

# 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**
  - [Crimes \(Administration of Sentences\) Amendment Act 2008 No 108](#), Sch 1 [28]–[31] (not commenced)
  - [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2010 No 119](#) (not commenced — to commence on 7.1.2011)
  - [Crimes \(Sentencing Procedure\) Amendment Act 2010 No 136](#) (not commenced)

### Authorisation

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# 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

### Introductory note—

This Part contains machinery provisions, including a statement of the objects of the Act and a provision that defines various words and expressions that are used in the Act.

### 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.

### 2A Objects of Act

(1) This Act has the following objects:

- (a) to ensure that those offenders who are required to be held in custody are removed from the general community and placed in a safe, secure and humane environment,
- (b) to ensure that other offenders are kept under supervision in a safe, secure and humane manner,
- (c) to ensure that the safety of persons having the custody or supervision of offenders is not endangered,
- (d) to provide for the rehabilitation of offenders with a view to their reintegration into the general community.

(2) In the pursuit of these objects, due regard must be had to the interests of victims of the offences committed by offenders.

- (3) Nothing in this section gives rise to any civil cause of action or can be taken into account in any civil proceedings.

### 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, Justice Health** means the person for the time being holding office or acting as the chief executive officer of Justice Health under the [Health Services Act 1997](#).

**Commissioner** means the Commissioner of Corrective Services, Department of Justice and Attorney General.

**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.

**compliance and monitoring officer** means a member of staff of Corrective Services NSW who is appointed as a compliance and monitoring officer under section 235G.

**compulsory drug treatment detention** means detention in accordance with Part 4A.

**compulsory drug treatment order** means an order in force under section 18C of the [Drug Court Act 1998](#).

**convicted inmate** means a person referred to in section 4 (1) (a), (b), (c), (c1), (d1) or (d2).

**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 declared under section 225A, 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.

**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 Corrective Services NSW as a correctional officer, as referred to in section 231.

**Corrective Services NSW** means that part of the Department of Justice and Attorney General comprising the group of staff who are principally involved in the administration of this 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 the 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.

**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.

**Drug Court** means the Drug Court of New South Wales constituted under the [Drug Court Act 1998](#).

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

**full-time detention** means detention in a correctional centre.

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

**general manager**, in relation to a correctional centre, means the general manager of the correctional centre and includes any person who is for the time being in charge of the correctional centre.

**home detention order** means an order in force under section 6 of the [Crimes \(Sentencing Procedure\) Act 1999](#) or under section 165A of this Act.

**ICO Management Committee** means the Intensive Correction Orders Management Committee established under section 92.

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

**intensive correction** means intensive correction in the community pursuant to an intensive correction order.

**intensive correction order** means an order in force under section 7 of the *Crimes (Sentencing Procedure) Act 1999* or section 89 of the *Fines Act 1996*.

**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.

**Justice Health** means the statutory health corporation of that name specified in Schedule 2 to the *Health Services Act 1997*.

**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, 4A 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, 4 or 4A.

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

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

**Parole Authority** means the State Parole Authority constituted by section 183.

**parole eligibility date**, in relation to an offender, means:

- (a) subject to paragraph (b), the date on which the offender first becomes eligible for release on parole, or

- (b) if the offender is returned to custody while on release on parole or following revocation of parole, the date occurring 12 months after the date on which the offender is so returned.

**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*.

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

**Probation and Parole Service** means the administrative unit of that name that exists within Corrective Services NSW.

**residential facility** means any premises declared to be a residential facility by a proclamation in force under section 236L.

**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 Authority 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 Authority, 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.

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

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

### Introductory note—

This Part applies to those offenders who have been sentenced to imprisonment by way of full-time detention (referred to as **inmates**) and to other persons who are required to be held in custody. It deals with the following matters:

- (a) the general obligations of inmates (Division 1),
- (b) the circumstances in which an inmate can be kept in segregated or protective custody (Division 2),
- (c) the circumstances in which an inmate may be transferred to another correctional centre, or to hospital, or given leave of



- absence (Division 3),
- (d) the management of juvenile inmates (Division 3A),
- (e) the conveyance and detention of prisoners received from the Australian Capital Territory (Division 4),
- (f) the conveyance and detention of prisoners received from Norfolk Island (Division 5),
- (g) the prescription of correctional centre offences, the penalties they attract and the procedure for dealing with both correctional centre offences and other offences (Division 6),
- (h) the procedure to be followed in determining whether a serious offender is to be given a low security classification permitting unescorted leave of absence from a correctional centre (Division 7),
- (i) other miscellaneous matters (Division 8).

## 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 Authority has committed the person to a correctional centre to serve the remainder of a sentence by way of full-time detention, and
- (c1) any person the subject of a warrant under section 20 of the *Crimes (Serious Sex Offenders) Act 2006* by which the Supreme Court has committed the person to a correctional centre pursuant to a continuing detention order or interim detention order under that Act, 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
- (d1) any person the subject of an order under section 33 (1) (g) of the *Children (Criminal Proceedings) Act 1987* by which the Children's Court has committed the person to the control of the Minister administering this Act, and
- (d2) any person who is the subject of a warrant under section 170 (1) (a) of the *Defence Force Discipline Act 1982* of the Commonwealth by which an authorised officer under that Act has committed the person to a correctional centre pursuant

to a punishment of imprisonment imposed under that Act, and

- (d3) any person who is a detainee within the meaning of the *Migration Act 1958* of the Commonwealth and who is held in a correctional centre as referred to in paragraph (b) (ii) of the definition of **immigration detention** in section 5 of that Act, 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 above, and
- (f) any person in custody who is given into the keeping of a correctional officer under section 250.

(2) This Part does not apply to a person who is detained in a correctional centre in accordance with Part 16 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

(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), (c), (c1), (d1) or (d2).

## 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 general manager of a correctional centre may make an order directing any convicted inmate in the correctional centre to carry out such work as the general manager considers suitable.
- (2) The general manager may direct a convicted inmate, or such classes or groups of convicted inmates as the Commissioner may from time to time determine, to carry out community service work, or any work for Corrective Services NSW or a public or local authority:
  - (a) within the correctional centre in which the inmate is imprisoned, or
  - (b) within the correctional complex in which the inmate is imprisoned but outside the correctional centre, or
  - (c) outside the correctional complex in which the inmate is 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 general manager 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 general manager 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 general manager 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 general manager 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 general manager 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 general manager 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 general manager 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 general manager 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 general manager 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 general manager of the receiving correctional centre.
- (5) A direction by the general manager 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 general manager 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 general manager 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 general manager 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 general manager 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 general manager 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 general manager 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 an Australian 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 general manager of a correctional centre (or both) may be represented by an Australian 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 general manager 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 de facto partner of the inmate.

**Note—**

“De facto partner” is defined in section 21C of the *Interpretation Act 1987*.

## **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 de facto partner of the inmate.

### **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,
- (f1) while absent from a correctional centre in accordance with an approval granted under section 255A,
- (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 not escorted by a correctional officer, the inmate is taken to be in the custody of the general manager 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 general manager 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 Corrective Services NSW 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 Corrective Services NSW 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, interstate leave permit or approval granted under section 255A, or
  - (b) whose local leave order, local leave permit, interstate leave permit or approval granted under section 255A 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, interstate leave permit or approval granted under section 255A, 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 officer 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 officer 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 officer under subsection (2) (a) or (3) (a), the authorised officer 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 officer 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 general manager of that correctional centre, and
- (b) for the general manager 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 officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

#### **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, interstate leave permit or approval granted under section 255A, and
  - (c) otherwise than by reason of having failed to return to a correctional centre following the revocation of an intensive correction 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 general manager 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 general manager 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 under the age of 18 years 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.

- (5) Subsections (2), (3) and (4) do not apply to the transfer of a juvenile inmate to a hospital pursuant to an order by the Commissioner under section 24.
- (6) Such an order may not be made without prior consultation between the Commissioner and the Chief Executive Officer, Justice Health.

**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 an Australian 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 an Australian 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) an Australian 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 Full-time detainees received from Australian Capital Territory**

### **42 Definitions**

In this Division:

**Australian Capital Territory Act** means the *Crimes (Sentence Administration) Act 2005* of the Australian Capital Territory.

**Australian Capital Territory direction** means a direction issued under section 26 of the Australian Capital Territory Act.

**chief executive, escort officer** and **full-time detainee** have the same meanings as they have in the Australian Capital Territory Act.

### **43 Application of Division**

This Division does not apply to a full-time detainee who is in custody in a correctional centre in New South Wales pursuant to a transfer effected under the *Prisoners (Interstate Transfer) Act 1982*.

### **44 Conveyance and detention of full-time detainees from ACT**

(1) If an escort officer has a full-time detainee in custody in accordance with the terms of an Australian Capital Territory direction, it is lawful for the escort officer to hold and

deal with the detainee in accordance with those terms.

- (2) It is the duty of the general manager of a correctional centre or any other officer doing duty at a correctional centre to accept custody of any full-time detainee the subject of an Australian Capital Territory direction.
- (3) The full-time detainee is to be held in custody in a correctional centre for so long as is necessary for the detainee's sentence referred to in the Australian Capital Territory direction to be executed in accordance with that direction.
- (4) Nothing in this section prevents the early release of a full-time detainee by reason of the operation of any law of the Commonwealth, or of the Australian Capital Territory, relating to the release of full-time detainees.
- (5) Until released from custody or delivered into the custody of an escort officer under an Australian Capital Territory direction, a full-time detainee may be dealt with as if the detainee'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 full-time detainees to ACT**

- (1) If an escort officer presents to a general manager of a correctional centre an Australian Capital Territory direction in respect of a full-time detainee held in custody in the correctional centre under this Division:
  - (a) for the delivery of the full-time detainee into the custody of the escort officer, and
  - (b) for the conveyance of the full-time detainee to the Australian Capital Territory,the general manager of the correctional centre must deliver the full-time detainee into the custody of the escort officer.
- (2) The direction is sufficient authority for the escort officer to convey the full-time detainee in custody to the Australian Capital Territory.

#### **46 Evidentiary provision**

A document purporting to be an Australian Capital Territory direction and to be under the hand of the chief executive 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 general manager 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, the *Sentencing Act 2007* of Norfolk Island and Division 4A of Part 6 of this Act.

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

- (1) If a constable presents to a general manager 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 general manager 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 (whether or not it is also a criminal offence):

- (a) that occurs while the inmate is within a correctional centre or correctional complex or is taken to be in the custody of the general manager of a correctional centre, and
- (b) that is declared by the regulations to be a correctional centre offence for the purposes of this Division.

**criminal offence** means an act or omission that constitutes an offence otherwise than as a consequence of its having been 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 general manager

- (1) If it is alleged that an inmate of a correctional centre has committed a correctional centre offence, the general manager 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 general manager is not bound by the rules of evidence, but may inform himself or herself of any matter in such manner as the general manager 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 an Australian legal practitioner or by any other person,
  - (e) the general manager must allow a person (other than an Australian legal practitioner) to represent or assist the inmate if the general manager 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 general manager 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 general manager may allow any correctional officer or other person to be present, and to be heard, at any hearing during the inquiry,
  - (i) the general manager may transfer the conduct of an inquiry to the general manager 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 general manager may impose**

- (1) If, after conducting an inquiry, the general manager is satisfied beyond reasonable doubt that the inmate is guilty of a correctional centre offence, the general manager 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 general manager 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 general manager 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 general manager may dismiss the charge, or
  - (b) the general manager 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 general manager is not satisfied beyond reasonable doubt that the inmate is guilty of a correctional centre offence, the general manager must dismiss the charge.
- (4) A penalty imposed on an inmate by the general manager may be revoked by the general manager or by the Commissioner.

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

- (1) The general manager may refer a correctional centre offence with which an inmate is charged to a Visiting Magistrate for hearing and determination if the general manager 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 general manager, 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 the 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 an Australian 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 5BA (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 use or possession of a mobile phone**

- (1) The general manager or Visiting Magistrate dealing with a charge relating to a correctional centre offence arising out of the use or 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 general manager 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 general manager 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 general manager 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 general manager or Visiting Magistrate may determine if satisfied beyond reasonable doubt that the inmate is guilty of the offence.
- (3) The general manager 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 a criminal offence for which proceedings should be taken before a court, the Visiting Magistrate must terminate the proceedings and order that the inmate be brought before the 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 general manager 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 general manager 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 general manager 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 general manager 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 general manager of any correctional centre**

A correctional centre offence may be dealt with under this Division by the general manager 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 general manager 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.
- (5) The power exercisable by the State under this section may also be exercised by the Australian Capital Territory in relation to a prisoner within the meaning of Division 4 and, for that purpose, references in this section to the State are taken to extend to the Australian Capital Territory.

## **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 general manager 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 general manager 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, Justice Health 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, Justice Health is not a medical practitioner, the reference to the Chief Executive Officer, Justice Health 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 general manager 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 general manager.
- (2) For the purposes of the [Coroners Act 2009](#), the receipt of such a notice from the general manager 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 destroyed or otherwise 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.

## **76A Inmates' money**

- (1) Any money:
  - (a) that is surrendered by an inmate on being taken into custody at a correctional centre, or
  - (b) that is paid to an inmate pursuant to section 7, or
  - (c) that is received by a correctional officer or other member of staff of Corrective Services NSW on an inmate's behalf (other than money that it is unlawful for the inmate to acquire or retain possession of while in custody),is to be deposited in an authorised deposit-taking institution.
- (2) Until repaid, money so deposited may be invested by the Treasurer in any form of investment approved by the Treasurer.
- (3) Interest from any such investment may be applied for the benefit of inmates and their families in such manner as the Commissioner may determine.

## **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 Commissioner 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 general manager of the correctional centre in which the inmate is held 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 general manager, 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 Corrective Services NSW 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 general manager 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 general manager'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.

#### **78A Separation and other variations in conditions of custody of inmates**

- (1) Nothing in this Act requires the conditions of custody of inmates to be the same for all inmates or for all inmates in the same correctional centre or of the same classification or designation, including conditions with respect to association with other inmates.
- (2) An inmate or group of inmates in a correctional centre may be held separately from other inmates in the correctional centre for the purposes of the care, control or management of the inmate or group of inmates.
- (3) In particular, inmates may be separated because of a requirement of this Act or the regulations, because of the classification or designation of the inmates, because of the nature of any program being undertaken by the inmates or because of any intensive

monitoring that is required of the inmates.

