department (including correctional officers) with respect to the management and control of the Department.

### **235C Transitional centre officers**

- (1) In this section:

**transitional centre officer** means a person who is employed at a transitional centre for the purpose of supervising inmates residing at the transitional centre (including supervising such inmates while they are outside the transitional centre).

- (2) The functions of transitional centre officers are to be as determined from time to time by the Commissioner.
- (3) Those functions may include functions of a correctional officer.
- (4) To the extent that the functions of a transitional centre officer include the functions of a correctional officer, the transitional centre officer has all the immunities of a correctional officer.
- (5) A transitional centre officer may exercise a function of a correctional officer only in respect of an inmate who resides at the transitional centre where the transitional centre officer is employed.
- (6) Transitional centre officers must at all times exercise their functions in such manner as the Commissioner, having regard to current circumstances, may from time to time direct.

### **235D Functions of periodic detention field officers**

- (1) In this section:

**periodic detention field officer** means a person who is employed for the purpose of supervising offenders subject to periodic detention orders while the offenders are outside a periodic detention centre.

- (2) The functions of periodic detention field officers are to be as determined from time to time by the Commissioner.

- (3) Those functions may include functions of a correctional officer.
- (4) To the extent that the functions of a periodic detention field officer include the functions of a correctional officer, the periodic detention field officer has all the immunities of a correctional officer.
- (5) A periodic detention field officer may exercise a function of a correctional officer only:
  - (a) in respect of an offender who is subject to a periodic detention order, and
  - (b) during any detention period for that offender.
- (6) Periodic detention field officers must at all times exercise their functions in such manner as the Commissioner, having regard to current circumstances, may from time to time direct.

### **236 Oath to be taken by correctional officers**

- (1) Before a person exercises any of the functions of a correctional officer, the person must take the oath or make the affirmation of office as a correctional officer in accordance with the regulations.
- (2) A correctional officer is not required to take a further oath or make a further affirmation merely because of a change in the officer's rank or position.

## **Division 4 Health**

### **236A Functions of Corrections Health Service**

The Corrections Health Service, in addition to any other functions conferred on it by or under this or any other Act or law, has the following functions:

- (a) to provide health services to offenders and other persons in custody within the meaning of section 249,
- (b) to monitor the provision of health services in managed correctional centres,
- (c) to prevent the spread of infectious diseases in, or in relation to, correctional centres,
- (d) to keep medical records of offenders and other persons in custody within the meaning of section 249,
- (e) to provide advice to the Commissioner on the diet, exercise, clothing, capacity to work and general hygiene of inmates.

### **236B CEO, Corrections Health Service to have access to centres**

For the purpose of ensuring that the provisions of this Act and the regulations (in so far as they relate to the functions of the Corrections Health Service) are being complied with at a correctional centre (including a periodic detention centre), the Chief Executive Officer,

Corrections Health Service, is to have free and unfettered access at all times to all parts of the correctional centre, to all medical records held at the correctional centre and to all offenders held in custody in the correctional centre.

### **236C Appointment of medical officers**

- (1) The Chief Executive Officer, Corrections Health Service, may appoint one or more registered medical practitioners as medical officers for a correctional centre.
- (2) A registered medical practitioner may be appointed as a medical officer for one or more correctional centres.
- (3) A medical officer is subject to the direction and control of the Chief Executive Officer, Corrections Health Service.
- (4) A medical officer for a correctional centre is to attend the correctional centre as regularly and frequently as is necessary to comply with the medical officer's statutory obligations.
- (5) The Chief Executive Officer, Corrections Health Service is to keep such statistical records, and furnish to the Commissioner such returns, as the Commissioner may direct in relation to health services provided to inmates.
- (6) A person who held office as a medical officer for a correctional centre immediately before the commencement of this section is taken to hold office pursuant to an appointment under this section, and the appointment may be suspended or revoked accordingly.

### **236D Delegation of functions of CEO, Corrections Health Service**

- (1) The Chief Executive Officer, Corrections Health Service, may delegate to any person any of the Chief Executive Officer's functions under this Act, other than this power of delegation.
- (2) Subsection (1) does not enable the Chief Executive Officer, Corrections Health Service to delegate the right of free and unfettered access conferred on the Chief Executive Officer by sections 236B and 244.

## **Division 5 Testing of correctional staff for alcohol and prohibited drugs**

### **236E Definitions**

In this Division:

**authorised person** means a person authorised in accordance with the regulations to conduct breath tests, breath analyses or other tests for the purposes of this Division and the regulations.

**breath analysing instrument** means any instrument approved by the Governor by order under the [Road Transport \(Safety and Traffic Management\) Act 1999](#) as such an instrument, that is, an instrument designed to ascertain, by analysis of a person's breath, the concentration of alcohol present in the person's blood.

**breath analysis** means a test carried out by a breath analysing instrument for the purpose of ascertaining, by analysis of a person's breath, the concentration of alcohol present in that person's blood.

**breath test** means a test:

- (a) that is designed to indicate the concentration of alcohol in a person's blood, or whether a particular concentration of alcohol is or may be present in a person's blood, and
- (b) that is carried out on the person's breath by means of a device (not being a breath analysing instrument) of a type approved by the Governor for the conduct of breath tests under the [Road Transport \(Safety and Traffic Management\) Act 1999](#).

**hospital** means a public or private hospital, and includes any premises, institution or establishment prescribed by the regulations as a hospital for the purposes of this Division.

**member of correctional staff** means a correctional officer or any other person who is employed in the Department.

**prohibited drug** has the same meaning as in the [Drug Misuse and Trafficking Act 1985](#).

### **236F Testing of staff for alcohol and prohibited drugs**

- (1) An authorised person may require any member of correctional staff who is on duty, or who is present at the staff member's place of work and about to go on duty:
  - (a) to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence or concentration of alcohol, or
  - (b) to provide, or enable to be taken, a non-invasive sample from the staff member for the purpose of testing for the presence of prohibited drugs,in accordance with the directions of the authorised person and the regulations.
- (2) The selection of a member of correctional staff for testing under subsection (1) may be conducted on a random or targeted basis.
- (3) Without limiting the generality of subsection (1), if an incident occurs in which a person dies or is injured while in the custody of a member of correctional staff, or as the result of the discharge of a firearm by a member of correctional staff, an authorised person may require any member of correctional staff involved in the incident:

- (a) to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence or concentration of alcohol, or
  - (b) to provide, or enable to be taken, a non-invasive sample from the staff member for the purpose of testing for the presence of prohibited drugs,
- in accordance with the directions of the authorised person and the regulations.

- (4) An authorised person may require the staff member to remain on the premises where the test is to be conducted until the test is completed.
- (5) A requirement pursuant to subsection (3) to undergo a test or to provide a sample is to be made by the authorised person as soon as practicable after the incident concerned.

### **236G Testing where member of correctional staff attends hospital**

- (1) If a member of correctional staff attends or is admitted to a hospital for examination or treatment because of an incident referred to in section 236F (3), an authorised person may require the member of staff to provide, or enable to be taken, a sample of blood or a non-invasive sample from the staff member in accordance with the directions of a medical practitioner who attends the member of staff at the hospital.
- (2) Any such medical practitioner must take the sample if informed by an authorised person that the sample is required to be taken by the practitioner, but not a sample of blood if such a sample is taken under Division 4 of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999* instead.
- (3) If there is no medical practitioner present to attend the staff member at the hospital, the sample is to be taken by a registered nurse who is attending the staff member and who is accredited by a hospital to perform the sampling procedures.
- (4) Sections 21 and 22 of the *Road Transport (Safety and Traffic Management) Act 1999* apply to any taking, or provision, of a sample of blood or a non-invasive sample under subsection (1) as if the sample were a sample of blood taken under Division 4 of Part 2 of that Act.
- (5) Any sample taken under subsection (1) is to be dealt with, and a report on the analysis of the sample is to be provided, in accordance with the regulations.
- (6) Nothing in this section or the regulations derogates from the operation of Division 4 of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999*.

### **236H Protection from liability**

- (1) A medical practitioner does not incur any civil or criminal liability in respect of anything properly and necessarily done by the practitioner in the course of taking, or being provided with, a sample of blood or a non-invasive sample from a member of



correctional staff for the purpose of its being used by an analyst to detect the presence of alcohol or any prohibited drug if the practitioner:

- (a) believed on reasonable grounds that he or she was required under this Act to take, or be provided with, the sample of blood or the non-invasive sample from the person, or
- (b) was informed by an authorised officer that the staff member was a person from whom the practitioner was required under this Act to take, or be provided with, the sample of blood or the non-invasive sample.

(2) Subsection (1) extends to a registered nurse, or any person acting under the supervision of the medical practitioner, who performs the functions of a medical practitioner under this Division in accordance with this Division or the regulations.

### **236I Regulations**

The regulations may make provision for or with respect to the following:

- (a) the appointment of authorised officers and the authorisation of persons:
  - (i) to administer breath tests, breath analyses or other tests for the purposes of detecting the presence or concentration of alcohol or prohibited drugs, and
  - (ii) to operate equipment for that purpose,
- (b) the conduct of testing,
- (c) the taking of samples of blood or non-invasive samples,
- (d) the taking of a sample of blood at the choice of a member of correctional staff for the staff member to retain or arrange to be analysed (or both),
- (e) the provision of a non-invasive sample from the staff member for the purpose of testing for the presence of prohibited drugs,
- (f) the devices used in carrying out the breath tests, breath analyses and other tests, including the calibration, inspection and testing of those devices,
- (g) the accreditation of persons conducting analyses for the presence of prohibited drugs,
- (h) the procedure for the handling and analysis of samples of blood or non-invasive samples,
- (i) offences relating to interference with test results or the testing procedure,
- (j) the consequences of refusing to comply with a requirement of or under this Division,
- (k) the consequences for members of correctional staff of testing positive for alcohol or prohibited drugs,

- (l) the evidentiary value and use of certificates relating to the analysis of a sample or the authorisation of persons,
- (m) the confidentiality of test results.

## **Division 6 Recognised interstate correctional officers**

### **236J Appointment of recognised interstate correctional officers**

- (1) The Commissioner may, by instrument in writing, appoint any of the following persons, or each person in a group of such persons, as a recognised interstate correctional officer:
  - (a) any person who is employed as a correctional officer (other than a probationary correctional officer) within the public service of another State or Territory,
  - (b) any member of the police force of another State or Territory (other than a probationary constable),
  - (c) any member of the Australian Federal Police.
- (2) The Commissioner may not appoint a person, or each person in a group of persons, as a recognised interstate correctional officer unless, in the Commissioner's opinion, the person or each person in the group of persons:
  - (a) has undergone appropriate training in respect of the exercise of his or her functions as a recognised interstate correctional officer, and
  - (b) is to be subject to an appropriate disciplinary system in respect of the exercise of those functions.
- (3) An appointment as a recognised interstate correctional officer may be made subject to conditions. The kinds of conditions to which an appointment may be subject include (but are not limited to) conditions as to the kinds of functions conferred and the purposes for and circumstances in which such functions may be exercised.
- (4) The Commissioner may, at any time, revoke the appointment of any person, or of each person in a group of persons, as a recognised interstate correctional officer and may, at any time, impose, vary or revoke any conditions of appointment.
- (5) A person who is a recognised interstate correctional officer because he or she is employed as a correctional officer in the public service of another State or Territory, or because he or she is a member of a police force, ceases to be a recognised interstate correctional officer on ceasing to be so employed as a correctional officer or on ceasing to be such a member.
- (6) Without limiting subsection (4), the Commissioner may at any time revoke the appointment of a person as a recognised interstate correctional officer if of the opinion

that the person is not a suitable person to be a recognised interstate correctional officer.