- (4) The making of a segregated custody direction under Division 2 is not required to authorise a separation of inmates.
- (5) Anything done or omitted that could have been validly done or omitted if this section (and section 79 (c1)) had been in force when it was done or omitted is taken to be, and always to have been, validly done or omitted.

## **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,
- (c1) the designation of inmates for the purposes of or in connection with the management of security and other risks,
- (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 (including money) 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 destruction or other disposal of any property (including money):
  - (i) brought into a correctional centre or correctional complex by any person in



contravention of this Act, the regulations or any other law, or

(ii) found within, sent to or delivered to a correctional centre or correctional complex and that it is unlawful for an inmate to acquire or retain possession of under this Act, the regulations or any other law,

(h3) the seizure, forfeiture and destruction or other disposal of any drug, or any thing reasonably suspected of being a drug:

(i) in the possession of an inmate, or

(ii) in the possession of any other person in a correctional centre or correctional complex, or

(iii) found within a correctional centre or correctional complex, or

(iv) sent to or delivered to a correctional centre or correctional complex,

(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 general manager 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 general manager 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 intensive correction in the community**

#### **Introductory note—**

This Part applies to those offenders who have been sentenced to imprisonment by way of intensive correction in the community. It deals with the following matters:

- (a) the general obligations of offenders (Division 1),
- (b) permission for non-compliance with work or reporting requirements (Division 2),
- (c) breaches of intensive correction orders (Division 3),
- (d) other miscellaneous matters (Division 4).

## Division 1 Preliminary

### 80 Definition

In this Part:

**offender** means a person in respect of whom an intensive correction order is in force.

### 81 Conditions governing intensive correction orders

- (1) An intensive correction order is subject to any conditions imposed by the sentencing court under this section.
- (2) The sentencing court must at the time of sentence impose on an intensive correction order the conditions prescribed by the regulations as the mandatory conditions of an intensive correction order.
- (3) The sentencing court may at the time of sentence, or subsequently on the application of the Commissioner or the offender:
  - (a) impose additional conditions on an intensive correction order, or
  - (b) vary or revoke any additional conditions imposed by it on an intensive correction order.
- (4) The **additional conditions** that a court can impose are limited to:
  - (a) conditions prescribed by the regulations as additional conditions that can be imposed by the sentencing court, and
  - (b) such other conditions as the court considers necessary or desirable for reducing the likelihood of the offender re-offending.
- (5) The court may refuse to entertain an application by the offender under this section if the court is satisfied that the application is frivolous or vexatious.
- (6) The court may, at its discretion, deal with an application under this section with or without the parties being present and in open court or in the absence of the public.
- (7) Before imposing an additional condition under subsection (4) (b), a court is to consider whether the condition will create a need for additional resources and must not impose the condition unless satisfied that any such additional resources that will be needed are or will be made available.
- (8) This section does not permit the sentencing court to impose any additional conditions, or vary any additional conditions imposed by it, so as to be inconsistent with any of the conditions prescribed by the regulations as the mandatory conditions of an intensive correction order.

## **82 Obligations of offender**

The obligations of an offender while serving a sentence pursuant to an intensive correction 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 intensive correction order is subject.

## **83 Duration of intensive correction order**

Unless sooner revoked, an offender's intensive correction order expires at the end of the term of the sentence to which it relates.

## **Division 2 Permission for non-compliance with work or reporting requirements**

### **84 Definition**

In this Division:

***work or reporting requirement*** means a requirement imposed by or under a condition of an intensive correction order that the offender is to:

- (a) undertake work or engage in an activity or program, or
- (b) attend at, report to or remain at a place.

### **85 Permission for non-compliance with work, reporting and other requirements**

- (1) The Commissioner may, on application made by or on behalf of an offender, grant permission for the offender to not comply with a work or reporting requirement.
- (2) The Commissioner may grant such a permission:
  - (a) for health reasons, or
  - (b) on compassionate grounds, or
  - (c) for any other reason the Commissioner thinks fit.
- (3) An application for permission in respect of a requirement must be made before the time the requirement is due to be complied with.
- (4) A permission under this section may be granted either before or after the requirement to which it relates is due to be complied with.
- (5) A permission that is granted before the requirement to which it relates is due to be

complied with may be granted subject to such conditions as the Commissioner may determine.

- (6) An offender who is unable to comply with a requirement:
  - (a) must cause a telephone call advising of the offender's inability to comply to be made, to such telephone number as the Commissioner may from time to time determine, before the time at which the requirement is due to be complied with, and
  - (b) must, in support of the offender's application for permission under subsection (1), cause a document setting out the reasons for the offender's inability to comply with the requirement to be given to the Commissioner within 7 days after the date on which the offender is due to comply with the requirement.
- (7) If the reasons for the offender's inability to comply with a requirement include illness or injury, a certificate from a medical practitioner is to be given to the Commissioner in support of the offender's application for permission under subsection (1) (in addition to the document referred to in subsection (6) (b)):
  - (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 comply with the requirement.
- (8) The Commissioner may exempt an offender from compliance with subsection (3) or (6) (a) in a particular case if the Commissioner is satisfied that the exceptional circumstances of the case justify the exemption.

#### **86 Direction to make up for work etc avoided**

- (1) If the Commissioner grants an offender permission to not comply with a work or reporting requirement, the Commissioner may give such directions to the offender as the Commissioner determines to be necessary to ensure that the offender will undertake work or engage in an activity or program to the extent necessary to make up for the work, activity or program avoided as a result of the permission granted.
- (2) The offender's intensive correction order is subject to a condition that the offender must comply with a direction of the Commissioner under this section.
- (3) The sentencing court may, on the application of the Commissioner, extend the offender's intensive correction order by such period as the court considers necessary and appropriate for ensuring that the offender complies with a direction of the Commissioner under this section.
- (4) In determining an application to extend an offender's intensive correction order under this section, the sentencing court is to give consideration to the following:

- (a) any hardship likely to be experienced by the offender if the order is extended,
  - (b) the likelihood of the offender's intensive correction order being revoked if the order is not extended, and any hardship likely to be experienced by the offender as a result,
  - (c) such other matters as the court considers relevant.
- (5) An intensive correction order cannot be extended under this section if the term of the sentence to which the order relates has ended.
- (6) The power of the sentencing court to extend an intensive correction order under this section is limited to one extension of no more than 6 months.
- (7) If an intensive correction order is extended under this section, the term of the sentence to which the order relates is, by this section, extended by the same period.

#### **87 Review of Commissioner's decision**

- (1) An offender who is aggrieved by a decision of the Commissioner to refuse permission for the offender to not comply with a work or reporting requirement may apply to the ICO Management Committee for a review of the matter.
- (2) The ICO Management Committee is to review the matter and may make recommendations to the Commissioner on the matter. The Commissioner is not bound by the ICO Management Committee's recommendations.
- (3) If the Commissioner does not grant the permission following the ICO Management Committee's review of the matter, the offender may apply to the Parole Authority for the permission concerned. The Parole Authority may direct that the permission be granted and the Commissioner is to comply with any such direction.
- (4) The matter is only to be reviewed by the Parole Authority if the Parole Authority is satisfied that the application for review is not frivolous or vexatious.

### **Division 3 Breach of intensive correction order**

#### **88 Definition**

In this Division:

**breach** of an intensive correction order means a failure by an offender to comply with any of his or her obligations under an intensive correction order.

#### **89 Commissioner powers to deal with breach of ICO**

- (1) If the Commissioner is satisfied that an offender has breached an intensive correction order, the Commissioner can decide to impose a sanction on the offender under this section or can decide to take no action in respect of the breach.

- (2) The Commissioner can impose either or both of the following sanctions on the offender:
  - (a) a formal warning,
  - (b) a more stringent application of the conditions of the intensive correction order in accordance with the terms of those conditions (for example, further restrictions on association with other persons).
- (3) As an alternative or in addition to imposing a sanction on the offender, the Commissioner can decide to refer the breach to the Parole Authority because of the serious nature of the breach.
- (4) In deciding whether and what action should be taken in respect of an offender's breach of an intensive correction order, the Commissioner may have regard to any action previously taken in respect of the breach or any previous breach of the order by the offender.

#### **90 Parole Authority powers to deal with breach**

- (1) The Parole Authority may, on its own motion or on the application of the Commissioner, deal with an offender's breach of an intensive correction order by:
  - (a) imposing any sanction that the Commissioner could impose under section 89, or
  - (b) imposing a period of up to 7 days' home detention on the offender by imposing as a condition of the offender's intensive correction order a requirement that the offender remain at his or her place of residence for the period of home detention, or
  - (c) revoking the intensive correction order pursuant to Division 1 of Part 7.
- (2) In deciding whether and what action should be taken in respect of an offender's breach of an intensive correction order, the Parole Authority may have regard to any action previously taken (by the Parole Authority or by the Commissioner) in respect of the breach or any previous breach of the order by the offender.

#### **91 Interim suspension of ICO**

- (1) On the application of the Commissioner, a judicial member of the Parole Authority:
  - (a) may make an order suspending an offender's intensive correction order, and
  - (b) if the offender is not then in custody, may issue a warrant for the offender's arrest.
- (2) An application under subsection (1) may be made in person or by telephone, electronic mail or facsimile transmission.

- (3) Action under subsection (1) may be taken in relation to an offender's intensive correction order only if the judicial member is satisfied:
- (a) that the Commissioner has reasonable grounds for believing that:
    - (i) the offender has failed to comply with the offender's obligations under the intensive correction order, or
    - (ii) there is a serious and immediate risk that the offender will leave New South Wales in contravention of the conditions of the intensive correction order, or
    - (iii) there is a serious and immediate risk that the offender will harm another person, or
    - (iv) there is a serious and immediate risk that the offender will commit an offence, and
  - (b) that, because of the urgency of the circumstances, there is insufficient time for a meeting of the Parole Authority to be convened to deal with the matter.
- (4) If an application under this section is made otherwise than in person, the judicial member may furnish the applicant with a suspension order or arrest warrant:
- (a) by sending a copy of the order or warrant to the applicant by electronic mail or facsimile transmission, or
  - (b) by dictating the terms of the order or warrant to the applicant by telephone.
- (5) A document:
- (a) that contains:
    - (i) a copy of a suspension order or arrest warrant that the judicial member has sent by electronic mail or facsimile transmission, or
    - (ii) the terms of a suspension order or arrest warrant that the judicial member has dictated by telephone, and
  - (b) that bears a notation:
    - (i) as to the identity of the judicial member, and
    - (ii) as to the time at which the copy was sent or the terms dictated,
- has the same effect as the original suspension order or arrest warrant.
- (6) A suspension order may be revoked by any judicial member of the Parole Authority or by the Commissioner.
- (7) Unless sooner revoked, a suspension order ceases to have effect at the end of 28



days after it is made or, if the offender is not in custody when it is made, at the end of 28 days after the offender is taken into custody.

- (8) While a suspension order is in force, the intensive correction order to which it relates does not have effect.
- (9) An arrest warrant is sufficient authority for a police officer to arrest 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 general manager of that correctional centre.

## **Division 4 Miscellaneous**

### **92 ICO Management Committee**

- (1) The Commissioner is to establish a committee to be called the Intensive Correction Orders Management Committee (the **ICO Management Committee**).
- (2) The ICO Management Committee is to consist of such number of members (not less than 5) as the Commissioner determines from time to time.
- (3) The members of the ICO Management Committee are to be officers of Corrective Services NSW appointed by the Commissioner. Of the members, one is (in and by the member's instrument of appointment or a subsequent instrument executed by the Commissioner) to be appointed as Chairperson of the ICO Management Committee.
- (4) The ICO Management Committee has the following functions:
  - (a) to provide advice and make recommendations to the Commissioner in connection with the case management of offenders who are subject to intensive correction orders,
  - (b) such other functions with respect to offenders who are subject to intensive correction orders as the Commissioner may direct from time to time,
  - (c) such other functions as may be conferred on the ICO Management Committee by or under this Act.

#### **Note—**

Schedule 3 provides for the procedure of the ICO Management Committee.

- (5) The ICO Management Committee is to provide the Commissioner with an annual report in writing of its activities and that report is to form part of the next annual report of the Department of Justice and Attorney General prepared for the purposes of the *Annual Reports (Departments) Act 1985*.

### **93 Regulations**

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

- (a) the mandatory conditions to be imposed on an intensive correction order by a sentencing court and the additional conditions that may be imposed by a sentencing court,
- (b) the manner in which an offender's failure to comply with the offender's obligations under an intensive correction order may be dealt with,
- (c) the service of notices on an offender,
- (d) the management, administration and supervision of intensive correction orders,
- (e) the procedures to be followed by an offender when applying for permission to not comply with a work or reporting requirement under section 85, and the circumstances under which such a permission may be granted,
- (f) the procedures to be followed by an offender who has been granted permission not to comply with a work or reporting requirement under section 85,
- (g) the procedures to be followed by an offender when applying for a review under section 87 of a decision of the Commissioner,
- (h) the circumstances in which an offender may be tested for drugs or alcohol (including random and periodic testing), 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 type and nature of the tests to be used,
- (i) the circumstances under which an offender may be required to submit to a medical examination by a medical officer,
- (j) the day-to-day routine of offenders, including the performance of work or engagement in an activity or intervention, or attendance at, or reporting to, or remaining at a place,
- (k) the use of electronic monitoring devices in relation to offenders,
- (l) the procedure to be followed when an offender reports to carry out work,
- (m) the performance of work by an offender,
- (n) the functions of officers of Corrective Services NSW under and in connection with this Part,
- (o) the form of any warrants issued for the purposes of this Part.

### **94-101 (Repealed)**

## Part 4 Imprisonment by way of home detention

### Introductory note—

This Part applies to those offenders who have been sentenced to imprisonment by way of home detention. It deals with the conditions governing home detention and the general obligations of offenders.

### 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 Authority under this section.
- (2) The Parole Authority 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 Authority:
  - (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, and
- (c) to permit any correctional officer or other member of staff of Corrective Services NSW to visit the offender at the offender's residential address at any time and, for that purpose, to enter the premises at that address.

### **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 4A Imprisonment by way of compulsory drug treatment detention**

### **Introductory note—**

This Part applies to those offenders who have been sentenced to imprisonment by the Drug Court for the purpose of undergoing compulsory drug treatment. It deals with the following matters:

- (a) a general description of the 3 stages of compulsory drug treatment detention and the general obligations of offenders (Division 1),
- (b) the way in which compulsory drug treatment orders are to be administered (Division 2),
- (c) the revocation of compulsory drug treatment orders (Division 3),
- (d) the role of the Drug Court as the parole authority for offenders (Division 4),
- (e) other miscellaneous matters (Division 5).