- (7) In this section, a reference to a correctional officer or to the public service of another State or Territory means a correctional officer however described, or a public service however described.

### **236K Recognised interstate correctional officer to have correctional officer functions**

- (1) A recognised interstate correctional officer has all the functions and immunities that a correctional officer has under this or any other Act.
- (2) The conferral of functions by this section on a recognised interstate correctional officer is subject to any applicable conditions of the person's appointment as a recognised interstate correctional officer.
- (3) The regulations may make provision for or with respect to identification requirements for, or the wearing of uniforms by, recognised interstate correctional officers.

## **Part 12 Engagement of contractors**

### **237 Purpose for which contractors may be engaged**

- (1) To assist the Commissioner in the exercise of the Commissioner's functions with respect to the management of correctional centres and the transfer of offenders between correctional centres, the Commissioner may make use of the services of one or more contractors.
- (2) The engagement of a contractor for the management of a correctional centre, and its management by the contractor, may not be undertaken otherwise than in accordance with this Part.

### **238 Management agreements**

- (1) The Commissioner may enter into an agreement (the **management agreement**) with a corporation (the **management company**) providing for the management of one or more correctional centres.
- (2) The management agreement must provide for:
- (a) compliance by the management company with the provisions of this Act and the regulations, and of any other Act or law, so far as they affect the correctional centre and the welfare of its inmates, and
  - (b) objectives and performance standards for the management company in relation to the management of the correctional centre, and
  - (c) employment by the management company of a person competent to exercise the

functions of the governor of the correctional centre and of sufficient and competent custodial and paramedical and other staff to enable it to discharge its obligations under the agreement, and

- (d) remuneration of the management company, and
  - (e) submission to the Commissioner of periodic reports and audited accounts in relation to the management of the correctional centre, and
  - (f) prohibition of subcontracting by the management company, otherwise than as allowed by a submanagement agreement or as approved by the Commissioner, and
  - (g) indemnity by the management company of the Crown and the Commissioner for damage to the correctional centre and any associated public property in the possession or under the control of the management company, and
  - (h) notification of any variation of the controlling interests in the management company or of its management structure, and
  - (i) such other matters as may be prescribed by the regulations.
- (3) The management agreement may make such other provision, not inconsistent with this Act or the regulations, as may be agreed for or with respect to the management of the correctional centre by the management company.
- (4) For the purposes of subsection (3), a provision of a management agreement is not inconsistent with this Act or the regulations in so far as it prescribes a standard that exceeds the standard provided by this Act or the regulations in relation to the health, diet or exercise of offenders or any other matter affecting their welfare.

### **239 Submanagement agreements**

- (1) The management company may, with the approval of the Commissioner, enter into an agreement (the **submanagement agreement**) with respect to the management of the correctional centre on its behalf and in accordance with the management agreement by another corporation (the **submanagement company**).
- (2) The submanagement agreement may make such other provision, not inconsistent with this Act or the regulations, as may be agreed for or with respect to the management of the correctional centre by the submanagement company.
- (3) For the purposes of subsection (2), a provision of a submanagement agreement is not inconsistent with this Act or the regulations in so far as it prescribes a standard that exceeds the standard provided by this Act or the regulations in relation to the health, diet or exercise of offenders or any other matter affecting their welfare.

#### **240 Authorisation of correctional centre staff**

- (1) A person must not be or continue to be employed, at a managed correctional centre, to perform any of the duties of:
  - (a) the governor of the correctional centre, or
  - (b) a custodian of offenders, or
  - (c) employment in any other capacity prescribed by the regulations,unless the person is the holder of an authority, issued by the Commissioner, authorising the person to perform the duties concerned.
- (2) The Commissioner may refuse to issue an authority under this section to a person:
  - (a) if the person has not undertaken an accredited course of training or instruction relevant to the employment concerned, or
  - (b) if, because of a criminal record, insufficient education, aspects of character or other matters, the Commissioner does not consider the person to be a fit and proper person to be so employed, or
  - (c) for any other reason which the Commissioner thinks is a sufficient reason, in the public interest, for refusal.
- (3) An authority issued under this section to a person may be revoked by the Commissioner:
  - (a) if, in the opinion of the Commissioner, having regard to the provisions of subsection (2), the authority ought not to have been issued, or
  - (b) if the person has failed to comply with any of the provisions of this Act or the regulations or with any direction given to the person under this Act, or
  - (c) for any other reason which the Commissioner thinks is a sufficient reason, in the public interest, for revocation of the authority,but no such authority is to be revoked without affording the person concerned a reasonable opportunity to be heard.
- (4) The Commissioner may from time to time accredit courses of training or instruction for the purposes of this Part.

#### **241 Status of staff at correctional centre managed under agreement**

- (1) A person who, in accordance with this Part and a management or submanagement agreement, is appointed by the management company or submanagement company under the agreement to exercise the functions of the governor of a correctional centre

is, for the purposes of this Act and for all other purposes, the governor of the correctional centre.

- (2) A person employed for the purposes of a management or submanagement agreement is, in the performance of the duties of his or her employment, subject to:
  - (a) the provisions of the regulations, and
  - (b) any directions, not inconsistent with the regulations, given by the Commissioner either generally or in a particular case.
- (3) Despite any power or authority conferred by a management or submanagement agreement, or by the regulations, on any person employed by the management company or submanagement company in connection with a correctional centre, a person so employed is not, for the purposes of this Act, a correctional officer, nor does the *Public Sector Management Act 1988* apply to any such person on account of that employment.

#### **242 Monitoring**

- (1) A person (in this section referred to as the **monitor**) is to be appointed under the *Public Sector Management Act 1988* for the purposes of this section in respect of each managed correctional centre.
- (2) The monitor is to be appointed for a term of not more than 2 years, but is eligible for re-appointment.
- (3) The monitor is responsible to the Commissioner for the assessment and review of the management of the correctional centre concerned by the management company or submanagement company concerned.
- (4) A monitor must make an annual report in writing to the Commissioner of his or her findings regarding:
  - (a) the management of a correctional centre, and
  - (b) any activity undertaken in accordance with a management or submanagement agreement that affects the correctional centre,including any transportation of offenders to or from the correctional centre.
- (5) When making a report to the Commissioner under subsection (4), a monitor must give a copy of the report to the Inspector-General.
- (6) The report is to form part of the next annual report of the Department prepared for the purposes of the *Annual Reports (Departments) Act 1985*.
- (7) The monitor has such other functions as may be specified in the regulations and such additional functions as may be specified by the Commissioner from time to time.

- (8) The monitor is to have free and unfettered access at all times to all parts of the correctional centre, to all correctional centre records, to all offenders held in custody in the correctional centre and to all persons employed at the correctional centre.

#### **243 Community advisory councils**

- (1) To assist in the monitoring of a managed correctional centre, and to encourage community involvement in the oversight of its management, the Minister is to appoint a community advisory council for the correctional centre.
- (2) A community advisory council is to consist of persons the Minister considers to be suitably qualified to serve on the committee and to be suitably representative of the interests of the local community.
- (3) The community advisory council is to make quarterly reports in writing to the Minister of its findings regarding the management of the correctional centre.
- (4) When making a report to the Minister under subsection (3), the community advisory council must give a copy of the report to the Inspector-General.

#### **244 Corrections Health Service**

- (1) For the purpose of ensuring that the provisions of this Act and the regulations (in so far as they relate to medical, surgical or dental treatment or to the health of offenders) are being complied with at a managed correctional centre, the Chief Executive Officer, Corrections Health Service, is to have free and unfettered access at all times to all parts of the correctional centre, to all medical records held at the correctional centre and to all offenders held in custody in the correctional centre.
- (2) Nothing in this section:
  - (a) affects any power conferred on the Chief Executive Officer, Corrections Health Service, with respect to any correctional centre, or
  - (b) affects any duty of a management company, submanagement company or correctional centre medical officer under this Act, the regulations or any agreement.
- (3) (Repealed)

#### **245 Investigation of corruption**

While a correctional centre is being managed under a management or submanagement agreement, the *Independent Commission Against Corruption Act 1988* and the regulations under that Act, with any necessary modifications:

- (a) apply to and in respect of the management company or submanagement company as if (in so far as it has functions under this Act or the agreement) it were a public

authority within the meaning of that Act, and

- (b) apply to and in respect of every director or other officer of the management company or submanagement company (and any employee of the management company or submanagement company who under this Part requires an authority from the Commissioner in order to be such an employee) as if:
  - (i) the director, officer or employee were, by virtue of his or her office or employment, a public official within the meaning of that Act, and
  - (ii) any functions exercisable in the course of his or her office or employment were public official functions.

#### **246 Administrative complaints**

While a correctional centre is being managed under a management or submanagement agreement, the *Ombudsman Act 1974* and the regulations under that Act, with any necessary modifications:

- (a) apply to and in respect of the management company or submanagement company and the governor of the correctional centre as if (in so far as they have functions under this Act or the agreement) they were public authorities within the meaning of that Act, and
- (b) apply to and in respect of:
  - (i) any director or other officer of the management company or submanagement company, and
  - (ii) any employee of the management company or submanagement company who under this Part requires an authority from the Commissioner in order to be such an employee,

as if he or she were, by virtue of his or her office or employment, a statutory employee within the meaning of that Act.

#### **247 Freedom of information**

While a correctional centre is being managed under a management or submanagement agreement, the *Freedom of Information Act 1989* and the regulations under that Act apply, with any necessary modifications, to and in respect of the management company or submanagement company and its members and employees:

- (a) as if the management company or submanagement company (in so far as it has functions under this Act or the agreement) were a local authority within the meaning of that Act, and
- (b) as if the managing director of the management company or submanagement company were its principal officer within the meaning of that Act, and



- (c) as if the Minister were its responsible Minister within the meaning of that Act.

#### **248 Minimum standards**

- (1) The Commissioner must cause to be prepared a written statement setting out minimum standards in relation to the exercise of any functions by a management company or submanagement company in accordance with this Part.
- (2) The Minister must cause the statement to be laid before each House of Parliament within 10 sitting days of that House after the execution of a management or submanagement agreement providing for the exercise of those functions by a management company or submanagement company.
- (3) The Commissioner may amend such a statement from time to time.
- (4) The Minister must cause the amended statement to be laid before each House of Parliament within 10 sitting days of that House after the statement is amended.
- (5) Nothing in this section requires a statement (including an amended statement) to be laid before a House of Parliament if such a statement in substantially the same terms has already been laid before that House.

### **Part 13 Custody of persons during proceedings**

#### **249 Definitions**

- (1) In this Part:

**correctional officer** includes:

- (a) a person employed on a temporary basis within the Department to perform some or all of the duties of a correctional officer, and
- (b) a person holding an authority under section 240 to perform escort duties.

**designated officer** means the person for the time being holding or acting in the position within the Department designated by the Commissioner for the purposes of this Part.