## **Division 1 Preliminary**

### **106A Definitions**

In this Part:

***community supervision order*** means an order by the Drug Court that imposes conditions on the offender in relation to the periods of time when the offender is not in the Compulsory Drug Treatment Correctional Centre.

**Note—**

See section 106O.

**Compulsory Drug Treatment Correctional Centre** means the correctional centre given that name by a proclamation under section 225.

**Director** or **Director of the Compulsory Drug Treatment Correctional Centre** means the general manager of that correctional centre.

**offender** means a person in respect of whom a compulsory drug treatment order is in force.

**progression order** means an order by the Drug Court that an offender progress from one stage of compulsory drug treatment detention to a higher stage.

**Note—**

See sections 106D and 106M.

**regression order** means an order by the Drug Court that an offender regress from one stage of compulsory drug treatment detention to a lower stage.

**Note—**

See sections 106D and 106M.

**revocation order** means an order by the Drug Court that revokes an offender's compulsory drug treatment order.

**Note—**

See section 106Q.

### **106B Objects of compulsory drug treatment**

The objects of compulsory drug treatment are:

- (a) to provide a comprehensive program of compulsory treatment and rehabilitation under judicial supervision for drug dependent persons who repeatedly resort to criminal activity to support that dependency, and
- (b) to effectively treat those persons for drug dependency, eliminating their illicit drug use while in the program and reducing the likelihood of relapse on release, and
- (c) to promote the re-integration of those persons into the community, and
- (d) to prevent and reduce crime by reducing those persons' need to resort to criminal activity to support their dependency.

### **106C Obligations of offender**

The obligations of an offender while serving a sentence by way of compulsory drug treatment 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 compulsory drug treatment personal plan applying to the offender under this Part, and
- (c) to comply with the provisions of any other Part of this Act or the regulations applying to the offender under section 106V.

**106D Stages of compulsory drug treatment detention**

- (1) There are 3 stages of compulsory drug treatment detention:
  - (a) closed detention (Stage 1), and
  - (b) semi-open detention (Stage 2), and
  - (c) community custody (Stage 3).
- (2) Under closed detention (Stage 1), the offender is to be kept in full-time custody at the Compulsory Drug Treatment Correctional Centre.
- (3) Under semi-open detention (Stage 2), the offender is to be kept in the Compulsory Drug Treatment Correctional Centre and may be allowed to attend employment, training or social programs outside the Centre (as specified in the offender's compulsory drug treatment personal plan).
- (4) Under community custody (Stage 3), the offender may reside outside the Compulsory Drug Treatment Correctional Centre at accommodation approved by the Drug Court under intensive supervision.
- (5) An offender allocated to, or by order progressed or regressed to, a stage of detention is in that stage of detention.

**106E Duration of compulsory drug treatment order**

Unless sooner revoked, an offender's compulsory drug treatment 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.

**Division 2 Administration of compulsory drug treatment orders**

**Subdivision 1 Compulsory drug treatment personal plans**

**106F Compulsory drug treatment personal plans**

- (1) The Commissioner must, as soon as practicable after the making of a compulsory

drug treatment order in relation to an offender, prepare a plan that imposes conditions on the offender regarding the offender's drug treatment and rehabilitation during the period of operation of that order (the offender's **compulsory drug treatment personal plan**).

- (2) An offender's compulsory drug treatment personal plan comes into operation when it is approved by the Drug Court.
- (3) The Commissioner, when preparing a compulsory drug treatment personal plan, must consult the Chief Executive Officer, Justice Health or the Chief Executive Officer's delegate.
- (4) The Drug Court may make recommendations to the Commissioner regarding the conditions to be included in an offender's compulsory drug treatment personal plan.
- (5) A compulsory drug treatment personal plan may be approved by the Drug Court in the absence of the offender in respect of whom it is made.
- (6) The kinds of conditions that may be imposed on an offender in a compulsory drug treatment personal plan are as follows:
  - (a) conditions relating to conduct and good behaviour,
  - (b) conditions relating to attendance for counselling or other treatment,
  - (c) conditions relating to the management of the offender in the Compulsory Drug Treatment Correctional Centre,
  - (d) conditions relating to periodic drug testing that the offender must undergo,
  - (e) conditions relating to involvement in activities, courses, training or employment for the purpose of promoting the re-integration of the offender into the community,
  - (f) any other kinds of conditions that may be prescribed by the regulations,
  - (g) such other conditions as the Commissioner considers appropriate in the circumstances,
  - (h) such other conditions as the Drug Court considers appropriate in the circumstances.
- (7) The regulations referred to in subsection (6) (f) may deal with the following:
  - (a) the form of compulsory drug treatment,
  - (b) the provision of integrated case management services to the offender,
  - (c) the key elements of non-pharmacotherapy drug treatment programs.

- (8) The regulations may make provision for or with respect to the following:
- (a) the preparation and implementation of compulsory drug treatment personal plans (including comprehensive individual assessments of offenders before the making of any such plans),
  - (b) the role and responsibilities of an offender under the offender's compulsory drug treatment personal plan,
  - (c) the role and responsibilities of persons responsible for the offender's care and treatment,
  - (d) ongoing review and regular updating of compulsory drug treatment personal plans,
  - (e) informing the Drug Court of the contents of offenders' compulsory drug treatment personal plans.
- (9) The conditions of an offender's compulsory drug treatment personal plan relating to periodic drug testing do not prevent any random drug testing of the offender.

**106G Variation of conditions of personal plan**

- (1) The Commissioner may from time to time prepare a variation to an offender's compulsory drug treatment personal plan that adds new conditions to, or varies or revokes existing conditions of, the plan.
- (2) A variation of an offender's compulsory drug treatment personal plan comes into effect when it is approved by the Drug Court.
- (3) The Commissioner, when preparing a variation to a compulsory drug treatment personal plan, must consult the Chief Executive Officer, Justice Health or the Chief Executive Officer's delegate.
- (4) A variation to a compulsory drug treatment personal plan may be approved by the Drug Court in the absence of the offender in respect of whom it relates.

**106H Mandatory conditions of all personal plans**

It is a condition of each compulsory drug treatment personal plan that the offender:

- (a) must not use any drug other than a drug prescribed by a registered medical practitioner or registered dentist, and
- (b) must not resort to violence or make any threat of violence, and
- (c) must comply with any community supervision order made in relation to the offender, and



(d) must not commit any further offences.

**Note—**

The term **drug** is defined in section 3 of this Act to mean:

- (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.

**106I Sanctions for non-compliance with personal plan**

- (1) If the Commissioner is satisfied that an offender has failed to comply with any condition of the offender's compulsory drug treatment personal plan, the Commissioner may impose any one or more of the sanctions specified in subsection (2).
- (2) The following kinds of sanctions may be imposed on an offender under this section:
  - (a) withdrawal of privileges granted to the offender under section 106J (2) (a),
  - (b) an increase in the level of the management of the offender in the Compulsory Drug Treatment Correctional Centre,
  - (c) an application to the Drug Court to vary any community supervision order applying to the offender to increase the level of supervision to which the offender is subject,
  - (d) an application to the Drug Court to vary the offender's compulsory drug treatment personal plan to increase the frequency with which the offender must undergo periodic testing for drugs.
- (3) The Commissioner must refer an offender to the Drug Court if the Commissioner is of the opinion that the offender's failure to comply with any condition of the offender's compulsory drug treatment personal plan is of such a serious nature that it might warrant the Drug Court making any of the following:
  - (a) a regression order,
  - (b) a revocation order,
  - (c) a variation of any community supervision order applying to the offender to increase the level of supervision to which the offender is subject.
- (4) Without affecting the other circumstances in which an offender is taken to have failed to comply with his or her compulsory drug treatment personal plan, if an offender is charged before a court with an offence referred to in section 5A (2) of the *Drug Court Act 1998*:
  - (a) the offender is taken to have failed to comply with his or her compulsory drug

treatment personal plan and that failure is taken to be of a serious nature, and

(b) the Commissioner must refer the offender to the Drug Court.

(5) Nothing in this section prevents:

(a) the Commissioner from referring an offender to the Drug Court for any other reason, or

(b) the Drug Court from dealing with an offender as it sees fit, including making any order under this Part.

#### **106J Rewards for compliance with personal plan**

(1) If the Commissioner is satisfied that an offender has maintained a satisfactory level of compliance with the offender's compulsory drug treatment personal plan, the Commissioner may grant any one or more of the rewards specified in this section.

(2) The following kinds of rewards may be granted to an offender under this section:

(a) conferral of privileges,

(b) a decrease in the level of the management of the offender in the Compulsory Drug Treatment Correctional Centre,

(c) an application to the Drug Court to vary any community supervision order applying to the offender to decrease the level of supervision to which the offender is subject,

(d) an application to the Drug Court to vary the offender's compulsory drug treatment personal plan to decrease the frequency with which the offender must undergo periodic testing for drugs.

#### **106K No appeal from decisions of Drug Court or Commissioner**

No appeal lies against the Drug Court or the Commissioner in relation to any decision made by the Drug Court or the Commissioner under this Subdivision.

### **Subdivision 2 Initial allocation and movement between stages of compulsory drug treatment detention**

#### **106L New offenders in compulsory drug treatment detention allocated to Stage 1**

On the making of a compulsory drug treatment order in relation to the offender's sentence of imprisonment, the offender is automatically allocated to closed detention (Stage 1).

**106M Progression and regression between stages of detention**

- (1) After an offender has served his or her sentence in closed detention (Stage 1) for a period of at least 6 months, the Drug Court may order that the offender progress to semi-open detention (Stage 2).
- (2) After an offender has served his or her sentence in semi-open detention (Stage 2) for a period of at least 6 months, the Drug Court may order that the offender progress to community custody (Stage 3).
- (3) If the Drug Court is satisfied, on the balance of probabilities, that an offender has failed to comply in a serious respect with any condition of the offender's compulsory drug treatment personal plan, the Drug Court may order that an offender:
  - (a) serving a sentence in semi-open detention (Stage 2) regress to closed detention (Stage 1), or
  - (b) serving a sentence in community custody (Stage 3) regress to closed detention (Stage 1) or semi-open detention (Stage 2), as the Drug Court sees fit.
- (4) The regulations may make provision for or with respect to the criteria to be used by the Drug Court in determining whether to make a progression or regression order under this section.
- (5) No appeal lies against the Drug Court's decision to make a progression or regression order under this section.

**106N Assessment reports**

- (1) Before the Drug Court makes a progression order in relation to an offender, the Court is to have regard to the following reports prepared in relation to the offender:
  - (a) an assessment report prepared by the Director of the Compulsory Drug Treatment Correctional Centre,
  - (b) in relation to a progression order that would progress an offender to community custody (Stage 3), an assessment report prepared by a probation and parole officer,
  - (c) any other report that the Drug Court considers relevant.
- (2) The Drug Court may, at any time, order that an assessment report on an offender be prepared.
- (3) The regulations may make provision for or with respect to the conduct of investigations and the preparation of reports for the purposes of this Part.

**106O Community supervision orders**

- (1) On the making of a progression order in relation to an offender, the Drug Court must make an order (a **community supervision order**) that:
  - (a) allows the offender to be absent from the Compulsory Drug Treatment Correctional Centre, and
  - (b) imposes conditions on the offender in relation to the periods of time when the offender is not in the Compulsory Drug Treatment Correctional Centre.
- (2) The kinds of conditions that the Drug Court may impose on the offender under this section are as follows:
  - (a) conditions relating to conduct and good behaviour,
  - (b) conditions relating to the supervision of the offender outside the Compulsory Drug Treatment Correctional Centre,
  - (c) conditions relating to drug testing that the offender must undergo,
  - (d) conditions relating to residence, association with other persons or attendance at specified locations,
  - (e) any other kinds of conditions that may be prescribed by the regulations,
  - (f) such other conditions as the Drug Court considers appropriate in the circumstances.
- (3) The Drug Court when imposing any condition on an offender under this section is to have regard to and give substantial weight to any recommendations of the Commissioner.
- (4) The Drug Court may from time to time vary an offender's community supervision order by adding new conditions to, or varying or revoking existing conditions of, the order.
- (5) No appeal lies against the Drug Court in relation to a decision regarding an order under this section.

**106P Commissioner of Corrective Services may make regression and removal orders in special circumstances**

- (1) The Commissioner may order that an offender serving his or her sentence:
  - (a) in semi-open detention (Stage 2) regress to closed detention (Stage 1), or
  - (b) in community custody (Stage 3) regress to closed detention (Stage 1), or
  - (c) in community custody (Stage 3) regress to semi-open detention (Stage 2).

- (2) The Commissioner may order that an offender serving his or her sentence in closed detention (Stage 1) or semi-open detention (Stage 2) be removed from the Compulsory Drug Treatment Correctional Centre and taken to another correctional centre and held in separate custody.
- (3) The Commissioner may make an order referred to in subsection (1) or (2) only if the Commissioner believes, on reasonable grounds, that:
  - (a) the security of the community is threatened, or
  - (b) the good order and discipline of a correctional centre may be jeopardised if the offender is not regressed or removed, or
  - (c) the offender may be about to commit an offence, or
  - (d) another reason exists to regress or remove the offender.
- (4) The Commissioner must immediately notify the Drug Court if the Commissioner makes an order under this section and must give the Drug Court his or her reasons for making the order.
- (5) Within 21 days (or such other period determined by the Drug Court) after receiving the notification of the Commissioner, the Drug Court must review the Commissioner's order and make an order:
  - (a) revoking the Commissioner's order, or
  - (b) confirming the Commissioner's order, or
  - (c) confirming the Commissioner's order, but amending its terms, or
  - (d) revoking, in accordance with section 106Q, the offender's compulsory drug treatment order.
- (6) The Drug Court when reviewing a Commissioner's order under subsection (5) is to have regard to and give substantial weight to any recommendations of the Commissioner.
- (7) No appeal lies against the Drug Court in relation to a decision regarding an order under subsection (5).