**person in custody** means a person who is in lawful custody:

- (a) before being brought before a court in connection with the alleged commission of an offence, or
- (b) during proceedings to determine whether the person has committed an offence or while such proceedings are pending, or
- (c) following a grant of bail but before the person has fulfilled the necessary requirements entitling the person to be released, or

- (d) during any period for which the person is on remand, or
- (e) while awaiting sentencing for an offence or during sentencing proceedings, or
- (f) during any period after the person is sentenced for an offence, or
- (g) during any period after a periodic detention order is made in relation to the person and before a periodic detention notice is served on the person, or
- (h) in accordance with a warrant of commitment or other warrant, or an order of a court or other competent authority,

but does not include a person who is detained in accordance with the *Intoxicated Persons Act 1979*.

- (2) For the removal of doubt, **person in custody** in subsection (1) includes a person in lawful custody:
  - (a) refused bail by an authorised officer as referred to in section 20 of the *Bail Act 1978*, or
  - (b) granted bail by an authorised officer but not released as referred to in section 20 of the *Bail Act 1978*, or
  - (c) arrested under section 50 (1) (a) of the *Bail Act 1978*, or
  - (d) apprehended under a warrant referred to in section 50 (1) (b) (i) of the *Bail Act 1978*.

## **250 Transport and detention of persons in custody**

- (1) A person in custody may be given into the keeping of a correctional officer.
- (2) A correctional officer into whose keeping a person in custody has been given:
  - (a) may convey the person to any correctional centre, court or other place, and
  - (b) may detain the person in any correctional centre or other place.
- (3) A warrant of commitment or other warrant, or an order of a court or other competent authority, authorising the conveyance of a person in custody to, or the detention of a person in custody in, a correctional centre authorises a correctional officer to convey the person to the correctional centre referred to in the warrant or order.

## **251 Designated officer**

- (1) While a person in custody is in the keeping of a correctional officer under this Part, the person is taken to be in the custody of the designated officer.
- (2) Subject to the regulations:

- (a) the designated officer has, in relation to a person taken to be in the officer's custody by virtue of this section, all the powers and duties that the governor of a correctional centre has in relation to an inmate of a correctional centre, and
  - (b) a person taken to be in the designated officer's custody by virtue of this section has all the rights of such an inmate.
- (3) Subsection (2) (b) does not affect any other right that a person in custody may have apart from that paragraph.
- (4) The regulations:
- (a) may limit the powers and duties of the designated officer in relation to persons taken to be in the custody of the designated officer by virtue of this section, and
  - (b) may limit the rights that a person in custody has under subsection (2) (b).

## **252 Places where persons in custody may be kept during transfer**

While being transferred from one place to another, a person in custody may be accommodated in a correctional centre, police station or court cell complex if it is necessary or convenient to do so.

### **252A Correctional officers may provide assistance**

- (1) A correctional officer may, if requested to do so by a police officer or an officer of the Department of Juvenile Justice, provide assistance in connection with the restraint, conveyance or detention of any person in the lawful custody of the officer requesting the assistance.
- (2) A correctional officer has, while providing such assistance, all the functions and immunities of the officer who requested the assistance in relation to the restraint, conveyance or detention of the person concerned.

### **253 Part subject to [Children \(Detention Centres\) Act 1987](#)**

This Part is subject to the [Children \(Detention Centres\) Act 1987](#).

## **Part 14 General**

### **254 Extension of sentence following unlawful absence from custody**

- (1) If a person is unlawfully absent from custody during the term of a sentence:
  - (a) the term of the sentence, and
  - (b) if the absence occurs during a non-parole period of the sentence, the non-parole period of the sentence,are, by this subsection, extended by the period for which the person is unlawfully

absent from custody.

(2) In subsection (1):

- (a) the reference to a person being unlawfully absent from custody includes a reference to a person being absent from custody following the revocation of a periodic detention order, home detention order or parole order, and
- (b) the reference to the period for which such a person is unlawfully absent from custody does not include any period for which the person is in custody, whether or not in relation to the sentence the subject of the order that has been revoked.

(3) This section does not apply to:

- (a) any absence from custody for which the person is taken to have been in lawful custody by operation of section 40, or
- (b) any absence from custody in respect of which the person's sentence is extended by some other provision of this Act.

(4) This section does not prevent a person from being proceeded against and convicted in relation to any offence arising out of an escape from lawful custody.

#### **255 Effect of extension of sentence**

(1) This section applies to any sentence whose term or non-parole period is extended under this Act.

(2) The date of commencement of any other sentence (the **later sentence**) that is to be served consecutively, or partly consecutively, with the extended sentence (the **earlier sentence**), is, by this subsection, postponed:

- (a) if the later sentence commences at or before the end of the non-parole period of the earlier sentence, by the period for which the non-parole period of the earlier sentence is extended, or
- (b) if the later sentence commences at or before the expiry of the earlier sentence (but after the end of any non-parole period), by the period for which the term of the earlier sentence is extended.

(3) The relevant warrant of commitment is sufficient authority for the detention of the person concerned:

- (a) in the case of a warrant committing the person to a correctional centre, until the end of the extended term of the sentence, or
- (b) in the case of a warrant committing the person to imprisonment by way of periodic detention, for any detention period occurring before the end of the extended term of the sentence.

## 256 Victims Register

- (1) There is to be a Victims Register.
- (2) There are to be recorded in the Victims Register the names of victims of offenders who have requested that they be given notice of the possible parole of the offender concerned.
- (3) Subject to the regulations, the Victims Register is to be kept by such government agency as the Minister directs.
- (4) The regulations may make provision for or with respect to:
  - (a) the keeping of the Victims Register, and
  - (b) the manner in which a notice to victims may or must be given under this Act and the circumstances (if any) in which such a notice need not be given, and
  - (c) the identification of persons who are victims for the purposes of this Act, including:
    - (i) the determination of the persons who are family representatives of victims, and
    - (ii) the provision, by persons claiming to be victims, of evidence of their identity and of the circumstances by which they claim to be victims.
- (5) For the purposes of this section:

**victim** of an offender means:

- (a) a victim of an offence for which the offender has been sentenced or of any offence taken into account under Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*, or
- (b) a family representative of such a victim (if the victim is dead or under any incapacity or in such circumstances as may be prescribed by the regulations),

and includes a person who suffers actual physical bodily harm, mental illness or nervous shock, or whose property is deliberately taken, destroyed or damaged, as a direct result of an act committed, or apparently committed, by the offender in the course of a criminal offence.

## 257 Disclosure of information

A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act, or

- (c) for the purposes of any legal proceedings, or
- (d) in accordance with a requirement of the *Ombudsman Act 1974* or with any request made by the Ombudsman, or
- (e) with other lawful excuse.

Maximum penalty: 10 penalty units.

### **258 Supreme Court to review list of persons on remand who are in custody**

- (1) As soon as practicable after 15 February, 15 May, 15 August and 15 November in each year, the Commissioner must cause to be furnished to the Supreme Court a list of all persons on remand who, as at that date, have been in custody in a correctional centre for more than 3 months.
- (2) The list must indicate, in relation to each person on remand, the court to which the person is remanded to appear.
- (3) The Supreme Court is to conduct a review of the list, in open court, so as:
  - (a) to ascertain whether there has been any undue delay in the prosecution or conduct of proceedings against any person whose name appears on the list, and
  - (b) if there has been any such delay, to take such action as the Supreme Court considers appropriate to expedite those proceedings.
- (4) In this section, **person on remand** means any person the subject of a warrant or order issued by a court by which the person is remanded in custody in connection with proceedings for an offence committed or alleged to have been committed by the person.

### **259 Service of notices**

- (1) Any notice required by or under this Act to be served on a person in respect of whom a periodic detention order, home detention order, parole order or community service order is in force may be served personally or by posting it, addressed to the person, to the address nominated by the person for that purpose.
- (2) Such a notice may be served on a person in custody by service on the person in whose custody the person is held, and is to be dealt with in accordance with the regulations.
- (3) The means of service authorised by this section are in addition to any means that would, in the absence of this section, be sufficient for valid service of the notice.

### **260 Evidentiary certificates**

A certificate issued by the Commissioner or by a person prescribed by the regulations,

being a certificate that states that on a date or during a period specified in the certificate:

- (a) a specified person was in the custody of the governor of a specified correctional centre or periodic detention centre, or
- (a1) a specified person was in the custody of the designated officer within the meaning of section 38 or 249.
- (b) a specified person was or was not the subject of a specified periodic detention order, home detention order, community service order or parole order, or
- (c) a specified periodic detention order, home detention order, community service order or parole order did or did not contain specified terms, or
- (d) a specified person failed to comply with that person's obligations under a specified periodic detention order, home detention order, community service order or parole order,

is admissible in any legal proceedings and is evidence of the facts so stated.

#### **261 Address of warrant**

- (1) Any warrant, order or other instrument addressed to the governor of a correctional centre describing the correctional centre by its situation or other definite description is valid whatever the formal description of the correctional centre.
- (2) Any warrant, order or other instrument addressed to the governor responsible for a periodic detention centre describing the periodic detention centre by its situation or other definite description is valid whatever the formal description of the periodic detention centre.
- (3) A warrant addressed to the governor of a correctional centre may be received by the governor of any other correctional centre or by the person in charge of any police station or court cell complex.
- (4) A warrant addressed to the person in charge of a police station may be received by the person in charge of any other police station or by the governor of a correctional centre.
- (5) Nothing in this section authorises the detention of a person for the whole or part of a sentence in one or more police stations for more than one month at a time.

#### **262 Effect of certain warrants**

- (1) A warrant issued by the Commissioner or the Parole Board under this Act has the same effect as a warrant issued by a court.
- (2) All courts and persons acting judicially must take judicial notice of a warrant issued by the Commissioner or the Parole Board under this Act.

### **263 Exclusion of personal liability**

(1) An act or omission:

- (a) by a body constituted by this Act, or
- (b) by a person who is a member of such a body or a member of staff of such a body, or
- (c) by a correctional officer or by any other person on whom functions are conferred or imposed by or under this Act, or
- (d) by any person acting under the direction of a body or person referred to in paragraph (a), (b) or (c),

does not subject a person referred to in paragraph (b), (c) or (d) personally to any action, liability, claim or demand if the act or omission was done or omitted to be done in good faith in the administration or execution of this Act or of any other Act that confers or imposes any functions on a correctional officer.

(2) In particular, such a person is not personally liable in respect of:

- (a) anything properly and necessarily done by the person in the course of carrying out a medical examination or medical test if the person believed on reasonable grounds that the examination or test was authorised or required to be carried out by this Act or the regulations, or
- (b) the disclosure, in accordance with the regulations, of information obtained in the course of any such examination or test.

(3) In this section:

**correctional officer** includes a person holding an authority under section 240 to perform custodial duties.

### **264 Wearing or possession of correctional officer uniform by others**

(1) A person (not being a correctional officer) who wears, or has in his or her possession, a correctional officer uniform is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

(2) A person is not guilty of an offence against this section if the person establishes:

- (a) that the person had the permission of the Commissioner to wear or possess the uniform, or
- (b) that the person wore or was in possession of the uniform for the purposes of a public entertainment, or



(c) that the person had a reasonable excuse for wearing or being in possession of the uniform.

(3) In this section, **correctional officer uniform** means the uniform of a correctional officer, and includes:

(a) any parts of such a uniform (or any accoutrements of a correctional officer) that are generally recognised as parts of the uniform or accoutrements of a correctional officer, or

(b) a reasonable imitation of such a uniform, parts of a uniform or accoutrements.