### **Division 3 Revocation of compulsory drug treatment order**

#### **106Q Revocation of compulsory drug treatment order**

- (1) The Drug Court may by order revoke an offender's compulsory drug treatment order:
  - (a) if:
    - (i) the offender has failed to comply with a condition of the offender's compulsory

- drug treatment personal plan, and
- (ii) that failure is of a serious nature, and
  - (iii) in the opinion of the Drug Court, the offender:
    - (A) is unlikely to make any further progress in the offender's compulsory drug treatment program, or
    - (B) poses an unacceptable risk to the community of re-offending, or
    - (C) poses a significant risk of harming others or himself or herself, or
  - (b) if the non-parole period for the offender's sentence has expired or is about to expire and the offender is serving his or her sentence in closed detention (Stage 1) or semi-open detention (Stage 2), or
  - (c) if the offender ceases to be an eligible convicted offender (within the meaning of the *Drug Court Act 1998*), or
  - (d) for any other reason the Drug Court sees fit.
- (2) In making a decision under Part 6 as to whether to make a parole order for an offender whose compulsory drug treatment order has been revoked under this section, the Parole Authority is to have regard to the circumstances that led to the revocation.
- (3) No appeal lies against the Drug Court's revocation of a compulsory drug treatment order.

**106R Effect of revocation order**

- (1) A revocation order takes effect, or is taken to have taken effect, on the day on which it is made or on such earlier day as the Drug Court thinks fit.
  - (2) 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 offender was at large after the order took effect.

**106S Warrants committing offenders to correctional centres**

- (1) If the Drug Court revokes a compulsory drug treatment order, it is to 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.

- (2) 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 general manager of that correctional centre, and
  - (b) for the general manager 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.
- (3) The regulations may make provision for or with respect to the form of any warrants issued for the purposes of this section.

## **Division 4 Parole for offenders in compulsory drug treatment detention**

### **106T Drug Court is parole authority for offenders in compulsory drug treatment detention**

- (1) Part 6 applies to an offender who is serving a sentence by way of compulsory drug treatment detention, subject to the following:
- (a) references to the Parole Authority are taken to be references to the Drug Court,
  - (b) references to the Chairperson of the Parole Authority are taken to be references to the Senior Judge of the Drug Court,
  - (c) references to the Secretary of the Parole Authority are taken to be references to the registrar of the Drug Court,
  - (d) any modifications of those provisions prescribed by the regulations.
- (2) On the release of an offender on parole under a parole order made by the Drug Court under Part 6 as applied in accordance with this section (and the consequent expiry of the offender's compulsory drug treatment order under section 106E (b)), Part 7 applies to the offender in the same way as it applies to other offenders released on parole.

#### **Note—**

This section provides that the Drug Court is the authority that will determine whether an offender serving a sentence by way of compulsory drug treatment detention is to be released on parole. Subsection (2) makes it clear that after release on parole (and the consequent expiry of the offender's compulsory drug treatment order), the Parole Authority is responsible for the supervision and revocation of any parole order made in relation to the offender.

## **Division 5 Miscellaneous**

**106U Formal assessment by Director**

- (1) The Director is to cause regular assessment reports to be prepared setting out the progress of each offender's drug treatment and rehabilitation and the offender's compliance with his or her compulsory drug treatment personal plan.
- (2) An assessment report under this section is to be prepared in consultation with the Chief Executive Officer, Justice Health and the Drug Court.
- (3) The regulations may make provision for or with respect to assessment reports under this section, including but not limited to:
  - (a) the frequency of such reports, and
  - (b) the procedures that must be followed with respect to assessment of offenders.

**106V Application of Part 2 to Stages 1 and 2 compulsory drug treatment detention**

- (1) Part 2 and the provisions of any regulations made under that Part, subject to any modifications prescribed by the regulations under this section, apply to and in respect of an offender who is in closed detention (Stage 1) or semi-open detention (Stage 2).
- (2) 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.

**106W Conviction and sentencing of offenders for old offences while compulsory drug treatment order is in force**

- (1) If an offender is convicted and sentenced to a term of imprisonment (a **new sentence**) for an offence that occurred before the offender's compulsory drug treatment order was made, the court that sentenced that offender is to refer the offender to the Drug Court to determine whether the offender's compulsory drug treatment order should:
  - (a) be varied so as to apply also in relation to the new sentence, or
  - (b) be revoked.
- (2) The Drug Court may vary a compulsory drug treatment order so as to direct an offender to serve a new sentence of imprisonment by way of compulsory drug treatment detention.
- (3) Subject to subsection (4), the Drug Court must not vary a compulsory drug treatment order under this section unless the offender is an eligible convicted offender (within the meaning of the *Drug Court Act 1998*).
- (4) Despite section 5A (1) (b) of the *Drug Court Act 1998*, the Drug Court may vary a compulsory drug treatment order under this section if the cumulative unexpired non-parole period for the offender's term of imprisonment under all sentences in force is



greater than 3 years but not more than 4 years.

#### **106X Arrest warrants**

- (1) If it suspects that an offender who is not serving the offender's sentence of imprisonment in the Compulsory Drug Treatment Correctional Centre may have failed to comply with his or her compulsory drug treatment personal plan, the Drug Court may issue a warrant for the offender's arrest.
- (2) A warrant under this section authorises any police officer to arrest the offender and to bring the offender before the Drug Court to be dealt with under this Act.
- (3) The *Bail Act 1978* does not apply to an offender who is arrested on the authority of a warrant under this section.
- (4) The Drug Court's functions under this section may be exercised by the registrar of the Drug Court.

#### **106Y Provision of information relating to offenders**

- (1) This section applies to such persons as are prescribed by the regulations for the purposes of this section, being persons who are involved in the administration of, or who provide services in connection with, an offender's drug treatment under this Part.
- (2) It is the duty of a person to whom this section applies:
  - (a) to promptly notify the registrar of the Drug Court or the Commissioner of any failure by an offender to comply with the offender's compulsory drug treatment personal plan, and
  - (b) to promptly comply with the requirements of the regulations with respect to the giving of information to the registrar of the Drug Court or the Commissioner.
- (3) The following provisions apply to and in respect of any information (**protected information**) relating to an offender that is provided to the Drug Court or the Commissioner, or to any person to whom this section applies, by a person to whom this section applies:
  - (a) the provision of the information does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct,
  - (b) the provision of the information does not constitute a contravention of the *Health Records and Information Privacy Act 2002* or the *Privacy and Personal Information Protection Act 1998*,
  - (c) no liability for defamation is incurred because of the provision of the information,
  - (d) the provision of the information does not constitute a ground for civil proceedings

for malicious prosecution or for conspiracy,

- (e) the information is not admissible in evidence in any proceedings before a court, tribunal or committee,
  - (f) a person is not compellable in any proceedings before a court, tribunal or committee to disclose the information or to produce any document that contains the information.
- (4) The provisions of subsection (3) (e) and (f) do not apply to or in respect of the provision of protected information:
- (a) in proceedings before the Drug Court or any court hearing or determining an appeal from a decision of the Drug Court, or
  - (b) in proceedings before the Parole Authority or any court hearing or determining an application in relation to a decision of the Parole Authority, or
  - (c) in support of, or in answer to, any charge or allegation made in proceedings against a person in relation to the person's exercise of functions under this Act.
- (5) An offender is taken to have authorised the communication of protected information:
- (a) from any person to whom this section applies to the registrar of the Drug Court or the Commissioner, and
  - (b) from the registrar of the Drug Court or the Commissioner to any person to whom this section applies, and
  - (c) from any member of staff of the Drug Court or Corrective Services NSW to any other member of staff of the Drug Court or Corrective Services NSW.
- (6) A provision of any Act or law that prohibits or restricts the disclosure of information does not operate to prevent the provision of information in accordance with this section.

#### **106Z Review of Compulsory Drug Treatment Correctional Centre**

- (1) The Minister is to arrange for a review to be conducted of:
- (a) the compulsory drug treatment program, established under Part 2A of the *Drug Court Act 1998* and this Part, during the first four years of the program's operation, and
  - (b) the provisions of the *Drug Court Act 1998* and this Act relating to the compulsory drug treatment program and of any regulations made for the purposes of those provisions,

in order to ascertain whether any of those provisions (or any other provisions of any

other Act or regulations) should be amended.

- (2) The review is to commence as soon as practicable after the declaration of the Compulsory Drug Treatment Correctional Centre under section 225.
- (3) The Minister is to cause a report of the outcome of the review to be tabled in each House of Parliament as soon as practicable after its completion.

#### **106ZA Regulations**

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

- (a) the administration of the compulsory drug treatment program,
- (b) the management, control, administration, supervision and inspection of the Compulsory Drug Treatment Correctional Centre,
- (c) the procedure to be followed when receiving an offender into the Compulsory Drug Treatment Correctional Centre, including the procedure for accepting or refusing custody of property in an offender's possession when the offender is admitted,
- (d) the search and security procedures to be observed in the Compulsory Drug Treatment Correctional Centre,
- (e) visits to inmates in the Compulsory Drug Treatment Correctional Centre, including the following:
  - (i) the days and times that visits may be allowed,
  - (ii) the maximum number of persons who may visit an inmate at the same time,
  - (iii) the classes of persons who may be prohibited from visiting an inmate,
  - (iv) the conditions that must be observed by persons intending to visit an inmate before such a visit will be allowed,
  - (v) the procedures to be observed by visitors and inmates during visits,
- (f) the use of electronic monitoring devices in relation to offenders in semi-open detention (Stage 2) or community custody (Stage 3),
- (g) the circumstances in which an offender may be tested for drugs (including random and periodic testing) and the type and nature of the tests to be used,
- (h) the circumstances under which an offender may be required to submit to a medical examination by a medical officer,
- (i) the declaration of offences against discipline,
- (j) the day-to-day routine of offenders,

- (k) the service of notices on an offender,
- (l) the provision of post release case management services and other services to offenders after release.

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

### **Introductory note—**

This Part applies to those offenders who have been sentenced to community service work. It deals with the following matters:

- (a) the general obligations of offenders, the administration of community service orders and other miscellaneous matters (Division 1),
- (b) general provisions about community service work and other work performed by offenders (Division 2).

## **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.

**community offender services field officer** means a person who is employed for the purpose of supervising offenders subject to community service orders while the offenders are performing community service work.

**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.

#### **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**

- (1) 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 that, under the Act under which it is made, can be satisfied by the payment of a fine, until the order is satisfied in accordance with that Act,whichever first occurs.
- (2) This section is subject to section 114.

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

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

On receiving notice of the making of a community service order, 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 community offender services field officers 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, the 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 the 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.
- (4) If an application to the Local Court for an extension of the relevant maximum period is made:
  - (a) by the offender's assigned officer, or by the offender with the written consent of the offender's assigned officer, and
  - (b) before the expiry of the relevant maximum period,the community service order is taken to remain in force, even if the relevant maximum period expires, until the application is determined by the Local Court.

#### **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 community offender services field officers 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 an intensive correction 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 an intensive correction 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**

### **Introductory note—**

This Part applies to the granting of parole to those offenders who are subject to sentences of imprisonment. It deals with the following matters:

- (a) eligibility for release on parole, the conditions to which parole is subject, the general obligations of offenders who are on release on parole and other provisions applying generally to parole (Division 1),
- (b) procedures for parole orders for sentences of more than 3 years (Division 2),
- (c) procedures for parole orders for sentences of 3 years or less (Division 3),
- (d) procedures for parole orders in exceptional circumstances (Division 4),
- (e) other miscellaneous matters (Division 5).

## **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) (Repealed)
- (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.
- (4) An offender is not eligible for release on parole if the offender is the subject of a continuing detention order or an interim detention order under the *Crimes (Serious Sex Offenders) Act 2006*.

### **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 of parole generally**

- (1) A parole order is subject to the following conditions:
  - (a) the standard conditions imposed by this Act or 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 Authority under this section.
- (2) The Parole Authority 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.
- (2A) The conditions of a parole order must include conditions giving effect to a post-release plan, prepared by the Probation and Parole Service and adopted by the Parole Authority, in relation to the offender.
- (3) Without limiting subsection (2A), but subject to section 128B, 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 Authority:
- (a) to revoke any standard conditions imposed by this Act or 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 this Act or 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).

#### **128B Conditions of parole as to lifetime supervision**

- (1) This section applies to an offender serving an existing life sentence within the meaning of Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999*, being an offender in respect of whom a parole order is made as a consequence of the Supreme Court having set a non-parole period for the sentence (but not a specified term) under clause 4 of that Schedule.
- (2) It is a condition of a parole order for an offender to whom this section applies that, for the whole of the period for which the parole order is in force:
  - (a) the offender is to be subject to supervision, as prescribed by the regulations, and
  - (b) in relation to that supervision, the offender must comply with such obligations as the Commissioner may from time to time impose on the offender.

#### **Note—**

Unless the parole order is sooner revoked, the effect of this provision is supervision for life.

- (3) This section does not permit the Commissioner to impose any obligations that are inconsistent with any standard conditions imposed by this Act or the regulations or any additional conditions imposed by the sentencing court or the Parole Authority.

#### **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.

(c) (Repealed)

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

- (1) The Parole Authority 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.
- (2) Division 4 of Part 7 applies to the revocation of a parole order under this section in the same way as it applies to the revocation of a parole order under Division 3 of that Part.

### **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 (Repealed)**

### **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 Authority 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 Authority**

- (1) The Parole Authority must not make a parole order for an offender unless it is satisfied, on the balance of probabilities, that the release of the offender is appropriate in the public interest.
- (2) In deciding whether or not the release of an offender is appropriate in the public interest, the Parole Authority must have regard to the following matters:
  - (a) the need to protect the safety of the community,
  - (b) the need to maintain public confidence in the administration of justice,
  - (c) the nature and circumstances of the offence to which the offender's sentence relates,
  - (d) any relevant comments made by the sentencing court,
  - (e) the offender's criminal history,
  - (f) the likelihood of the offender being able to adapt to normal lawful community life,
  - (g) the likely effect on any victim of the offender, and on any such victim's family, of the offender being released on parole,
  - (h) any report in relation to the granting of parole to the offender that has been prepared by or on behalf of the Probation and Parole Service, as referred to in section 135A,
  - (i) any other report in relation to the granting of parole to the offender that has been prepared by or on behalf of the Review Council, the Commissioner or any other authority of the State,
  - (ia) if the Drug Court has notified the Parole Authority that it has declined to make a compulsory drug treatment order in relation to an offender's sentence on the ground referred to in section 18D (1) (b) (vi) of the *Drug Court Act 1998*, the circumstances of that decision to decline to make the order,
  - (j) such guidelines as are in force under section 185A,



(k) such other matters as the Parole Authority considers relevant.

(3) Except in exceptional circumstances, the Parole Authority must not make a parole order for a serious offender unless the Review Council advises that it is appropriate for the offender to be considered for release on parole.