### **265 Impersonating correctional officer**

A person who impersonates a correctional officer is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

### **266 Proceedings for offences**

Proceedings for offences against this Act or the regulations are to be dealt with summarily before a Local Court.

### **267 Research**

(1) In this section:

**research** means research in connection with:

(a) the administration or management of correctional centres or any other facilities administered or managed by the Department or a management company, or

(b) services provided to offenders by or on behalf of the Department or a management company, or

(c) the circumstances relating to offenders, or

(d) workplace or industrial relations matters relating to correctional centres or any other facilities administered or managed by the Department or a management company, or

(e) some other aspect of penology.

(2) A person must apply to the Commissioner for approval to conduct research that involves the person (or persons acting under the direction of that person) obtaining access to:

(a) information held by the Department or a management company, or

(b) facilities administered or managed by the Department or a management

company, or

(c) persons employed in, or engaged by contract to, the Department or a management company, or

(d) persons in the custody of, or supervised by, the Department or a management company.

- (3) In determining such an application, the Commissioner may have regard to any recommendations made by an ethics committee established by the Commissioner in accordance with the regulations.
- (4) The Commissioner may approve an application subject to conditions or unconditionally, and may give access to such information, facilities or persons, or give access in such manner, as the Commissioner considers appropriate.
- (5) If the Commissioner refuses to approve an application, the Commissioner must give the applicant reasons in writing for the refusal.
- (6) A person to whom any such access is given must not use any information obtained in connection with that access, or created as a result of that access, in a manner:
- (a) that contravenes any conditions imposed by the Commissioner as to its use, or
  - (b) that enables the identity of any person to whom the information relates to be ascertained.

Maximum penalty: 2 penalty units.

- (7) The Department may, either alone or in conjunction with a university body or another person or organisation, undertake research in connection with matters referred to in subsection (1).

## **268 Funds payable to certain organisations**

- (1) The Minister may, out of money provided by Parliament or otherwise legally available, make payments to such bodies or organisations undertaking the provision of aid and assistance to offenders, discharged offenders and relatives of offenders as the Minister may approve.
- (2) Any such payments are to be subject to such conditions as the Minister may impose.

## **269 Sheriff's functions preserved**

Nothing in this Act limits or affects the functions conferred or imposed on the Sheriff by or under this or any other Act or law.

## **270 Prerogative of mercy preserved**

Nothing in this Act limits or affects the prerogative of mercy.

## **271 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

## **272 Savings, transitional and other provisions**

Schedule 5 has effect.

## **273 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

# **Schedule 1 Parole Board**

(Section 183)

## **Part 1 Constitution**

### **1 Chairperson**

- (1) A person who is appointed as a judicial member of the Parole Board is, in and by the instrument by which the person is so appointed (or such other instrument as may be executed by the Governor), to be appointed as:
  - (a) the Chairperson of the Parole Board, or
  - (b) the Alternate Chairperson of the Parole Board, or
  - (c) a Deputy Chairperson of the Parole Board.
- (2) Neither the appointment of a person who is a Judge as Chairperson, Alternate Chairperson or Deputy Chairperson, nor the person's service as Chairperson, Alternate Chairperson or Deputy Chairperson, affects:

- (a) the person's tenure of the office of a Judge, or
  - (b) the person's rank, title, status, precedence, salary or other rights or privileges as a holder of the office of a Judge.
- (3) A person who is a Judge may exercise the powers of a Judge even though the person is Chairperson, Alternate Chairperson or Deputy Chairperson.
- (4) Service of a Judge as Chairperson, Alternate Chairperson or Deputy Chairperson is, for all purposes, taken to be service as a Judge.

## **2 Acting members**

- (1) During the illness or absence of the Chairperson, the Alternate Chairperson is to act in the office of the Chairperson and, while so acting, has all the functions of the Chairperson and is taken to be the Chairperson.
- (2) During the illness or absence of the Alternate Chairperson, a Deputy Chairperson designated by the Chairperson is to act in the office of the Alternate Chairperson and, while so acting, has all the functions of the Alternate Chairperson (including the function of acting in the office of the Chairperson during the illness or absence of the Chairperson) and is taken to be the Alternate Chairperson.
- (3) The Governor may, from time to time, appoint a judicially qualified person to act in the office of a Deputy Chairperson during the illness or absence of a Deputy Chairperson, and the person, while so acting, has all the functions of a Deputy Chairperson and is taken to be a Deputy Chairperson.
- (4) If a community member is granted leave of absence by the Minister, the Governor may appoint a person to act in the office of the member during the member's absence, and that person, while so acting, has all the functions of the member and is taken to be a member.
- (5) The Governor may, at any time, remove a person from an office to which the person was appointed under subclause (3) or (4).
- (6) For the purposes of this clause:
- (a) a vacancy in the office of Chairperson, Alternate Chairperson or Deputy Chairperson is taken to be an absence from office of the judicial member concerned, and
  - (b) the Alternate Chairperson or a Deputy Chairperson is taken to be absent from the office of Alternate Chairperson or Deputy Chairperson during any period of acting in another office under subclause (1) or (2).

### **3 Deputies**

- (1) The Commissioner of Police may from time to time nominate a police officer to be the deputy of the official member appointed by that Commissioner, and may revoke such a nomination at any time.
- (2) The Commissioner of Corrective Services may from time to time nominate an officer of the Probation and Parole Service to be the deputy of the official member appointed by that Commissioner, and may revoke such a nomination at any time.
- (3) In the absence of an official member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is taken to be a member.

### **4 Term of office**

Subject to this Schedule, an appointed member holds office for 3 years, but is eligible (if otherwise qualified) for re-appointment.

### **5 Remuneration**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

### **6 Vacancy in office of appointed member**

- (1) The office of an appointed member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Governor, or
  - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (f) becomes a mentally incapacitated person, or
  - (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or

(h) being a judicial member, ceases to be a judicially qualified person.

(2) The Governor may remove an appointed member from office at any time.

#### **7 Revocation of appointment as official member**

(1) The Commissioner of Police may at any time revoke the appointment of a police officer made for the purposes of section 183 (2) (b).

(2) The Commissioner of Corrective Services may at any time revoke the appointment of an officer of the Probation and Parole Service made for the purposes of section 183 (2) (c).

(3) On revocation under this clause, the office, as a Parole Board member, of the person affected is taken to be vacant.

#### **8 Filling of vacancy in office of appointed member**

If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### **9 Effect of certain other Acts**

(1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of an appointed member.

(2) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

### **Part 2 Procedure**

#### **10 Establishment of committees and appointment of other persons**

(1) The Parole Board may establish committees, or appoint any person or persons, to assist it in connection with the exercise of any of its functions.

(2) If a committee is established:

(a) the members of that committee may be members of the Parole Board, and

(b) the procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be determined by the chairperson of the committee (subject to any determination of the Parole Board), and

(c) the Parole Board may delegate to that committee such of its functions as may be prescribed by the regulations.

#### **11 General procedure**

(1) Except as otherwise provided by this Act or the regulations:

- (a) meetings of the Parole Board are to be held at such times and places as are fixed by the Chairperson, and
  - (b) the procedure for the convening of meetings of the Parole Board and for the conduct of business at those meetings is to be as determined by the Chairperson.
- (2) The Parole Board may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit.
- (3) The Parole Board is not bound by the rules of evidence, but may inform itself of any matter in such manner as it thinks appropriate.
- (4) Proceedings before the Parole Board:
- (a) are to be open to the public, unless the Parole Board determines in a particular case that the proceedings are to be conducted wholly or partly in the absence of the public, and
  - (b) are not to be conducted in an adversarial manner, and
  - (c) are to be conducted with as little formality and technicality, and with as much expedition, as fairness to any affected person and the requirements of this Act permit.
- (5) A decision of the Parole Board is not vitiated merely because of any informality or want of form.
- (6) The Parole Board may, if it thinks fit, hold a meeting at which some members participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members and by members of the public (if the meeting is open to the public).

**11A Use of audio links and audio visual links in proceedings**

- (1) A person who is required or entitled to appear before the Parole Board in any proceedings and who is in custody in New South Wales:
- (a) must, unless the Parole Board otherwise directs, appear before the Parole Board by audio visual link if the place at which the person is in custody is not the place at which the Parole Board is conducting the proceedings, and
  - (b) may give evidence or make any submission to the Parole Board by that audio visual link.
- (2) Subclause (1) does not apply unless the person concerned is in custody at a place where the necessary audio visual links are available or can reasonably be made available.
- (3) The Parole Board may make a direction under subclause (1) only if it is satisfied that it

is in the interests of justice for the person required or entitled to appear in the relevant proceedings to appear physically before the Parole Board.

- (4) The Parole Board may direct that a person to whom subclause (1) does not apply (whether or not the person is a party to the proceedings) give evidence or make a submission to the Parole Board by audio link or audio visual link from any place other than the place at which the Parole Board is conducting the proceedings.
- (5) The Parole Board must not make a direction under subclause (4) if:
  - (a) the necessary facilities are unavailable or cannot reasonably be made available, or
  - (b) the Parole Board is satisfied that the evidence or submission can more conveniently be given or made at the place at which the Parole Board is conducting the relevant proceedings, or
  - (c) the Parole Board is satisfied by a party opposing the making of the direction that the direction would be unfair to the party, or
  - (d) the Parole Board is satisfied that the person in respect of whom the direction is proposed to be made will not give evidence or make the submission.
- (6) If a party to the proceedings opposes the making of a direction under subclause (4), the Parole Board must not make the direction unless satisfied that it is in the interests of justice to do so.
- (7) The Parole Board may make a direction under subclause (1):
  - (a) on its own motion, or
  - (b) on the application of a party to the proceedings, or
  - (c) if the proceedings relate to the consideration of the release of a serious offender on parole, on the application of a victim of the serious offender.
- (8) If the Parole Board refuses to make a direction on an application by a victim under subclause (7), the Parole Board must give reasons in writing to the victim for the refusal.
- (9) The Parole Board may make a direction under subclause (4) on its own motion or on the application of any party to the proceedings.
- (10) If audio visual links are used for proceedings before the Parole Board, facilities are to be made available for private communication between the person the subject of the proceedings and the person's representative in the proceedings if the person's representative is at the place where the Parole Board is conducting the proceedings.



(11) The regulations may make provision for or with respect to the use of audio links and audio visual links in proceedings before the Parole Board.

(12) For the avoidance of doubt, this clause operates despite any other provision of this Act that requires or entitles a person to be present at any proceedings of the Parole Board and, in particular, applies despite section 147.

## **12 Representation of Review Council**

A person (who need not be a member of the Review Council), chosen by the Chairperson of the Review Council or by a judicial member of the Review Council nominated by the Chairperson, is entitled to be present, and to be heard, (but not vote) at a meeting of the Parole Board at which a matter relating to a serious offender is being considered.

## **13 Quorum**

The quorum for a meeting of the Parole Board is 3 members consisting of at least one judicial member and at least 2 non-judicial members.

## **14 Attendance of community members**

(1) For the purposes of any meeting of the Parole Board, not more than 4 community members may attend for the purposes of constituting the Parole Board.

(2) If there are more than 4 community members present at a particular meeting, the members who may attend the meeting are to be determined in accordance with arrangements approved by the Chairperson of the Parole Board.

(3) Despite subclause (1), the Chairperson may convene up to 6 meetings a year of the Parole Board at which all community members may attend.

### **14A Attendance of official members**

(1) For the purposes of any meeting of the Parole Board:

(a) not more than one police officer, and

(b) not more than one officer of the Probation and Parole Service,

may attend for the purposes of constituting the Parole Board.

(2) Despite subclause (1), the Chairperson may convene up to 6 meetings a year of the Parole Board at which all official members may attend.

## **15 Presiding members**

(1) The Chairperson or a judicial member nominated by the Chairperson is to preside at a meeting of the Parole Board.

(2) At a meeting of a Division, the judicial member of the Division is to preside.

## **16 Voting**

- (1) If the Chairperson and the Alternate Chairperson or a Deputy Chairperson, or both, are present at a meeting of the Parole Board, only the Chairperson is entitled to vote with respect to any decision.
- (2) Despite subclause (1), if the Chairperson and the Alternate Chairperson or a Deputy Chairperson, or both, are present at a meeting of the Parole Board at which all community members may attend, the Alternate Chairperson and Deputy Chairperson are each entitled to vote with respect to any decision.

## **17 Decisions**

- (1) A decision supported by a majority of the votes cast at a meeting of the Parole Board at which a quorum is present (being votes cast by persons entitled to vote at the meeting) is the decision of the Parole Board.
- (2) In the case of an equality of votes, the judicial member presiding at a meeting of the Parole Board is to have the casting vote.

## **18 Record of proceedings**

- (1) The member presiding at a meeting of the Parole Board must cause a record of the proceedings at the meeting to be made.
- (2) Records made for the purposes of this clause may be destroyed after the expiry of the period prescribed by the regulations.

## **19 Committees**

The Chairperson may appoint one or more non-judicial members as a committee for the purpose of:

- (a) inquiring into and reporting to the Parole Board on any offender to whom a parole order relates and whose case is to come before the Parole Board for consideration, and
- (b) disposing of routine business of the Parole Board, other than making determinations or decisions, or preparing reasons for rejecting advice from the Review Council, under Part 6.

## **20 Authentication of documents**

Any document requiring authentication by the Parole Board is sufficiently authenticated if it is signed by:

- (a) the member who presided at the meeting of the Parole Board that dealt with the proceedings with respect to which the document was prepared, or

(b) in the absence of that member, any other member who was present at that meeting.

### **21 Evidentiary certificate**

A certificate issued by the Secretary of the Parole Board, being a certificate that records any determination or decision of the Parole Board is admissible in any legal proceedings and is evidence of the matters so recorded.

### **22 Proof of certain matters not required**

In any legal proceedings, proof is not required, until evidence is given to the contrary, of:

- (a) the constitution of the Parole Board, or
- (b) any determination, decision or recommendation of the Parole Board, or
- (c) the appointment of, or holding of office by, any member, or
- (d) the presence or nature of a quorum at any meeting of the Parole Board.

### **22A Rulings on points of law**

If either of the following questions arises at a meeting of the Parole Board, it is to be decided by the person presiding at the meeting alone:

- (a) whether a question is a question of fact or law, or a question of mixed law and fact,
- (b) any question determined to be a question of law alone or a question of mixed law and fact.

### **23 Application of Part to Divisions of the Parole Board**

This Part applies to a Division of the Parole Board in the same way as it applies to the Parole Board, except to the extent to which this Part otherwise provides.

## **Schedule 2 Serious Offenders Review Council**

(Section 195)

### **Part 1 Constitution**

#### **1 Chairperson**

- (1) The judicial members of the Review Council are to be appointed, in and by the instruments by which they are appointed (or in and by other instruments executed by the Governor) as:
  - (a) Chairperson of the Review Council, and
  - (b) Alternate Chairperson of the Review Council, and

(c) Deputy Chairperson of the Review Council.

- (2) Neither the appointment of a person who is a Judge as Chairperson, Alternate Chairperson or Deputy Chairperson, nor the person's service as Chairperson, Alternate Chairperson or Deputy Chairperson, affects:
- (a) the person's tenure of the office of a Judge, or
  - (b) the person's rank, title, status, precedence, salary or other rights or privileges as a holder of the office of a Judge.
- (3) A person who is a Judge may exercise the powers of a Judge even though the person is Chairperson, Alternate Chairperson or Deputy Chairperson.
- (4) Service of a Judge as Chairperson, Alternate Chairperson or Deputy Chairperson is, for all purposes, taken to be service as a Judge.

## **2 Acting members**

- (1) During the illness or absence of the Chairperson, the Alternate Chairperson is to act in the office of the Chairperson and, while so acting, has all the functions of the Chairperson and is taken to be the Chairperson.
- (2) During the illness or absence of the Alternate Chairperson, the Deputy Chairperson is to act in the office of the Alternate Chairperson and, while so acting, has all the functions of the Alternate Chairperson (including the function of acting in the office of the Chairperson during the illness or absence of the Chairperson) and is taken to be the Alternate Chairperson.
- (3) The Governor may, from time to time, appoint a judicially qualified person to act in the office of the Deputy Chairperson during the illness or absence of the Deputy Chairperson, and the person, while so acting, has all the functions of the Deputy Chairperson and is taken to be the Deputy Chairperson.
- (4) If a community member is granted leave of absence by the Minister, the Governor may appoint a person to act in the office of the member during the member's absence, and that person, while so acting, has all the functions of the member and is taken to be a member.
- (5) The Governor may, at any time, remove a person from an office to which the person was appointed under subclause (3) or (4).
- (6) For the purposes of this clause:
- (a) a vacancy in the office of Chairperson, Alternate Chairperson or Deputy Chairperson is taken to be an absence from office of the Chairperson, Alternate Chairperson or Deputy Chairperson, and

- (b) the Alternate Chairperson or Deputy Chairperson is taken to be absent from the office of Alternate Chairperson or Deputy Chairperson during any period of acting in another office under subclause (1) or (2).

### **3 Deputies**

- (1) The Commissioner may establish a list of officers of the Department eligible to be nominated as the deputy of an official member (***eligible officers***).
- (1A) An official member may from time to time nominate an eligible officer to be the deputy of the official member.
- (1B) The nomination of a deputy of an official member under this clause may be revoked at any time by the Commissioner or the official member that nominated the deputy.
- (1C) The nomination of a deputy under this clause may be for a specified period or an indefinite period and, in respect of the period the nomination is in force, has effect according to its terms.
- (1D) The nomination of a deputy of an official member under this clause is revoked on revocation of the appointment of the official member under clause 7.
- (2) In the absence of an official member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is taken to be a member.

### **4 Term of office**

Subject to this Schedule, an appointed member holds office for 3 years, but is eligible (if otherwise qualified) for re-appointment.

### **5 Remuneration**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

### **6 Vacancy in office of appointed member**

- (1) The office of an appointed member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Governor, or

- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (f) becomes a mentally incapacitated person, or
- (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (h) being a judicial member, ceases to be a judicially qualified person.

(2) The Governor may remove an appointed member from office at any time.

#### **7 Revocation of appointment as official member**

- (1) The Commissioner may at any time revoke the appointment of an official member.
- (2) On revocation under this clause, the office, as an official member, of the person affected is taken to be vacant.

#### **8 Filling of vacancy in office of appointed member**

If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### **9 Effect of certain other Acts**

- (1) Part 2 of the [Public Sector Management Act 1988](#) does not apply to or in respect of the appointment of an appointed member.
- (2) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

### **Part 2 Procedure**

#### **10 Establishment of committees and appointment of other persons**

- (1) The Review Council may establish committees, or appoint any person or persons, to assist it in connection with the exercise of any of its functions.
- (2) If a committee is established:
  - (a) the members of that committee may be members of the Review Council, and
  - (b) the procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be determined by the chairperson of the committee (subject to any determination of the Review Council), and

- (c) the Review Council may delegate to that committee such of its functions as may be prescribed by the regulations.

## **11 General procedure**

- (1) Except as otherwise provided by this Act or the regulations:
  - (a) meetings of the Review Council are to be held at such times and places as are fixed by the Chairperson, and
  - (b) the procedure for the convening of meetings of the Review Council and for the conduct of business at those meetings is to be as determined by the Chairperson.
- (2) The Review Council may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit.
- (3) The Review Council is not bound by the rules of evidence, but may inform itself of any matter in such manner as it thinks appropriate.
- (4) Proceedings before the Review Council:
  - (a) are to be closed to the public, unless the Review Council determines in a particular case that the proceedings are to be conducted wholly or partly in public, and
  - (b) are not to be conducted in an adversarial manner, and
  - (c) are to be conducted with as little formality and technicality, and with as much expedition, as fairness to any affected person and the requirements of this Act permit.
- (5) A decision of the Review Council is not vitiated merely because of any informality or want of form.
- (6) The Review Council may, if it thinks fit, hold a meeting at which some members participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members and by members of the public (if the meeting is open to the public).

### **11A Use of audio links and audio visual links in proceedings**

- (1) A person who is required or entitled to appear before the Review Council in any proceedings and who is in custody in New South Wales:
  - (a) must, unless the Review Council otherwise directs, appear before the Review Council by audio visual link if the place at which the person is in custody is not the place at which the Review Council is conducting the proceedings, and
  - (b) may give evidence or make any submission to the Review Council by that audio visual link.

- (2) Subclause (1) does not apply unless the person concerned is in custody at a place where the necessary audio visual links are available or can reasonably be made available.
- (3) The Review Council may make a direction under subclause (1) only if it is satisfied that it is in the interests of justice for the person required or entitled to appear in the relevant proceedings to appear physically before the Review Council.
- (4) The Review Council may direct that a person to whom subclause (1) does not apply (whether or not the person is involved in the proceedings) give evidence or make a submission to the Review Council by audio link or audio visual link from any place other than the place at which the Review Council is conducting the proceedings.
- (5) The Review Council must not make a direction under subclause (4) if:
  - (a) the necessary facilities are unavailable or cannot reasonably be made available, or
  - (b) the Review Council is satisfied that the evidence or submission can more conveniently be given or made at the place at which the Review Council is conducting the relevant proceedings, or
  - (c) the Review Council is satisfied by a person opposing the making of the direction that the direction would be unfair to the person, or
  - (d) the Review Council is satisfied that the person in respect of whom the direction is proposed to be made will not give evidence or make the submission.
- (6) If a person involved in the proceedings opposes the making of a direction under subclause (4), the Review Council must not make the direction unless satisfied that it is in the interests of justice to do so.
- (7) The Review Council may make a direction under subclause (1) or (4) on its own motion or on the application of any person involved in the proceedings.
- (8) If audio visual links are used for proceedings before the Review Council, facilities are to be made available for private communication between the person the subject of the proceedings and the person's representative in the proceedings if the person's representative is at the place where the Review Council is conducting the proceedings.
- (9) The regulations may make provision for or with respect to the use of audio links and audio visual links in proceedings before the Review Council.
- (10) For the avoidance of doubt, this clause operates despite any other provision of this Act that requires or entitles a person to be present at any proceedings of the Review Council and, in particular, applies despite section 21.



## **12 Quorum**

The quorum for a meeting of the Review Council is 3 members consisting of one judicial member, one community member and one official member.