### **135A Preparation of reports by Probation and Parole Service**

A report prepared by or on behalf of the Probation and Parole Service for the purposes of section 135 must address the following matters:

- (a) the likelihood of the offender being able to adapt to normal lawful community life,
- (b) the risk of the offender re-offending while on release on parole, and the measures to be taken to reduce that risk,
- (c) the measures to be taken to assist the offender while on release on parole, as set out in a post-release plan prepared by the Probation and Parole Service in relation to the offender,
- (d) the offender's attitude to the offence to which his or her sentence relates,
- (e) the offender's willingness to participate in rehabilitation programs, and the success or otherwise of his or her participation in such programs,
- (f) the offender's attitude to any victim of the offence to which his or her sentence relates, and to the family of any such victim,
- (g) any offences committed by the offender while in custody, including in particular any correctional centre offences and any offence involving an escape or attempted escape,
- (h) the likelihood of the offender complying with any conditions to which his or her parole may be made subject,
- (i) in the case of an offender in respect of whom the Drug Court has declined to make a compulsory drug treatment order on the ground referred to in section 18D (1) (b) (vi) of the *Drug Court Act 1998*, the contents of any notice under section 18D (2) (b) of that Act.

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

### **136 Application of Subdivision**

This Subdivision applies to offenders who are not serious offenders.

### **137 Consideration of parole when offender first eligible for parole**

(1) The Parole Authority must consider whether or not an offender should be released on

parole at least 60 days before the offender's parole eligibility date.

- (2) Despite subsection (1), the Parole Authority may defer consideration of an offender's case until not less than 21 days before the offender's parole eligibility date if it is of the opinion:
  - (a) that it is unable to complete its consideration because it has not been furnished with a report required to be made to it, or
  - (b) that there are other relevant matters requiring further consideration.

### **137A Consideration of parole in subsequent years**

- (1) At any time within 90 days before an offender's annual review date, the offender, if still eligible for release on parole, may apply to be released on parole.
- (1A) For the purposes of this section, an **offender's annual review date** occurs on each anniversary of the offender's parole eligibility date.
- (2) After receiving such an application, but not more than 60 days before the offender's annual review date, the Parole Authority must consider whether or not the offender should be released on parole.
- (3) Despite subsection (2):
  - (a) if the offender is unlawfully at large following revocation of parole, the Parole Authority is not required to consider the offender's case until the offender is returned to custody, and
  - (b) if the offender is unlawfully at large for the whole of one or more years following the revocation, the Parole Authority may decline to consider the offender's case at all in relation to that year or those years, and
  - (c) in any case, the Parole Authority may decline to consider an offender's case for up to 3 years at a time after it last considered the grant of parole to the offender.

### **137B Consideration of parole so as to avoid manifest injustice**

The Parole Authority may consider an offender's case at any time after the offender's parole eligibility date, and without the need for an application, in such circumstances as may be prescribed by the regulations as constituting manifest injustice.

### **137C Parole Authority may examine offender**

- (1) For the purpose of its consideration of an offender's case, the Parole Authority may (but need not) examine the offender.
- (2) An offender is not entitled to make submissions to the Parole Authority at any meeting held by it for the purposes of this section, and consequently section 190 (1) does not

apply to any such meeting.

### **138 Release of offender on parole**

(1) As soon as practicable after deciding to release an offender on parole, the Parole Authority must make an order directing that the offender be released on parole on a day occurring during a period specified in accordance with subsection (1AA).

(1AA) The period to be specified in a parole order under this section is to be:

(a) if the order is made earlier than the offender's parole eligibility date, a period beginning no earlier than the offender's parole eligibility date and ending no later than 35 days after that date, and

(a1) if the order is made following an application by the offender referred to in section 137A, and is made before the offender's annual review date (within the meaning of that section), a period beginning no earlier than the offender's annual review date and ending no later than 35 days after that date, and

(b) in any other case, a period beginning no earlier than the date on which the order is made and ending no later than 35 days after that date.

(1A) In determining a day on which to release a violent offender under subsection (1), the Parole Authority 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 Authority to amend or repeal an order as referred to in section 43 (2) of the *Interpretation Act 1987*.

### **139 Notice to offender of decision to refuse parole**

(1) As soon as practicable after deciding not to make a parole order for an offender, the Parole Authority:

(a) must give notice of its decision to the offender, and

(b) must determine whether, in relation to any reconsideration of the matter:

(i) there will be a hearing, whether or not the offender requests a hearing, or

(ii) there will be a hearing only if the offender requests a hearing and the Parole Authority is satisfied that a hearing is warranted.

- (2) The notice must inform the offender of the following matters:
  - (a) that the Parole Authority's decision is not to make a parole order in relation to the offender,
  - (b) that the offender may apply to the Parole Authority for the matter to be reconsidered,
  - (c) that, if the offender makes such an application:
    - (i) there will be a hearing, whether or not the offender requests a hearing, or
    - (ii) there will be a hearing only if the offender requests a hearing and the Parole Authority is satisfied that a hearing is warranted,
  - (d) that the Parole Authority will take into account any submissions by the offender when making its final decision on the matter.
- (3) The notice:
  - (a) must indicate the address to which such an application should be sent, and the date by which such an application must be made, and
  - (b) subject to section 194, must be accompanied by copies of the reports and other documents intended to be used by the Parole Authority in making its final decision.
- (4) An application by an offender under this section:
  - (a) may be accompanied by written submissions in support of the application, and
  - (b) if the notice to the offender states that there will be a hearing only if the application requests a hearing, may request a hearing.
- (5) If there is to be a hearing, the Parole Authority:
  - (a) must set a date (occurring as soon as practicable) on which the hearing will be conducted, and
  - (b) must give notice to the offender of the date, time and place for the hearing.

#### **140 Conduct of hearing**

- (1) At any hearing conducted by the Parole Authority pursuant to an application under section 139, the offender may make submissions to the Parole Authority as to whether or not the offender should be released on parole.
- (2) Submissions may be made orally or in writing and, if in writing, may be given to the Parole Authority either in advance of or at the hearing.

- (3) The Parole Authority may postpone or adjourn a hearing for any reason that seems appropriate to it.

**141 Decision following review**

- (1) After reviewing all the reports, documents, submissions and other information placed before it, the Parole Authority must decide:
- (a) whether or not the offender should be released on parole, or
  - (b) whether, for reasons specified by the Parole Authority 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 Authority decides that the offender should be released on parole, the Parole Authority must make an order directing the release of the offender on a day occurring during a period specified in accordance with subsection (3AA).

- (3AA) The period to be specified in a parole order under this section is to be:

- (a) if the order is made earlier than the offender's parole eligibility date, a period beginning no earlier than the offender's parole eligibility date and ending no later than 35 days after that date, and
- (b) in any other case, a period beginning no earlier than the date on which the order is made and ending no later than 35 days after that date.

- (3A) In determining when a violent offender should be released, the Parole Authority 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 Authority decides that the offender should not be released on parole, the Parole Authority:

- (a) (Repealed)
- (b) must cause notice that it does not intend to make a parole order to be served on the offender.

### **141A Submissions by Commissioner**

- (1) The Commissioner may at any time make submissions to the Parole Authority concerning the release on parole of an offender.
- (2) If the Commissioner makes any such submission before the Parole Authority makes a final decision concerning the release of the offender, the Parole Authority must not make such a decision without taking the submission into account.
- (3) If the Commissioner makes any such submission after the Parole Authority makes a final decision concerning the release of the offender, but before the offender is released, the Parole Authority must consider whether or not it should exercise its power under section 130 to revoke the relevant parole order.
- (4) The regulations may make provision for or with respect to submissions by the Commissioner under this section, including provisions relating to the application of this Subdivision in connection with any such submission.

## **Subdivision 3 Serious offenders**

### **142 Application of Subdivision**

This Subdivision applies to serious offenders.

### **143 Consideration of parole when serious offender first eligible for parole**

- (1) The Parole Authority must consider whether or not a serious offender should be released on parole at least 60 days before the offender's parole eligibility date.
- (2) Despite subsection (1), the Parole Authority may defer consideration of an offender's case until not less than 21 days before the offender's parole eligibility date if it is of the opinion:
  - (a) that it is unable to complete its consideration because it has not been furnished with a report required to be made to it, or
  - (b) that there are other relevant matters requiring further consideration.

### **143A Consideration of parole in subsequent years**

- (1) At any time within 90 days before an offender's annual review date, the offender, if still eligible for release on parole, may apply to be released on parole.
  - (1A) For the purposes of this section, an **offender's annual review date** occurs on each anniversary of the offender's parole eligibility date.
- (2) After receiving such an application, but not more than 60 days before the offender's annual review date, the Parole Authority must consider whether or not the offender should be released on parole.

(3) Despite subsection (2):

- (a) if the offender is unlawfully at large following revocation of parole, the Parole Authority is not required to consider the offender's case until the offender is returned to custody, and
- (b) if the offender is unlawfully at large for the whole of one or more years following the revocation, the Parole Authority may decline to consider the offender's case at all in relation to that year or those years, and
- (c) in any case, the Parole Authority may decline to consider an offender's case for up to 3 years at a time after it last considered the grant of parole to the offender.

**143B Consideration of parole so as to avoid manifest injustice**

The Parole Authority may consider a serious offender's case at any time after the offender's parole eligibility date, and without the need for an application, in such circumstances as may be prescribed by the regulations as constituting manifest injustice.

**143C Parole Authority may examine serious offender**

- (1) For the purpose of its consideration of a serious offender's case, the Parole Authority may (but need not) examine the offender.
- (2) A serious offender is not entitled to make submissions to the Parole Authority at any meeting held by it for the purposes of this section, and consequently section 190 (1) does not apply to any such meeting.

**144 Formulation of Parole Authority'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 Authority 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 intention to grant parole**

- (1) As soon as practicable after forming an initial intention to make a parole order for a serious offender, but subject to and in accordance with the regulations, the Parole Authority must give notice of its intention to those victims of the offender (if any) whose names are recorded in the Victims Register.
- (2) The notice must inform each victim concerned of the following matters:
  - (a) that the Parole Authority's initial intention is to make a parole order in relation to the offender,

- (b) that the victim may apply to the Parole Authority for the matter to be reconsidered,
  - (c) that, if the victim makes such an application, there will be a hearing only if the application requests a hearing,
  - (d) that the Parole Authority will take into account any submissions by the victim when making its final decision on the matter.
- (3) The notice must indicate the address to which such an application should be sent and the date by which such an application must be made.
- (4) An application by a victim under this section:
- (a) may be accompanied by written submissions in support of the application, and
  - (b) may request a hearing.
- (5) If the application requests a hearing, the Parole Authority:
- (a) must set a date (occurring as soon as practicable) on which the hearing will be conducted, and
  - (b) must give notice to the Commissioner, the offender and the victim of the date, time and place for the hearing.
- (6) The notice to the offender under subsection (5) (b) must include the following information:
- (a) that the Parole Authority's initial intention is to make a parole order,
  - (b) that there will be a hearing conducted for the purpose of reconsidering the matter,
  - (c) that, following the hearing, the Parole Authority could change its intention,
  - (d) that the offender will be entitled to make submissions at the hearing as to whether or not the offender should be released on parole,
  - (e) that other submissions may be made at the hearing by the State and by victims of the offender.
- (7) In circumstances where, under subsection (1), notice need not be given of its initial intention, the Parole Authority may, subject to section 152, proceed immediately to confirm its intention.

#### **146 Notice to serious offender of intention to refuse parole**

- (1) As soon as practicable after forming an initial intention not to make a parole order for a serious offender, the Parole Authority:



- (a) must give notice of its intention to the offender, and
  - (b) must determine whether, in relation to any reconsideration of the matter:
    - (i) there will be a hearing, whether or not the offender requests a hearing, or
    - (ii) there will be a hearing only if the offender requests a hearing and the Parole Authority is satisfied that a hearing is warranted.
- (2) The notice must inform the offender of the following matters:
- (a) that the Parole Authority's initial intention is not to make a parole order in relation to the offender,
  - (b) that the offender may apply to the Parole Authority for the matter to be reconsidered,
  - (c) that, if the offender makes such an application:
    - (i) there will be a hearing, whether or not the offender requests a hearing, or
    - (ii) there will be a hearing only if the offender requests a hearing and the Parole Authority is satisfied that a hearing is warranted,
  - (d) that the Parole Authority will take into account any submissions by the offender when making its final decision on the matter.
- (3) The notice:
- (a) must indicate the address to which such an application should be sent, and the date by which such an application must be made, and
  - (b) subject to section 194, must be accompanied by copies of the reports and other documents intended to be used by the Parole Authority in making its final decision.
- (4) An application by an offender under this section:
- (a) may be accompanied by written submissions in support of the application, and
  - (b) if the notice to the offender states that there will be a hearing only if the application requests a hearing, may request a hearing.
- (5) If there is to be a hearing, the Parole Authority:
- (a) must set a date (occurring as soon as practicable) on which the hearing will be conducted, and
  - (b) must give notice to the Commissioner, the offender and, subject to and in accordance with the regulations, to those victims of the offender (if any) whose

names are recorded in the Victims Register, of the date, time and place for the hearing.

- (6) The notice to a victim under subsection (5) (b) must include the following information:
- (a) that the Parole Authority's initial intention is not to make a parole order,
  - (b) that there will be a hearing for the purpose of reconsidering the matter,
  - (c) that, following the hearing, the Parole Authority could change its intention,
  - (d) that the victim will be entitled to make submissions at the hearing as to whether or not the offender should be released on parole,
  - (e) that other submissions may be made at the hearing by the State and by the offender.

#### **147 Conduct of hearing**

- (1) At any hearing conducted by the Parole Authority pursuant to an application under section 145 or 146, both the offender and any victim of the offender may make submissions to the Parole Authority as to whether or not the offender should be released on parole.
- (2) Submissions may be made orally or in writing and, if in writing, may be given to the Parole Authority either in advance of or at the hearing.
- (3) The Parole Authority may postpone or adjourn a hearing for any reason that seems appropriate to it.