## **13 Attendance of community members**

- (1) For the purposes of any meeting of the Review Council, not more than 3 community members may attend for the purposes of constituting the Review Council.
- (2) If there are more than 3 community members present at a particular meeting, the members who may attend the meeting are to be determined in accordance with arrangements approved by the Chairperson of the Review Council.
- (3) Despite subclause (1), the Chairperson may convene up to 6 meetings a year of the Review Council at which all community members may attend.

## **14 Presiding members**

- (1) The Chairperson or a judicial member nominated by the Chairperson is to preside at a meeting of the Review Council.
- (2) At a meeting of a Division, the judicial member of the Division is to preside.

## **15 Voting**

- (1) If the Chairperson and the Alternate Chairperson or Deputy Chairperson, or both, are present at a meeting of the Review Council, only the Chairperson is entitled to vote with respect to any decision.
- (2) Despite subclause (1), if the Chairperson and the Alternate Chairperson or Deputy Chairperson, or both, are present at a meeting of the Review Council at which all community members may attend, the Alternate Chairperson and Deputy Chairperson are each entitled to vote with respect to any decision.

## **16 Decisions**

- (1) A decision supported by a majority of the votes cast at a meeting of the Review Council at which a quorum is present (being votes cast by persons entitled to vote at the meeting) is the decision of the Review Council.
- (2) In the case of an equality of votes, the judicial member presiding at a meeting of the Review Council is to have the casting vote.

## **17 Record of proceedings**

- (1) The member presiding at a meeting of the Review Council must cause a record of the proceedings at the meeting to be made.

- (2) Records made for the purposes of this clause may be destroyed after the expiry of the period prescribed by the regulations.

### **18 Authentication of documents**

Any document requiring authentication by the Review Council is sufficiently authenticated if it is signed by:

- (a) the member who presided at the meeting of the Review Council that dealt with the proceedings with respect to which the document was prepared, or
- (b) in the absence of that member, any other member who was present at that meeting.

### **19 Evidentiary certificate**

A certificate issued by the Executive Officer and Registrar of the Review Council, being a certificate that records any determination or decision of the Review Council is admissible in any legal proceedings and is evidence of the matters so recorded.

### **20 Proof of certain matters not required**

In any legal proceedings, proof is not required, until evidence is given to the contrary, of:

- (a) the constitution of the Review Council, or
- (b) any determination, decision or recommendation of the Review Council, or
- (c) the appointment of, or holding of office by, any member, or
- (d) the presence or nature of a quorum at any meeting of the Review Council.

### **20A Rulings on points of law**

If either of the following questions arises at a meeting of the Review Council, it is to be decided by the person presiding at the meeting alone:

- (a) whether a question is a question of fact or law, or a question of mixed law and fact,
- (b) any question determined to be a question of law alone or a question of mixed law and fact.

### **21 Application of Part to Divisions of the Review Council**

This Part applies to a Division of the Review Council in the same way as it applies to the Review Council, except to the extent to which this Part otherwise provides.

## Schedule 3 Inspector-General

(Section 210)

### 1 Acting Inspector-General

- (1) The Minister may, from time to time, appoint a person to act in the office of Inspector-General during the illness or absence of the Inspector-General.
- (2) The person, while so acting, has all the functions of the Inspector-General and is taken to be the Inspector-General.
- (3) The Minister may, at any time, remove a person from office as acting Inspector-General.
- (4) A person while acting in the office of Inspector-General is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.
- (5) For the purposes of this clause, a vacancy in the office of Inspector-General is taken to be an absence from the office of Inspector-General.

### 2 Office of Inspector-General may be full-time or part-time

The office of Inspector-General may be a full-time or part-time office, according to the terms of the relevant instrument of appointment.

### 3 Term of office

Subject to this Schedule, the Inspector-General holds office for such term not exceeding 3 years as may be specified in the relevant instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### 4 Remuneration

- (1) The Inspector-General is entitled to be paid:
  - (a) while holding office on a full-time basis, remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, or
  - (b) while holding office on a part-time basis, such remuneration as the Minister may from time to time determine.
- (2) The Inspector-General is also entitled to be paid such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Inspector-General.

### 5 Vacancy in office

- (1) The office of Inspector-General becomes vacant if the holder:

- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Governor, or
  - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (f) becomes a mentally incapacitated person, or
  - (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Governor may remove a person from the office of the Inspector-General:
- (a) on the ground of incapacity, incompetence, misbehaviour or unsatisfactory performance, or
  - (b) on the ground that the person is no longer eligible to be appointed as Inspector-General, as referred to in section 210 (2).

## **6 Filling of vacancy**

If the office of Inspector-General becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **7 Public Sector Management Act 1988**

The *Public Sector Management Act 1988* does not apply to the appointment of the Inspector-General, and the holder of that office is not, as holder, subject to that Act.

## **Schedule 4 Official Visitors**

(Section 228)

### **1 Acting Official Visitors**

- (1) The Minister may, from time to time, appoint a person to act in the office of an Official Visitor during the illness or absence of the Official Visitor.
- (2) The person, while so acting, has all the functions of an Official Visitor and is taken to be an Official Visitor.
- (3) The Minister may, at any time, remove a person from office as acting Official Visitor.

- (4) A person while acting in the office of an Official Visitor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.
- (5) For the purposes of this clause, a vacancy in the office of an Official Visitor is taken to be an absence from office of the Official Visitor.

## **2 Term of office**

Subject to this Schedule, an Official Visitor holds office for such period not exceeding 2 years as may be specified in the relevant instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

## **3 Remuneration**

An Official Visitor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

## **4 Declaration of interest**

- (1) Before being appointed as an Official Visitor or as an acting Official Visitor to a correctional centre that is being managed under a management agreement, a person must make a declaration of his or her interest (if any) in the agreement or in the management company under the agreement.
- (2) For the purposes of a declaration under this clause, a reference in subclause (1) to an interest in the management company includes a reference to:
  - (a) any shareholding in the management company or in any related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth, and
  - (b) any interest in business dealings that are taking place or that have taken place with the management company or any director or officer of the management company.
- (3) A person is not to be appointed as an Official Visitor or acting Official Visitor if, in the opinion of the Minister, the person has such an interest in the management agreement or the management company that the person should not be so appointed.

## **5 Vacancy in office of Official Visitor**

- (1) The office of an Official Visitor becomes vacant if the Official Visitor:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or

- (d) is removed from office by the Minister under this clause, or
  - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (f) becomes a mentally incapacitated person, or
  - (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove an Official Visitor from office at any time for such cause as to the Minister seems sufficient.
- (3) In particular, the Minister may remove from office an Official Visitor who contravenes section 228 or who, in the case of a managed correctional centre, is found:
- (a) to have such an interest in the relevant management agreement or the management company under that agreement that the person ought not, in the opinion of the Minister, continue to be an Official Visitor to the correctional centre, or
  - (b) to have made a declaration under clause 4 that was false or misleading in a material particular.

## **6 Filling of vacancy in office of Official Visitor**

If the office of an Official Visitor becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

## **Schedule 5 Savings, transitional and other provisions**

(Section 272)

### **Part 1 Preliminary**

#### **1 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Crimes (Administration of Sentences) Act 1999*

*Crimes Legislation Amendment (Sentencing) Act 1999*

*Crimes (Administration of Sentences) Amendment Act 2000*

*Crimes Legislation Amendment (Existing Life Sentences) Act 2001*

*Criminal Legislation Amendment Act 2001*, to the extent that it amends this Act

*Crimes (Administration of Sentences) Amendment Act 2002*

*Crimes Legislation Amendment (Periodic and Home Detention) Act 2002*

*Crimes (Administration of Sentences) Further Amendment Act 2002*

*Crimes Legislation Amendment (Parole) Act 2003*, to the extent that it amends this Act

*Crimes (Administration of Sentences) Amendment Act 2004*

*Crimes (Administration of Sentences) Amendment (Norfolk Island Prisoners) Act 2004*

- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

## **Part 2 Provisions consequent on enactment of *Crimes (Administration of Sentences) Act 1999***

### **Division 1 Correctional Centres Act 1952**

#### **2 Definitions**

In this Division:

**1952 Act** means the *Correctional Centres Act 1952*, as in force immediately before the appointed day.

**appointed day** means the day on which Part 2 of this Act commences.

#### **3 Correctional complexes and correctional centres**

Any premises that, immediately before the appointed day, were a correctional complex or correctional centre by virtue of a proclamation under section 5 of the 1952 Act are taken to be a correctional complex or correctional centre, as the case requires, by virtue of a

proclamation under section 224 or 225 of this Act.

#### **4 Continuation of certain appointments**

- (1) Any person who, immediately before the appointed day, was an Official Visitor appointed under section 8A of the 1952 Act is taken to be an Official Visitor appointed under section 228 of this Act.
- (2) Any person who, immediately before the appointed day, was a Visiting Justice appointed under section 10 of the 1952 Act is taken to be a Visiting Justice appointed under section 227 of this Act.
- (3) Any person who, immediately before the appointed day, was appointed to inquire into and report on a matter under section 11A of the 1952 Act is taken to have been appointed to inquire into and report on that matter under section 230 of this Act, and any such inquiry may be conducted accordingly.

#### **5 Correctional centre offences**

- (1) Any inquiry or other proceedings that, immediately before the appointed day, had been commenced but not concluded under Part 4 of the 1952 Act may be continued and concluded under that Part as if the 1952 Act had not been repealed.
- (2) Any penalty imposed under Part 4 of the 1952 Act, whether before or after the appointed day, is taken to have been imposed under Division 6 of Part 2 of this Act.
- (3) Any record of penalties made for the purposes of section 26F of the 1952 Act is taken to have been made for the purposes of section 61 of this Act.

#### **6 Transfer of inmates**

Any order or permit that, immediately before the appointed day, was in force under section 27, 28 or 29 of the 1952 Act is taken to be an order or permit in force under section 23, 24, 25 or 26 of this Act, as the case requires, and may be revoked or amended accordingly.

#### **7 Warrants**

Any warrant that, immediately before the appointed day, was in force under section 29 of the 1952 Act is taken to be a warrant in force under section 39 of this Act, and may be enforced accordingly.

#### **8 Interstate leave of absence**

- (1) Any order that, immediately before the appointed day, was in force under section 29AB of the 1952 Act is taken to be an order in force under section 28 of this Act, and may be revoked or amended accordingly.
- (2) Any interstate leave permit that, immediately before the appointed day, was in force



under section 29AC of the 1952 Act is taken to be an interstate leave permit in force under section 29 of this Act, and may be revoked or amended accordingly.

### **9 Certain absences not to affect length of sentence**

Section 40 of this Act applies to any absence from custody to which section 29B of the 1952 Act applied immediately before the appointed day.

### **10 Management agreements**

A management or submanagement agreement in force immediately before the appointed day under section 31B of the 1952 Act is taken to be a management or submanagement agreement, as the case requires, in force under section 238 or 239 of this Act.

### **11 Authorisations**

An authorisation in force immediately before the appointed day under section 31C of the 1952 Act is taken to be an authorisation in force under section 240 of this Act.

### **12 Monitors**

Any person who, immediately before the appointed day, was appointed as a monitor for the purposes of section 31E of the 1952 Act is taken to have been appointed as a monitor for the purposes of section 242 of this Act.