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

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

- (2) The Parole Authority must consider all submissions made in accordance with this Subdivision and, subject to section 185 (2), 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 Authority must decide:
  - (a) whether or not the offender should be released on parole, or
  - (b) whether, for reasons specified by the Parole Authority 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 Authority 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 occurring during a period specified in accordance with section 151.
- (4) If the Parole Authority decides that the offender should not be released on parole, the Parole Authority:
  - (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 Authority must confirm its initial intention to make a parole order if there are no victim submissions or other submissions to the contrary or if it is not required to seek victim submissions.
- (2) The Parole Authority must confirm its initial intention not to make a parole order if there are no offender submissions.
- (3) If the Parole Authority 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 occurring during a period specified in accordance with section 151.
- (4) If the Parole Authority 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 Release of serious offender on parole**

- (1) The period to be specified in a parole order under section 149 or 150 is to be:
  - (a) if the order is made earlier than 14 days before the offender's parole eligibility date, a period beginning no earlier than the offender's parole eligibility date and ending no later than 21 days after that date, and
    - (a1) if the order is made following an application by the offender referred to in section 143A, and is made before the offender's annual review date (within the meaning of that section), a period beginning no earlier than the offender's annual review date and ending no later than 35 days after that date, and
    - (b) in any other case, a period beginning no earlier than 14 days after the date on which the order is made and ending no later than 35 days after that date.
- (1A) In determining a day on which to release a violent offender under subsection (1), the Parole Authority 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 Supreme Court within 14 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 Supreme Court includes a requirement that the Parole Authority reconsider its decision in the light of the direction, until the Parole Authority 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 Authority 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 Authority rejects the advice of the Review Council concerning the release on parole of a serious offender, the Parole Authority must state in writing its reasons for rejecting that advice.
- (2) The Parole Authority must forward a copy of those reasons to the Review Council.

- (3) The Review Council may make submissions to the Parole Authority concerning the rejection of its advice within 21 days of that rejection.
- (4) The Parole Authority 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 Authority concerning the release on parole of a serious offender.
- (2) If the State makes any such submission before the Parole Authority makes a final decision concerning the release of the offender, the Parole Authority must not make such a decision without taking the submission into account.
- (3) If the State makes any such submission after the Parole Authority makes a final decision concerning the release of the offender, but before the offender is released, the Parole Authority must consider whether or not it should exercise its power under section 130 to revoke the relevant parole order.
- (4) 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.
- (5) The powers of the State under this section may be exercised by the Commissioner and by any other authority 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 Authority, 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 Authority 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 Authority by or on behalf of the offender.
- (2) An application under this section must be lodged with the Secretary of the Parole Authority.
- (3) After considering the application, the Parole Authority may make an order directing the release of the offender on parole if, and only if, the Parole Authority:
  - (a) is satisfied (on the basis of a report prepared by the Chief Executive Officer, Justice Health) 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 Supreme Court**

#### **155 Application to Supreme Court by offender**

- (1) If:
  - (a) the Parole Authority decides that an offender should not be released on parole, and
  - (b) the offender alleges that the decision of the Parole Authority has been made on the basis of false, misleading or irrelevant information,the offender may, in accordance with rules of court, apply to the Supreme Court for a direction to be given to the Parole Authority as to whether the information was false, misleading or irrelevant.

- (2) The Supreme Court 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 Supreme Court 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.
- (4) This section does not give the Supreme Court jurisdiction to consider the merits of the Parole Authority's decision otherwise than on the grounds referred to in subsection (1).

### **156 Application to Supreme Court by State**

- (1) If:
  - (a) the Parole Authority 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 Authority 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 Supreme Court for a direction to be given to the Parole Authority as to whether the information was false, misleading or irrelevant.
- (2) The Supreme Court may give such directions with respect to the information as it thinks fit.
- (3) This section does not give the Supreme Court jurisdiction to consider the merits of the Parole Authority's decision otherwise than on the grounds referred to in subsection (1).

### **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 Supreme Court.
- (2) The power of the Supreme Court 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 Authority**

- (1) The Parole Authority 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 Authority 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 Authority is satisfied that it is necessary to release the offender on parole because of exceptional extenuating circumstances.
- (2) The Parole Authority 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.

#### **160AA Submissions by Commissioner**

- (1) The Commissioner may at any time make submissions to the Parole Authority concerning the release on parole of an offender.
- (2) If the Commissioner makes any such submission before the Parole Authority makes a final decision concerning the release of the offender, the Parole Authority must not make such a decision without taking the submission into account.
- (3) If the Commissioner makes any such submission after the Parole Authority makes a



final decision concerning the release of the offender, but before the offender is released, the Parole Authority must consider whether or not it should exercise its power under section 130 to revoke the relevant parole order.

- (4) The regulations may make provision for or with respect to submissions by the Commissioner under this section, including provisions relating to the application of this Division in connection with any such submission.

## **Division 4A Parole orders for prisoners received from Norfolk Island**

### **160AB Definitions**

In this Division:

**modification** includes addition, exception, omission or substitution.

**Norfolk Island Act** means the *Sentencing Act 2007* of Norfolk Island.

**offender** means a person who is serving in New South Wales a sentence by way of full-time detention imposed under a law in force in Norfolk Island.

### **160AC Parole orders for prisoners from Norfolk Island**

- (1) The Parole Authority has, and may exercise, in relation to an offender the functions of a Board under Part 6 of the Norfolk Island Act.
- (2) This Act and the regulations apply to and in respect of the parole of an offender, and a parole order made by the Parole Authority for an offender under the Norfolk Island Act, in the same way as they apply to any other offender or parole order to which Part 6 of this Act applies. However, this Act and the regulations do not apply to the extent to which they are inconsistent with the Norfolk Island Act.

#### **Note—**

Section 151 (10) of the Norfolk Island Act requires the Parole Authority, when making a parole order, to exercise its duties in accordance with the legislation, rules and procedures applicable under the [Crimes \(Administration of Sentences\) Act 1999](#).

- (3) The regulations may provide that any specified provision of this Act or the regulations:
- (a) does or does not apply to the parole of an offender or a parole order for an offender, or
- (b) applies to and in respect of the parole of an offender or a parole order for an offender with such modifications as the regulations may prescribe.
- (4) The Probation and Parole Service has the same functions in respect of an offender as it has in respect of any other offender to which Part 6 of this Act applies.
- (5) Despite any other provision of this section, the Parole Authority and the Probation and Parole Service are not required to exercise any functions in respect of an offender who

is not in New South Wales unless they are doing so in accordance with an agreement with the Administration of Norfolk Island.

## **Division 5 Miscellaneous**

### **160A Relationship of parole orders to orders under the [Crimes \(Serious Sex Offenders\) Act 2006](#)**

- (1) An offender's obligations under a parole order are suspended while the offender is subject to an extended supervision order, an interim supervision order or an interim detention order under the [Crimes \(Serious Sex Offenders\) Act 2006](#).
- (2) For the purposes of Division 3 of Part 7, the offender's obligations under the extended supervision order or interim supervision order are taken to be obligations under the parole order.

**Note—**

Consequently, the offender's parole order may be revoked under Division 3 of Part 7 if the offender fails to comply with his or her obligations under the supervision order.

- (3) Any parole order to which an offender is subject is revoked if a continuing detention order is made against the offender under the [Crimes \(Serious Sex Offenders\) Act 2006](#).

### **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 Authority of certain orders**

**Introductory note—**

This Part applies to the revocation and reinstatement of various kinds of orders. It deals with the following matters:

- (a) the revocation and reinstatement of intensive correction orders (Division 1),
- (b) the revocation and reinstatement of home detention orders (Division 2),
- (c) the revocation of parole orders (Division 3),
- (d) post-revocation procedures and rights of appeal (Division 4),
- (e) the giving of certain directions by the Supreme Court and rights of appearance in related proceedings (Division 5),
- (f) other miscellaneous matters (Division 6).

## **Division 1 Intensive correction orders**

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

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

### **163 Revocation of intensive correction order**

- (1) The Parole Authority may, on its own initiative or on the recommendation of the Commissioner, make an order (a **revocation order**) revoking an intensive correction order:
  - (a) if it is satisfied that the offender has failed to comply with the offender's obligations under the order, or
  - (b) if it is satisfied that the offender is unable to comply with the offender's obligations under the order as a result of a material change in the offender's circumstances, or
  - (c) if the offender fails to appear before the Parole Authority when called on to do so under section 180, or
  - (d) if the offender has applied for the order to be revoked.
- (2) The Parole Authority may revoke an offender's intensive correction order on the recommendation of the Commissioner if it is satisfied that health reasons or compassionate grounds exist that justify its revocation.
- (3) If an intensive correction order is revoked under subsection (2), the Parole Authority 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.
- (4) The Parole Authority must revoke an intensive correction 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, 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.

- (5) A revocation order may be made:
- (a) whether or not the offender has been called on to appear before the Parole Authority, and
  - (b) whether or not the Parole Authority has held an inquiry.
- (6) 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 Authority 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 Authority that the offender failed to comply with the offender's obligations under the intensive correction 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.

#### **164A (Repealed)**

#### **165 Parole Authority may reinstate revoked intensive correction order**

- (1) If an offender's intensive correction order has been revoked under this Division or under section 179, the Parole Authority:
- (a) on the application of the offender, and
  - (b) subject to Part 5 of the *Crimes (Sentencing Procedure) Act 1999*,
- may make an order reinstating the offender's intensive correction order in respect of the remaining balance of the offender's sentence.
- (2) Such an application:
- (a) may not be made until the offender has, since the intensive correction order was revoked, served at least 1 month of the offender's sentence by way of full-time detention, and
  - (b) must state what the offender has done, or is doing, to ensure that the offender will not fail to comply with the offender's obligations under the intensive correction order in the event that it is reinstated.

- (3) Before making an order reinstating an offender's intensive correction order, the Parole Authority must refer the offender to the Commissioner for assessment as to the suitability of the offender for intensive correction in the community.
- (4) Part 5 of the *Crimes (Sentencing Procedure) Act 1999* applies to and in respect of the Parole Authority and the offender in relation to the making of an intensive correction 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 an intensive correction order under that Act.
- (5) The Parole Authority 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.

#### **165AA (Repealed)**

#### **165A Parole Authority may order home detention**

- (1) This section applies if the Parole Authority revokes an intensive correction order and, at the time that the revocation order takes effect, the remainder of the term of the sentence to which the intensive correction order relates is 18 months or less.
- (2) The Parole Authority may make an order directing that the remainder of the term of the sentence is to be served by way of home detention.
- (3) However, the Parole Authority 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 Authority 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 intensive correction order referred to in subsection (1) is revoked.

#### **165B 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 165A, the Parole Authority may make an order (a **temporary release order**) releasing the offender from custody or permitting the offender to remain at large, subject to such supervision as is prescribed by the regulations, pending the Parole Authority'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 Authority at any time, and
  - (b) must be revoked by the Parole Authority when it makes its decision as to whether or not to make a home detention order under section 165A 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.

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

- (1) The conditions to which a home detention order under section 165A 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 Authority has reason to suspect that an offender has failed to comply with the offender's obligations under a home detention order, the Parole Authority 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 Authority in relation to the matters under inquiry.

### 167 Revocation of home detention order

- (1) The Parole Authority 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 Authority 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,

and may do so either on its own initiative or on the recommendation of the Commissioner or a probation and parole officer.

- (2) A revocation order may be made:
  - (a) whether or not the offender has been called on to appear before the Parole Authority, and
  - (b) whether or not the Parole Authority 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 Authority 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 Authority must revoke a home detention order:

- (a) that it has made under section 165A, 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 Authority 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 Authority 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 Authority may reinstate revoked home detention order or prior revoked intensive correction 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 Authority 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



165A following revocation of an intensive correction order under Division 1, the Parole Authority 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 intensive correction 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 Authority must refer the offender to the Probation and Parole Service for assessment as to the suitability of the offender for home detention or intensive correction, as the case requires.
- (3) Parts 5 and 6 of the *Crimes (Sentencing Procedure) Act 1999* apply to and in respect of the Parole Authority and the offender in relation to the making of an intensive correction 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 an intensive correction order or home detention order under that Act.
- (4) The Parole Authority 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 Authority has reason to suspect that an offender has failed to comply with the offender's obligations under a parole order, the Parole Authority 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 Authority 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 Authority in relation to the matters under inquiry.
- (3) The Parole Authority 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 Authority 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 Authority when called on to do so under section 180, or

(c) if the offender has applied for the order to be revoked,

and may do so either on its own initiative or on the recommendation of the Commissioner or a probation and parole officer.

(2) A revocation order may be made:

(a) whether or not the offender has been called on to appear before the Parole Authority, and

(b) whether or not the Parole Authority 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 Authority 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 Authority 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 Authority 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 Authority 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.

**172A Interim suspension of parole order**

- (1) On the application of the Commissioner, a judicial member of the Parole Authority:
  - (a) may make an order suspending an offender's parole order, and
  - (b) if the offender is not then in custody, may issue a warrant for the offender's arrest.
- (2) An application under subsection (1) may be made in person or by telephone, electronic mail or facsimile transmission.
- (3) Action under subsection (1) may only be taken in relation to an offender's parole order if the judicial member is satisfied:
  - (a) that the Commissioner has reasonable grounds for believing:
    - (i) that the offender has failed to comply with the offender's obligations under the parole order, or
    - (ii) that there is a serious and immediate risk that the offender will leave New South Wales in contravention of the conditions of the parole order, or
    - (iii) that there is a serious and immediate risk that the offender will harm another person, or
    - (iv) that there is a serious and immediate risk that the offender will commit an offence, and
  - (b) that, because of the urgency of the circumstances, there is insufficient time for a meeting of the Parole Authority to be convened to deal with the matter.
- (4) If an application under this section is made otherwise than in person, the judicial member may furnish the applicant with a suspension order or arrest warrant:
  - (a) by sending a copy of the order or warrant to the applicant by electronic mail or facsimile transmission, or
  - (b) by dictating the terms of the order or warrant to the applicant by telephone.
- (5) A document:
  - (a) that contains:
    - (i) a copy of a suspension order or arrest warrant that the judicial member has sent by electronic mail or facsimile transmission, or
    - (ii) the terms of a suspension order or arrest warrant that the judicial member has dictated by telephone, and

(b) that bears a notation:

(i) as to the identity of the judicial member, and

(ii) as to the time at which the copy was sent or the terms dictated,

has the same effect as the original suspension order or arrest warrant.