### **13 Minimum standards under management agreements**

Any statement that was prepared for the purposes of section 31J of the 1952 Act is taken to be a statement prepared for the purposes of section 248 of this Act.

### **14 Correctional centre returns to Supreme Court**

Any return made under section 40A of the 1952 Act is taken to be a return made for the purposes of section 258 of this Act.

### **15 Evidentiary certificates**

Any certificate issued under section 40B of the 1952 Act is taken to be a certificate issued under section 260 of this Act.

### **16 Attendance orders**

Any order that, immediately before the appointed day, was in force under section 44 of the 1952 Act is taken to be an order in force under section 77 of this Act, and may be revoked or amended accordingly.

### **17 Serious Offenders Review Council**

(1) The Serious Offenders Review Council constituted by this Act is a continuation of, and the same entity as, the Serious Offenders Review Council constituted under the 1952

Act.

- (2) Subject to this Act, the persons who, immediately before the appointed day, were members of the Serious Offenders Review Council under the 1952 Act continue to hold office as members of the Serious Offenders Review Council under this Act for the remainder of their terms of office under the 1952 Act.
- (3) A Management Committee established under section 63 of the 1952 Act continues as a Management Committee under section 206 of this Act.
- (4) Subject to this Act, the persons who, immediately before the appointed day, were members of a Management Committee under section 63 of the 1952 Act continue to hold office as members of the corresponding Management Committee under this Act for the remainder of their terms of office under the 1952 Act.
- (5) A Management Committee subcommittee established under section 63 of the 1952 Act continues as a Management Committee subcommittee under section 207 of this Act.
- (6) Subject to this Act, the persons who, immediately before the appointed day, were members of a Management Committee subcommittee under section 63 of the 1952 Act continue to hold office as members of the corresponding Management Committee subcommittee under this Act for the remainder of their terms of office under the 1952 Act.

## 18 Continuation of existing regulations

The following regulations under the 1952 Act are taken to be regulations made under this Act, and may be amended and repealed accordingly:

- (a) the *Correctional Centres (Administration) Regulation 1995*,
- (b) the *Correctional Centres (General) Regulation 1995*.

## Division 2 Periodic Detention of Prisoners Act 1981

### 19 Definitions

In this Division:

**1981 Act** means the *Periodic Detention of Prisoners Act 1981*, as in force immediately before the appointed day.

**appointed day** means the day on which Part 3 of this Act commences.

### 20 Periodic detention orders

Any order for periodic detention that, immediately before the appointed day, was in force under the 1981 Act is taken to be a periodic detention order in force under this Act, and

may be revoked or amended accordingly.

## **21 Work orders and attendance orders**

- (1) Any order that, immediately before the appointed day, was in force under section 10 of the 1981 Act is taken to be an order in force under section 84 (1) of this Act, and may be revoked or amended accordingly.
- (2) Any order that, immediately before the appointed day, was in force under section 11 of the 1981 Act is taken to be an order in force under section 84 (4) of this Act, and may be revoked or amended accordingly.

## **22 Variation of day, time and place for periodic detention**

Any order that, immediately before the appointed day, was in force under section 11A, 12 or 13 of the 1981 Act is taken to be an order in force under section 85 of this Act, and may be revoked or amended accordingly.

## **23 Leave of absence**

Any leave of absence granted under the 1981 Act is taken to have been granted under Division 2 of Part 3 of this Act.

## **24 Extension of term of imprisonment**

If a term of the sentence to be served by way of periodic detention under an order for periodic detention under the 1981 Act was extended under that Act, the term of the sentence to be served by way of periodic detention under a periodic detention order under this Act is taken to have been extended accordingly.

## **25 Exemption from extension of term of imprisonment**

Any exemption that, immediately before the appointed day, was in force under section 21A of the 1981 Act is taken to be an exemption in force under section 90 of this Act, and may be revoked or amended accordingly.

## **26 Exemptions for health reasons or compassionate grounds**

Any order that, immediately before the appointed day, was in force under section 21B of the 1981 Act is taken to be an order in force under section 92 of this Act, and may be revoked or amended accordingly.

## **27 Directions**

Any direction that, immediately before the appointed day, was in force under section 22 of the 1981 Act is taken to be an order in force under section 94 of this Act, and may be revoked or amended accordingly.

## **28 Proceedings under 1981 Act**

Any proceedings that had been commenced, but not determined, under the 1981 Act before the appointed day are to be continued and disposed of under that Act as if that Act had not been repealed.

## **29 Warrants**

Any warrant that, immediately before the appointed day, was in force under section 26 of the 1981 Act is taken to be a warrant in force under section 181 of this Act, and may be enforced accordingly.

## **30 Appeals to Court of Criminal Appeal**

Division 5 of Part 7 of this Act applies to a decision of the Parole Board to cancel an order for periodic detention under the 1981 Act in the same way as it applies to a decision of the Parole Board to revoke a periodic detention order under Division 1 of Part 7 of this Act.

## **31 Eligibility for parole of existing periodic detainees**

- (1) This clause applies to a sentence of imprisonment that was imposed before 1 February 1999 and that is the subject of a periodic detention order made before that date.
- (2) Any person who becomes liable to full-time imprisonment as a consequence of the revocation by the Parole Board of a periodic detention order referred to in subclause (1) is eligible for parole under section 159 of this Act as if a non-parole period, expiring on the commencement of this clause, had been set for the sentence in respect of which the periodic detention order was made.
- (3) Division 2 of Part 6 (section 137 (1) (a) excepted) applies to the person.
- (4) The Parole Board must, not more than 30 days after the revocation of the offender's periodic detention order, consider whether or not the offender should be released on parole.
- (5) This clause does not operate to create a non-parole period for a sentence of imprisonment if the remainder of the term of the sentence is 6 months or less.

### **Note—**

Clause 31 (1) and (2) commenced on 3 April 2000.

## **32 Continuation of existing regulations**

The *Periodic Detention of Prisoners Regulation 1995* is taken to be a regulation made under this Act, and may be amended and repealed accordingly.

## Division 3 Home Detention Act 1996

### 33 Definitions

In this Division:

**1996 Act** means the *Home Detention Act 1996*, as in force immediately before the appointed day.

**appointed day** means the day on which Part 4 of this Act commences.

### 34 Home detention orders

Any home detention order that, immediately before the appointed day, was in force under the 1996 Act:

- (a) is taken to be a home detention order within the meaning of this Act, and
- (b) is taken to be subject to the same conditions as those to which it was subject immediately before that day.

### 35 Proceedings under 1996 Act

Any proceedings that had been commenced, but not determined, under the 1996 Act before the appointed day are to be continued and disposed of under that Act as if that Act had not been repealed.

### 36 Appeals to Court of Criminal Appeal

Division 5 of Part 7 of this Act applies to a decision of the Parole Board to revoke a home detention order under the 1996 Act in the same way as it applies to a decision of the Parole Board to revoke a home detention order under Division 2 of Part 7 of this Act.

## Division 4 Community Service Orders Act 1979

### 37 Definitions

In this Division:

**1979 Act** means the *Community Service Orders Act 1979*, as in force immediately before the appointed day.

**appointed day** means the day on which Part 5 of this Act commences.

### 38 Community service orders

Any community service order that, immediately before the appointed day, was in force under the 1979 Act:

- (a) is taken to be a community service order within the meaning of this Act, and

- (b) is taken to be subject to the same conditions as those to which it was subject immediately before that day.

### **39 Assigned officers and supervisors**

- (1) Any person who, immediately before the appointed day, was an assigned officer in relation to a community service order under the 1979 Act is taken to be an assigned officer in relation to the corresponding community service order under Part 5 of this Act.
- (2) Any person who, immediately before the appointed day, was a supervisor under the 1979 Act is taken to be a supervisor under Part 5 of this Act.

### **40 Work performed under former community service orders**

Any work performed for the purposes of a community service order under the 1979 Act is taken to be work performed for the purposes of the corresponding community service order under this Act.

### **41 Extension of period of former community service orders**

Any extension of the period of a community service order under section 17 of the 1979 Act is taken to be an extension of the period of the corresponding community service order under section 114 of this Act.

### **42 Proceedings under 1979 Act**

Any proceedings that had been commenced, but not determined, under the 1979 Act before the appointed day are to be continued and disposed of under that Act as if that Act had not been repealed.

### **43 Summonses and warrants**

Any summons or warrant that, immediately before the appointed day, was in force under section 24 of the 1979 Act is taken to be a summons or warrant in force under section 116 of this Act, and may be enforced accordingly.

### **44 Application of Division 2 of Part 5**

Division 2 of Part 5 of this Act applies to any matter to which Part 4 of the 1979 Act applied immediately before the appointed day.

## **Division 5 Sentencing Act 1989**

### **45 Definitions**

In this Division:

**1989 Act** means the [Sentencing Act 1989](#), as in force immediately before the appointed

day.

**appointed day** means the day on which Part 6 of this Act commences.

#### **46 Parole orders**

Any parole order that, immediately before the appointed day, was in force under the 1989 Act:

- (a) is taken to be a parole order within the meaning of this Act, and
- (b) is taken to be subject to the same conditions as those to which it was subject immediately before that day.

#### **47 Effect of parole orders under 1989 Act**

Section 132 of this Act applies to any period for which a person was lawfully released on parole under the 1989 Act in the same way as it applies to any period for which a person is lawfully released on parole under Part 6 of this Act.

#### **48 Proceedings under 1989 Act**

Any proceedings that had been commenced, but not determined, under the 1989 Act before the appointed day are to be continued and disposed of under that Act as if that Act had not been repealed.

#### **49 Warrants**

Any warrant that, immediately before the appointed day, was in force under section 36 of the 1989 Act is taken to be a warrant in force under section 181 of this Act, and may be enforced accordingly.

#### **50 Evidentiary certificates**

Any certificate issued under section 52 of the 1989 Act is taken to be a certificate issued under section 260 of this Act.

#### **51 Appeals to Court of Criminal Appeal**

- (1) Subdivision 4 of Division 2 of Part 6 of this Act applies to a decision of the Parole Board to refuse parole under the 1989 Act in the same way as it applies to a decision of the Parole Board to refuse parole under Subdivision 2 or 3 of Division 2 of Part 6 of this Act.
- (2) Division 5 of Part 7 of this Act applies to a decision of the Parole Board to revoke parole under the 1989 Act in the same way as it applies to a decision of the Parole Board to revoke a parole order under Division 3 of Part 7 of this Act.

## 52 Parole Board

- (1) The Parole Board constituted by this Act is a continuation of, and the same entity as, the Parole Board constituted by the 1989 Act.
- (2) Subject to this Act, the persons who, immediately before the appointed day, were members of the Parole Board under the 1989 Act continue to hold office as members of the Parole Board under this Act for the remainder of their terms of office under the 1989 Act.

## 53 Victims Register

The Victims Register kept under section 22M of the 1989 Act is taken to be the Victims Register kept under section 256 of this Act.

## Division 6 General

### 54 Definitions

In this Division:

**appointed day** means the day appointed under section 2 for the commencement of the provision of this Act in relation to which that expression is used.

**old legislation** means:

- (a) any Act or instrument repealed by Schedule 1 to the [Crimes Legislation Amendment \(Sentencing\) Act 1999](#), as in force immediately before its repeal, and
- (b) any Act or instrument amended by Schedule 2, 3, 4 or 5 to the [Crimes Legislation Amendment \(Sentencing\) Act 1999](#), as in force immediately before its amendment.

### 55 Common law recognizances

Any recognizance to be of good behaviour that was in force immediately before the power to require a person to enter into such a recognizance was abolished by section 101 of the [Crimes \(Sentencing Procedure\) Act 1999](#) continues to have effect, and may be enforced, as if that power had not been abolished.

### 56 Delegations

Any delegation that, immediately before the appointed day, was in force under a provision of the old legislation for which there is a corresponding provision in this Act is taken to be a delegation in force under the corresponding provision of this Act.

### 57 Construction of certain references

Subject to the regulations, in any Act or instrument:

- (a) a reference to a provision of the old legislation for which there is a corresponding



provision in this Act extends to the corresponding provision of this Act, and

- (b) a reference to any act, matter or thing referred to in a provision of the old legislation for which there is a corresponding provision in this Act extends to the corresponding act, matter or thing referred to in the corresponding provision of this Act.

#### **58 Construction of certain other references**

In any Act or instrument:

- (a) a reference to the Comptroller-General of Prisons is to be read as a reference to the Commissioner of Corrective Services, and
- (b) a reference to the Deputy Comptroller-General of Prisons is to be read as a reference to the Deputy Commissioner of Corrective Services, and
- (c) a reference to the Department of Prisons is to be read as a reference to the Department of Corrective Services.

#### **59 General saving**

Subject to the regulations:

- (a) anything begun before the appointed day under a provision of the old legislation for which there is a corresponding provision in this Act may be continued and completed under the old legislation as if the *Crimes Legislation Amendment (Sentencing) Act 1999* had not been enacted, and
- (b) subject to paragraph (a), anything done under a provision of the old legislation for which there is a corresponding provision in this Act (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of this Act.

### **Part 2A Provisions consequent on enactment of Crimes (Administration of Sentences) Amendment Act 2000**

#### **59A Validation of certain Parole Board meetings**

- (1) The participation by any person in any proceedings of the Parole Board at a meeting held after 10 August 2000 but before the commencement of the amending Act, is, if the participation would have been valid had the amendments made to clause 12 of Schedule 1 to the Act by the amending Act been in force at that time, validated by this clause.
- (2) In this clause, **amending Act** means the *Crimes (Administration of Sentences) Amendment Act 2000*.

### **Part 3 Provisions consequent on enactment of Crimes Legislation**

## **Amendment (Existing Life Sentences) Act 2001**

### **60 Definition**

In this Part, **the 2001 amending Act** means the *Crimes Legislation Amendment (Existing Life Sentences) Act 2001*.

### **61 Application of amendments to pending proceedings**

The amendments made to this Act by the 2001 amending Act do not affect:

- (a) any proceedings under Subdivision 3 of Division 2 of Part 6 of this Act in respect of which the Parole Board had taken action under section 144 of this Act, but had not made a decision under section 149 or 150 of this Act, before the commencement of those amendments, or
- (b) any parole order made by the Parole Board under section 149, 150 or 160 of this Act before the commencement of those amendments.

### **62 Application of amendments to offenders the subject of existing determinations**

Subject to clause 61, the amendments made to this Act by the 2001 amending Act apply to a serious offender:

- (a) who is serving a sentence for which a determination had been made under clause 4 of Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999* before the commencement of those amendments (including a determination referred to in clause 21 of Schedule 2 to that Act), and
- (b) who is the subject of a non-release recommendation within the meaning of that Schedule, as in force from time to time,

in the same way as they apply to a serious offender who is serving a sentence for which such a determination is made after that commencement and who is the subject of such a recommendation.

## **Part 4 Provisions consequent on enactment of Criminal Legislation Amendment Act 2001**

### **63 Release dates of offenders**

An amendment made to a provision of this Act by the *Criminal Legislation Amendment Act 2001* applies only to and in respect of a determination of the Parole Board that occurs on or after the commencement of the amendment.

## **Part 5 Provisions consequent on enactment of Crimes Legislation**

## **Amendment (Periodic and Home Detention) Act 2002**

### **64 Definition**

In this Part, the **2002 amending Act** means the *Crimes Legislation Amendment (Periodic and Home Detention) Act 2002*.

### **65 Applications for leave of absence**

Section 87 (3), as in force immediately before its substitution by the 2002 amending Act, continues to apply to any failure to report for a detention period that occurred before the subsection was substituted.

### **66 Revocation of periodic detention orders**

- (1) Section 163 (2) (a), as substituted by the 2002 amending Act, applies to a failure to report for a detention period that occurred before the commencement of that paragraph (being one of a series of detention periods occurring during consecutive, or partly consecutive, sentences of imprisonment) only if it is one of a series of failures to report of which the most recent occurred after that commencement.
- (2) Section 163 (2A), as inserted by the 2002 amending Act, applies to a failure to report for a detention period that occurred before the commencement of that subsection only if it is one of a series of consecutive failures to report of which the most recent occurred after that commencement.

### **67 Reinstatement of revoked periodic detention orders**

- (1) Section 164A, as inserted by the 2002 amending Act, extends to any periodic detention order that was revoked before that section was inserted.
- (2) Section 168A (1A), as inserted by the 2002 amending Act, extends to any periodic detention order that was revoked before that subsection was inserted.

### **68 Home detention orders following revocation of periodic detention orders**

- (1) Section 165, as substituted by the 2002 amending Act, extends to any periodic detention order that was in force immediately before that section was substituted.
- (2) Section 165AA, as inserted by the 2002 amending Act, extends to any periodic detention order that was, or had been, in force before that section was inserted.

### **69 Revocation of home detention order following sentence of imprisonment by way of full-time detention**

Section 167 (6), as inserted by the 2002 amending Act, extends to any home detention order that was in force immediately before that subsection was inserted.

## **Part 6 Provisions consequent on enactment of Crimes (Administration**

## of Sentences) Further Amendment Act 2002

### 70 Definition

In this Part:

**2002 amending Act** means the *Crimes (Administration of Sentences) Further Amendment Act 2002*.

### 71 Segregated custody directions and protective custody directions

(1) In this clause:

**commencement date** means the date on which Division 2 of Part 2 (as substituted by the 2002 amending Act) commences.

- (2) A segregated or protective custody direction given under Division 2 of Part 2 before the commencement date is taken to be a segregated or protective custody direction given under Division 2 of Part 2 as substituted by the 2002 amending Act.
- (3) For the purposes of the application of section 16 (as substituted by the 2002 amending Act) to a segregated or protective custody direction given before the commencement date, the following provisions have effect:
- (a) if the segregated or protective custody direction was given less than 14 days before the commencement date, the governor of the correctional centre where the inmate the subject of the direction is held in segregated or protective custody must submit a report about the direction to the Commissioner within 14 days after the direction was given, and that report is taken to be a report under section 16 (1),
  - (b) if the segregated or protective custody direction was given not less than 14 days before the commencement date and was extended by the Commissioner less than 3 months before the commencement date, the governor of the correctional centre where the inmate the subject of the direction is held in segregated or protective custody is to prepare a report referred to in that section within 3 months after the direction was extended by the Commissioner, and that report is taken to be a report under section 16 (3),
  - (c) if the segregated or protective custody direction was given not less than 14 days before the commencement date and was not extended by the Commissioner less than 3 months before the commencement date, the governor of the correctional centre where the inmate the subject of the direction is held in segregated or protective custody is to prepare a report referred to in that section as soon as possible after the commencement date, and that report is taken to be a report under section 16 (3).

## **72 Meetings of Parole Board and Review Council**

- (1) Schedule 1, as in force before its amendment by the 2002 amending Act, continues to apply to any proceedings before the Parole Board that had been commenced but not concluded immediately before the commencement of that amendment, and such proceedings are to be determined in accordance with Schedule 1 as if it had not been so amended.
- (2) Schedule 2, as in force before its amendment by the 2002 amending Act, continues to apply to any proceedings before the Review Council that had been commenced but not concluded immediately before the commencement of that amendment, and such proceedings are to be determined in accordance with Schedule 2 as if it had not been so amended.

## **Part 7 Provisions consequent on enactment of [Crimes Legislation Amendment \(Parole\) Act 2003](#)**

### **73 Constitution of Parole Board**

The substitution of section 183 (2) of this Act by the [Crimes Legislation Amendment \(Parole\) Act 2003](#) does not affect the appointment of a person as a member of the Parole Board if the appointment was in force immediately before the substitution of that subsection.

### **74 Judicial members of Parole Board**

The substitution of clause 1 (1) of Schedule 1 to this Act by the [Crimes Legislation Amendment \(Parole\) Act 2003](#) does not affect a judicial member's appointment as Chairperson, Alternate Chairperson or Deputy Chairperson, respectively, of the Parole Board if the appointment was in force immediately before the substitution of that subclause.

## **Part 8 Provisions consequent on enactment of [Crimes \(Administration of Sentences\) Amendment Act 2004](#)**

### **75 Definition**

In this Part, the **2004 amending Act** means the [Crimes \(Administration of Sentences\) Amendment Act 2004](#).

### **76 Removal of distinction between major offence and minor offence**

Sections 51, 53 and 54, as in force before their amendment by the 2004 amending Act, continue to apply to any correctional centre offence committed before the commencement of those amendments, and such offences are to be dealt with in accordance with those sections as if they had not been so amended.

## **77 Hearing of charges by Visiting Magistrate**

Section 55, as in force before its amendment by the 2004 amending Act, continues to apply to any proceedings on a charge referred to a Visiting Magistrate that had been referred but not concluded before the commencement of that amendment, and such proceedings are to be determined in accordance with that section as if it had not been so amended.

## **78 Compensation for property damage**

Section 59, as in force before its amendment by the 2004 amending Act, continues to apply to a correctional centre offence committed before the commencement of that amendment, and such an offence is to be dealt with in accordance with that section as if it had not been so amended.

## **79 Revocation of periodic detention orders**

Section 163 (2) and (2A), as substituted by the 2004 amending Act, apply to a failure to report for a detention period that occurred before the commencement of the relevant provision (being one of a series of detention periods occurring during consecutive, or partly consecutive, sentences of imprisonment) only if it is one of a series of failures to report of which the most recent occurred after the relevant commencement.

## **80 Extension of sentences**

- (1) Section 255, as in force before its amendment by the 2004 amending Act, continues to apply to a sentence whose term or non-parole period was extended under this Act before the commencement of that amendment.
- (2) Any such sentence and the date of commencement of any other sentence that is to be served consecutively with the extended sentence are to operate in accordance with section 255 as if it had not been so amended.

## **81 Exempt documents within the meaning of [Freedom of Information Act 1989](#)**

A document that contains matter relating to functions in relation to which the office of Inspector-General of Corrective Services was, by virtue of section 9 of the [Freedom of Information Act 1989](#), exempt from the operation of that Act immediately before 1 October 2003 is taken to be, and to always have been, an exempt document within the meaning of the [Freedom of Information Act 1989](#).

## **Part 9 Provisions consequent on enactment of [Crimes \(Administration of Sentences\) Amendment \(Norfolk Island Prisoners\) Act 2004](#)**

### **82 Persons in custody**

The amendments made to this Act by the [Crimes \(Administration of Sentences\) Amendment \(Norfolk Island Prisoners\) Act 2004](#) extend to any person who, immediately

before the commencement of those amendments, is in custody for an offence under the law in force in Norfolk Island.