- (6) A suspension order may be revoked by any judicial member of the Parole Authority or by the Commissioner.
- (7) Unless sooner revoked, a suspension order ceases to have effect at the end of 28 days after it is made or, if the offender is not in custody when it is made, at the end of 28 days after the offender is taken into custody.
- (8) While a suspension order is in force, the parole order to which it relates does not have effect.
- (9) An arrest warrant is sufficient authority for a police officer to arrest 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 general manager of that correctional centre.
- (10) In this section:

**arrest warrant** means a warrant referred to in subsection (1) (b).

**suspension order** means an order referred to in subsection (1) (a).

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

### **173 Notice of revocation**

- (1) The Parole Authority must cause a notice (a **revocation notice**) to be served on an offender if the Parole Authority revokes the offender's intensive correction 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 Authority issues a warrant under section 181 in relation to the offender, as soon as practicable after the warrant has been executed and, in any case, within 21 days after the offender is returned to custody.
- (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 Authority is to meet:
  - (i) for the purpose of reconsidering the revocation of the intensive correction 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 Authority, not later than 7 days before the date so set, if the offender intends to make submissions to the Parole Authority in relation to the reconsideration of those matters, and
- (d) must be accompanied by:
  - (i) a copy of the revocation order by which the intensive correction order, home detention order or parole order was revoked, and
  - (ii) copies of the reports and other documents used by the Parole Authority in making the decision to revoke the intensive correction 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 Authority that the offender intends to make submissions to the Parole Authority, the Chairperson of the Parole Authority must convene a meeting of the Parole Authority, 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 intensive correction 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 Authority with respect to the revocation of the intensive correction 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 Authority must decide whether or not:
  - (a) to rescind the revocation of the intensive correction 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 Authority may not rescind the revocation of:

(a) (Repealed)

(b) an intensive correction order that it has revoked under section 163 (4), or

(c) a home detention order that it has revoked under section 167 (6),

except in such circumstances as may be prescribed by the regulations as constituting manifest injustice.

(2) (Repealed)

(3) A decision under this section has effect according to its terms even if the intensive correction order, home detention order or parole order concerned has expired.

(4) If the Parole Authority rescinds the revocation of the intensive correction order, home detention order or parole order concerned, any other intensive correction 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 Authority rescinds the revocation of the intensive correction order, home detention order or parole order concerned, the Parole Authority must cause the reasons for its decision to be recorded in its minutes.

#### **175A Review not available in certain circumstances**

If an offender's intensive correction order, home detention order or parole order is revoked within 30 days before the date on which the offender's sentence expires (ignoring any extension of the sentence under section 168 (3)):

(a) the revocation notice referred to in section 173 is not required to comply with the requirements of section 173 (2) (b) or (c), and

(b) the offender is not entitled to seek reconsideration of the revocation of the order under section 174.

### **Division 5 Applications to Supreme Court**

#### **176 Application to Supreme Court by offender**

(1) If:

(a) the Parole Authority revokes an intensive correction order, home detention order or parole order, and

(b) the offender to whom the intensive correction 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 Supreme Court for a direction to be given to the Parole Authority as to whether the information was false, misleading or irrelevant.

- (2) The Supreme Court 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 Supreme Court 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.
- (4) This section does not give the Supreme Court jurisdiction to consider the merits of the Parole Authority's decision otherwise than on the grounds referred to in subsection (1).

#### **177 Application to Supreme Court by State**

- (1) If:
  - (a) the Parole Authority 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 Supreme Court for a direction to be given to the Parole Authority as to whether the information was false, misleading or irrelevant and the Supreme Court may give such directions with respect to the information as it thinks fit.
- (2) This section does not give the Supreme Court jurisdiction to consider the merits of the Parole Authority's decision otherwise than on the grounds referred to in subsection (1).

#### **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 Supreme Court.
- (2) The power of the Supreme Court 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 intensive correction 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 Authority may revoke any or all of the other intensive correction 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 1–4 do not apply to the revocation of an intensive correction order, home detention order or parole order under this section, except as provided by subsection (4).

(3) No appeal lies against the revocation of an intensive correction order, home detention order or parole order under this section.

(4) Section 165A applies to an intensive correction order revoked under this section in the same way as it applies to an intensive correction order revoked under Division 1 of this Part.

### 179A Revocation of first of consecutive home detention orders—Parole Authority 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 Authority has declined to revoke),

the Parole Authority 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 Authority determines that the offender is not suitable for home detention, the Parole Authority 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.

**179B Revocation of consecutive intensive correction orders**

- (1) When the Parole Authority revokes an offender's intensive correction order under this Part, the Parole Authority must at the same time make an order revoking any other intensive correction order to which the offender is subject at that time (including any order that is yet to come into force).
- (2) No appeal lies against a revocation of an intensive correction order under this section.

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

- (1) For the purposes of an inquiry under this Part, the Parole Authority:
- (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 Authority (as referred to in section 183 (2) (a)), 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 Authority.
- (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 Authority:
- (a) revokes an intensive correction order, home detention order or parole order, or
  - (b) decides not to make a home detention order under section 165A with respect to an offender the subject of a temporary release order under section 165B,
- 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 Authority revokes a temporary release order under section 165B, it may issue a warrant committing the offender to a correctional centre pending the Parole Authority's decision as to whether or not to make a home detention order under section 165A.

- (1B) The Parole Authority may, by order, recall or suspend any warrant that it has issued under this section.
- (2) A warrant or order under this section is to be signed by a judicial member of the Parole Authority as referred to in section 183 (2) (a).
- (3) Subject to any order under subsection (1B), 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 general manager of that correctional centre, and
  - (b) for the general manager 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 Parole Authority's decision as to whether or not to make a home detention order under section 165A, as the case requires.
- (4) The regulations may make provision for or with respect to the form of any warrants or orders issued for the purposes of this section.

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

The Parole Authority may exercise any function under this Part in relation to an intensive correction order, home detention order or parole order, even if the order has expired.

## **Part 8 The Parole Authority**

### **Introductory note—**

This Part establishes the State Parole Authority. It deals with the following matters:

- (a) the constitution and functions of the Parole Authority (Division 1),
- (b) the powers of the Parole Authority in relation to inquiries conducted by it (Division 2),
- (c) other miscellaneous matters (Division 3).

## **Division 1 Constitution and functions**

### **183 Constitution of Parole Authority**

- (1) There is constituted by this Act a State Parole Authority.
- (2) The Parole Authority 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) (Repealed)

(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.

(2A) Of the members referred to in subsection (2) (e), at least one must be a person who, in the opinion of the Minister, has an appreciation or understanding of the interests of victims of crime.

(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 Authority.

#### **184 Divisions of Parole Authority**

(1) The Chairperson may from time to time constitute Divisions of the Parole Authority 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) one or more official members.

(3) The Chairperson may delegate to a Division any of the functions of the Parole Authority.

(4) For the purpose of its exercise of any function so delegated, a Division is taken to be the Parole Authority.

#### **185 Functions of Parole Authority**

(1) The Parole Authority has the following functions:

- (a) to determine matters with respect to the granting of parole and the conditions on which parole is granted,
  - (b) to determine matters with respect to the revocation of intensive correction orders, home detention orders and parole orders,
  - (c) such other functions as are conferred or imposed on it by or under this or any other Act or law.
- (2) In exercising its functions, the Parole Authority:
- (a) must have regard to the fact that the Commissioner has the care, control and management of all offenders who are held in custody in accordance with Part 2, 3 or 4, and
  - (b) must consider any submissions made to it by the Commissioner or by any other person or body entitled to make such submissions.
- (3) In particular, in exercising any function in respect of which the Review Council has furnished advice, the Parole Authority must have regard not only to that advice but also to any submissions made by the Commissioner with respect to that advice.
- (4) The regulations may make provision for or with respect to submissions by the Commissioner under this section.

#### **185A Establishment of guidelines**

In consultation with the Minister, the Parole Authority may from time to time establish guidelines (not inconsistent with this Act or the regulations) in relation to the exercise of its functions.

## **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 Authority for the purpose of giving evidence, or
  - (b) to produce to the Parole Authority 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 Authority,
- at a time, date and place specified in the instrument.
- (2) A judicial member may require a person who appears before the Parole Authority 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 Authority, the Parole Authority 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 Authority 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 Authority to answer a question that is reasonably related to the proceedings before the Parole Authority.
- (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 Authority.

Maximum penalty: 5 penalty units.

### **189 Misconduct before Parole Authority**

- (1) A person must not, during a hearing at a meeting of the Parole Authority:
  - (a) wilfully insult any member of the Parole Authority, 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: 20 penalty units or imprisonment for 28 days.

(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 Authority at which any person (including the State) is entitled under this Act to make submissions to the Parole Authority, the person:

(a) may be represented by an Australian legal practitioner or, with the consent of the Parole Authority, by any other person, and

(b) may call and examine any witness who attends, including any witness called by the Parole Authority, and

(c) may produce documents and exhibits to the Parole Authority, and

(d) may give evidence on oath, and

(e) may otherwise adduce, orally or in writing, to the Parole Authority such matters, and address the Parole Authority on such matters, as are relevant to the proceedings before the Parole Authority.

(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 Authority:

(i) to give evidence on oath, or

(ii) to otherwise adduce any matter orally to the Parole Authority or to address the Parole Authority 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 Authority to make an oral submission to the Parole Authority under section 147 (2).

### **191 Witnesses' expenses**

A person who is required to appear or give evidence before the Parole Authority (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 Authority must furnish to the Minister for presentation to Parliament a report giving information as to the Parole Authority's activities during that year and setting out statistical information as to:
  - (a) the number of cases considered by the Parole Authority, 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 Authority, and
  - (d) the number of existing licences (within the meaning of the repealed *Sentencing Act 1989*) amended, varied or revoked by the Parole Authority, and
  - (e) such other matters as the Parole Authority considers appropriate.
- (2) The Parole Authority must also report to the Minister from time to time on any aspect of its activities concerning which the Minister requests a report.

### 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 Authority, or is authorised in writing by the Parole Authority 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 Authority, or
  - (b) whose case has been referred to the Parole Authority 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 (Forensic Provisions) 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 general manager 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 Authority, supply to the Parole Authority 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 Authority, supply to the Parole Authority 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 Authority:
- (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 Authority all reports on the result of any such examination.
- (5) In any report on an offender supplied to the Parole Authority under this section, there must be included such information available to the person supplying the report as



may be of assistance to the Parole Authority in considering the case of the offender to whom the report relates.

### **193A Access to documents held by Parole Authority**

- (1) The Minister is entitled to be given access to all documents held by or on behalf of the Parole Authority.
- (2) Subject to section 194, a victim of a serious offender, or a victim's authorised agent, is entitled to be given access to all documents held by or on behalf of the Parole Authority in relation to the offender, but only to the extent to which those documents indicate the measures that the offender has taken, or is taking, to address his or her offending behaviour.
- (3) In this section, **authorised agent** means a person who is authorised in writing by a victim and by the Commissioner to act as agent for that victim.
- (4) A victim may revoke an authorisation under this section at any time by notice in writing to the Commissioner.

### **193B Recommendations to Commissioner**

- (1) The Parole Authority may at any time make recommendations to the Commissioner concerning the preparation of offenders for release on parole, either generally or in relation to any particular offender or class of offenders.
- (2) In exercising his or her functions, the Commissioner must have regard to, but is not bound by, any such recommendation.

### **193C Parole Authority decisions**

- (1) The Parole Authority must cause a record of its reasons for the following decisions under Parts 6 and 7 to be kept in the minutes of its meetings:
  - (a) all decisions that result in the granting or refusing of parole,
  - (b) all decisions that result in the revocation of an intensive correction order, home detention order or parole order,
  - (c) all decisions that result in the refusal to revoke an intensive correction order or home detention order following a recommendation referred to in section 163 (1) or 167 (1),
  - (d) all decisions that result in the refusal to revoke a parole order:
    - (i) following a submission made under section 141A (3) or 153 (3), or
    - (ii) following a recommendation referred to in section 170 (1).

- (2) In recording its reasons for a decision under Division 2 of Part 6 that an offender should or should not be released on parole, the Parole Authority must address:
  - (a) the matters referred to in section 135, and
  - (b) if the decision relates to a serious offender to whom section 154 applies, the matters referred to in that section, and
  - (c) such other matters as the Parole Authority is, under this Act or the regulations, required to take into account in making the decision.
- (3) Copies of any records made under this section are to be supplied to the Minister, the Commissioner and the Probation and Parole Service, as they may request.
- (4) Subject to this Act, a decision by the Parole Authority under Part 6 or 7 is final.

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

- (1) 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, or
  - (e) adversely affect the supervision of any offender who has been released on parole, or
  - (f) disclose the contents of any offender's medical, psychiatric or psychological report.
- (2) Subsection (1) does not permit the Minister to be denied access to any document held by the Parole Authority.

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

### **Introductory note—**

This Part establishes the Serious Offenders Review Council. It deals with the following matters:

- (a) the constitution and functions of the Review Council (Division 1),
- (b) the powers of the Review Council in relation to inquiries conducted by it (Division 2),
- (c) the establishment of the Serious Offenders Management Committee and its subcommittees (Division 3),
- (d) other miscellaneous matters (Division 4).

## **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 Corrective Services NSW (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 Authority 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) (Repealed)

**197A Review Council constituted by Chairperson alone in certain circumstances**

- (1) The regulations may require any of the Review Council's functions under Division 2 (Segregated and protective custody) of Part 2, in relation to a specified class of inmate, to be exercised by the Chairperson.
- (2) Accordingly, in such a case, the Review Council is taken to be constituted by the Chairperson alone.
- (3) Any functions of the Review Council under Division 2 of Part 2 that are not required by the regulations to be exercised by the Chairperson may be delegated by the Review Council to the Chairperson or 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.

(2A) When exercising its functions under section 197 (2) (b) in relation to a serious offender, the Review Council must consider the following matters:

- (a) the public interest,
- (b) the offender's classification history,
- (c) the offender's conduct while in custody, both in relation to sentences currently being served and in relation to earlier sentences,
- (d) the offender's willingness to participate in rehabilitation programs, and the success or otherwise of his or her participation in such programs,
- (e) any relevant reports (including any medical, psychiatric or psychological reports) that are available to the Review Council in relation to the offender,
- (f) any other matter that the Review Council considers to be relevant.

(3) Without limiting the generality of the meaning of public interest in subsections (1) and (2A), 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 an Australian 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 Corrective Services NSW 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 Authority.

### **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**

#### **210-223 (Repealed)**

### **Part 11 Administration**

#### **Introductory note—**

This Part provides for means by which the Act is to be administered. It deals with the following matters:

- (a) the establishment of correctional complexes, correctional centres and juvenile correctional centres (Division 1),
- (b) the supervision of correctional centres by external officials (Division 2),
- (c) the employment of staff in the administration of the Act (Division 3),
- (d) the provision of health care (Division 4),
- (e) the testing of correctional staff for alcohol and prohibited drugs (Division 5),
- (f) the recognition of interstate correctional officers (Division 6).

## **Division 1 Correctional complexes and correctional 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 (Repealed)**

## **Division 2 Supervision of correctional centres**

### **227 Visiting Magistrates**

- (1) For each correctional complex and correctional 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 or correctional centre for which he or she is appointed.

### **228 Official Visitors**

- (1) The Minister may appoint Official Visitors for the purposes of this Act.
- (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 a member of staff of Corrective Services NSW,
  - (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,
  - (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) Official Visitors are to be assigned to specific correctional complexes and correctional centres by the Minister, or in accordance with arrangements approved by the Minister, and are to be assigned in such a way as to ensure that there is at all times at least one Official Visitor for each correctional complex and correctional centre.
- (5) An Official Visitor for a correctional complex or correctional 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 Corrective Services NSW at the complex or centre, and
    - (ii) for the purpose of giving interviews to offenders held in custody at the complex or centre, and

- (iii) 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 Commissioner, a visit would be undesirable for reasons of order or security, and
  - (c) must, in accordance with the regulations, receive and deal with complaints, and
  - (d) must, in accordance with the regulations, report to the Minister at least once every 6 months, and
  - (e) has and may exercise such other functions as may be prescribed by the regulations.
- (6) An Official Visitor's power to give interviews referred to in subsection (5) (a) may only be exercised with the consent of the interviewee, and does not include the power to conduct any investigation or carry out any audit.
- (7) 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 or correctional 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 or correctional centre.
- (2) The inquiry is to be conducted by the Visiting Magistrate for the correctional complex or correctional 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) general managers of correctional centres,
- (c) correctional officers,
- (d) probation and parole officers,
- (e) the Secretary and staff of the Parole Authority,
- (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 residential facilities, and
    - (a1) has the care, control and management of all offenders who are held in custody in accordance with Part 2, 3 or 4, 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), (a1) 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 General managers of correctional centres**

- (1) The general manager of a correctional centre:
  - (a) has the care, direction, control and management of the correctional centre, and
  - (b) has all other functions conferred or imposed on the general manager 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 general manager is subject to the direction and control of the Commissioner.
- (3) The general manager of a correctional centre may delegate to any person any of the general manager's functions, other than this power of delegation and other than any function delegated to the general manager 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 Corrective Services NSW.

### **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 and correctional centres in such manner as the Commissioner, having regard to current circumstances, may from time to time direct.
- (3) The Commissioner may, by order in writing, authorise any person to exercise such functions of a correctional officer as are specified in the order, subject to such conditions as are so specified.
- (4) The functions so specified may include not only functions under this Act but also functions under any other Act or law.
- (5) In the exercise of any such function, a person so authorised is taken to be, for all purposes, a correctional officer.

#### **235A Acquisition or use of assumed identity**

Nothing in this or any other Act authorises a person employed in Corrective Services NSW 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) an Australian 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 Corrective Services NSW (including correctional officers) with respect to the management and control of Corrective Services NSW.



**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 (Repealed)**

**235E Functions of community offender services field officers**

(1) In this section:

***community offender services field officer*** means a person who is employed for the purpose of supervising offenders subject to community service orders while the offenders are performing community service work.

- (2) The functions of community offender services field officers are to be as determined from time to time by the Commissioner.
- (3) Community offender services 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.

**235F (Repealed)**

**235G Functions of Departmental compliance and monitoring officers**

- (1) The Commissioner may appoint any member of staff of Corrective Services NSW (including any correctional officer or probation and parole officer) as a compliance and monitoring officer to exercise such of the functions referred to in subsections (2) and

(3) as are specified in the instrument of his or her appointment or in a subsequent instrument executed by the Commissioner.

- (2) The functions exercisable by a compliance and monitoring officer may include any of the following:
- (a) functions associated with the conduct of an intervention program under Part 4 of Chapter 7 of the *Criminal Procedure Act 1986*,
  - (b) functions associated with the administration of an extended supervision order or interim supervision order under Part 2 of the *Crimes (Serious Sex Offenders) Act 2006*,
  - (c) functions of a correctional officer under Part 4A of the *Summary Offences Act 1988* in relation to offences relating to places of detention,
  - (d) functions of a probation and parole officer, or of any other person within the Probation and Parole Service, under this or any other Act,
  - (e) functions of a correctional officer under section 39 in relation to the arrest of inmates unlawfully absent from custody,
  - (f) functions of a correctional officer under the regulations in relation to the testing of offenders (including offenders who are on release on parole) for the presence of alcohol or drugs,
  - (f1) functions associated with the administration of an intensive correction order under Part 3,
  - (g) such other functions as are ancillary to the functions referred to in the foregoing paragraphs,
- but only in relation to offenders who are outside a correctional centre and only in relation to offenders who are of or above the age of 18 years.
- (3) The functions referred to in subsection (2) may be exercised in relation to an offender, in accordance with the legislative provisions under which they arise, wherever the offender may be.
- (4) Subsection (3) is not to be construed as conferring on a compliance and monitoring officer any power to enter premises otherwise than with the consent of the occupier of those premises.
- (5) Subject to subsection (4), a compliance and monitoring officer may use such force as is reasonably necessary in the exercise of his or her functions under this section.
- (6) In this section, **offender** means:

- (a) an inmate referred to in Part 2 who is absent from a correctional centre, or
- (b) an offender referred to in Part 3, 4, 5 or 6, or
- (c) an offender referred to in Part 8 of the *Crimes (Sentencing Procedure) Act 1999*, or
- (d) an offender or accused person the subject of an intervention program under Part 4 of Chapter 7 of the *Criminal Procedure Act 1986*, or
- (e) a sex offender the subject of an extended supervision order or interim supervision order under Part 2 of the *Crimes (Serious Sex Offenders) Act 2006*.

### **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 Justice Health**

Justice Health, 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, Justice Health, to have access to correctional centres, offenders and medical records**

For the purpose of ensuring that the provisions of this Act and the regulations (in so far as they relate to the functions of Justice Health) are being complied with at a correctional centre, the Chief Executive Officer, Justice Health, 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, Justice Health, 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, Justice Health.
- (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, Justice Health 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, Justice Health**

- (1) The Chief Executive Officer, Justice Health, 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, Justice Health 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**

- (1) In this Division:

**authorised person** means a person appointed in accordance with the regulations to be an authorised person for the purposes of this Division.

**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 breath or 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 breath or blood.

**breath test** means a test:

- (a) that is designed to indicate the concentration of alcohol in a person's breath or blood, or whether a particular concentration of alcohol is or may be present in a person's breath or 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 Corrective Services NSW.

**prohibited drug** has the same meaning as in the [Drug Misuse and Trafficking Act 1985](#).

- (2) Subject to the regulations, section 8B (Measurement of alcohol concentrations) of the [Road Transport \(Safety and Traffic Management\) Act 1999](#) applies in relation to the measurement of the concentration of alcohol in a person's breath or blood for the purposes of this Division and the regulations in the same way as it applies for the purposes of Part 2 of that Act.

### **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 and, in particular, on the basis of the results of previous testing.

- (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 person 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 persons for the purposes of this Division,
- (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.

### **Division 7 Residential facilities**

#### **236L Residential facilities**

- (1) The Governor may, by proclamation, declare any premises specified or described in the proclamation to be a residential facility for the purposes of this Act.
- (2) The Governor may, by the proclamation by which any premises are declared to be a residential facility or by a subsequent proclamation, give a name to the residential facility.
- (3) The Governor may, by proclamation, vary or revoke any proclamation under this section.

#### **236M Accommodation of offenders in residential facilities**

- (1) The Commissioner may approve the use of a residential facility for any of the following purposes:
  - (a) accommodating inmates (or an approved class of inmates) prior to release from custody,
  - (b) accommodating other persons who are the subject of non-custodial orders (referred to as ***non-custodial residents***).
- (2) Part 2, and the regulations relating to that Part, apply to a residential facility in the same way as they apply to a correctional centre, subject to this section and any

modifications prescribed by the regulations.

- (3) For the purposes of the application of Part 2 to a residential facility:
  - (a) a reference in that Part to an inmate includes an inmate residing in a residential facility, but does not include a non-custodial resident, and
  - (b) a reference in that Part to the general manager of a correctional centre is taken to be a reference to the manager of the residential facility, and
  - (c) the functions of a Visiting Magistrate under that Part with respect to a residential facility may be exercised by any Visiting Magistrate appointed under section 227.
- (4) The regulations may provide for the application to residential facilities of other provisions of this Act that apply in respect of correctional centres.
- (5) In this section, a **non-custodial order** means an order under Division 3 of Part 2 of the *Crimes (Sentencing Procedure) Act 1999* or a parole order.

#### **236N Managers of residential facilities**

- (1) A manager of each residential facility is to be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002*.
- (2) The manager of a residential facility:
  - (a) has the care, direction, control and management of the residential facility, and
  - (b) has all other functions conferred or imposed on the manager by or under this or any other Act or law.
- (3) In the exercise of the functions referred to in subsection (2) (a) and (b), the manager is subject to the direction and control of the Commissioner.
- (4) The manager of a residential facility may delegate to any person any of the manager's functions, other than this power of delegation and other than any function delegated to the manager by the Commissioner.

#### **236O Residential facility officers**

- (1) The Commissioner may appoint any member of staff of Corrective Services NSW to supervise persons residing at a residential facility or to exercise other functions in relation to a residential facility (referred to as a **residential facility officer**).
- (2) The functions of residential facility 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 residential facility officer include the functions of

a correctional officer, the residential facility officer has all the immunities of a correctional officer.

- (5) A residential facility officer may exercise a function of a correctional officer only in respect of the residential facility where the residential facility officer is employed.
- (6) Residential facility 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.
- (7) A residential facility officer may be appointed as a compliance and monitoring officer under section 235G in relation to any offenders (within the meaning of that section) who are residing in the residential facility.

## Part 12 Engagement of contractors

### Introductory note—

This Part provides for the engagement of private contractors to manage certain correctional centres (or parts of them), gives appropriate powers and immunities to staff employed for that purpose and provides for the establishment of minimum standards of management.

### 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 general manager 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 general manager 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 general manager of a

correctional centre is, for the purposes of this Act and for all other purposes, the general manager 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) (Repealed)
- (6) The report is to form part of the next annual report of the Department of Justice and Attorney General 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) (Repealed)

#### **244 CEO, Justice Health, to have access to correctional centres, offenders and medical records**

- (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, Justice Health, 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, Justice Health, 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 general manager 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 Application of *Government Information (Public Access) Act 2009***

While a correctional centre is being managed under a management or submanagement agreement, the *Government Information (Public Access) Act 2009* 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 for the purposes of that Act, and
- (c) as if the Minister were its responsible Minister for the purposes 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

### Introductory note—

This Part provides for the transport of offenders between correctional centres, and between correctional centres and courts, and for the custody of offenders while in transit.

### 249 Definitions

- (1) In this Part:

**correctional officer** includes:

- (a) a person employed on a temporary basis within Corrective Services NSW 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 Corrective Services NSW 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 an intensive correction order is made in relation to the person and before an intensive correction 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 general manager 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**

(1) 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.

(2) If a person being transferred is under the age of 18 years, the person may also be accommodated in a detention centre (within the meaning of the *Children (Detention Centres) Act 1987*) if it is necessary or convenient to do so.

(3) A person detained in a detention centre under this section is taken to be a detainee (within the meaning of the *Children (Detention Centres) Act 1987*), as if the person were a person on remand, for the period during which the person is detained in a detention centre under this section.

## **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***

- (1) This Part is subject to the *Children (Detention Centres) Act 1987*.
- (2) Despite subsection (1), nothing in the *Children (Detention Centres) Act 1987* limits the operation of this Part in relation to a person who is of or above the age of 21 years.

## **Part 14 General**

### **Introductory note—**

This Part contains miscellaneous provisions in connection with the operation of this Act, including a power to make regulations.

### **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 an intensive correction 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) (Repealed)

**255A Approvals for the purposes of the [Mutual Assistance in Criminal Matters Act 1987 of the Commonwealth](#)**

- (1) The relevant officer may, at the request of the Commonwealth Attorney-General, grant approval, by order in writing, for an offender to travel to a foreign country:
  - (a) for the purpose of giving evidence at a proceeding relating to a criminal matter, as referred to in section 26 of the Commonwealth Act, or
  - (b) for the purpose of giving assistance in relation to an investigation relating to a criminal matter, as referred to in section 27 of the Commonwealth Act,and may give such directions as are necessary in that regard.
- (2) An approval under this section is subject to such conditions as are prescribed by the regulations and to such other conditions (not inconsistent with those prescribed by the regulations) as the relevant officer may specify in the approval.
- (3) While an approval is in force under this section, the offender to whom the approval relates:
  - (a) is authorised to be absent from custody (other than custody referred to in section 26 (1) (e) (iii) or 27 (1) (e) (iii) of the Commonwealth Act) in relation to any period during which the offender would, but for the approval, be required to be in custody, and
  - (b) is exempt from such other requirements imposed by or under this or any other Act as would, but for the approval, prevent the offender from travelling to the foreign country concerned for the purpose set out in the Commonwealth Attorney-

General's request.

**Note—**

Restrictions may nevertheless be imposed on an offender who is subject to an approval under this section by means of regulations made under section 79, 93 or 106ZA or conditions imposed under section 103 or 128.

(4) In this section:

**relevant officer** means:

- (a) in relation to an offender who is on release on parole, or is the subject of a home detention order—the Parole Authority, and
- (b) in any other case—the Commissioner.

**the Commonwealth Act** means the *Mutual Assistance in Criminal Matters Act 1987* of the Commonwealth.

## 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.
- (4A) Members of staff of the government agency that keeps the Victims Register may assist:
  - (a) the Review Council and the Parole Authority to give notices to victims under sections 67 and 145, and

- (b) the Parole Authority to give a victim of a serious offender or a victim's authorised agent access to documents specified by the Parole Authority for the purposes of section 193A, and
- (c) the Review Council and the Parole Authority to carry out other ancillary functions relating to the matters referred to in paragraphs (a) and (b).

(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 an offence.

## **257 Disclosure of information**

- (1) 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
  - (b1) in connection with the administration or execution of a law of some other State or Territory in its application to an inmate who has been, or is to be, transferred to that State or Territory pursuant to:
    - (i) a direction referred to in section 45, or
    - (ii) a warrant referred to in section 49, or
    - (iii) an order of transfer under the *Prisoners (Interstate Transfer) Act 1982*, 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
  - (d1) to the State Debt Recovery Office in connection with the administration or execution of the *Fines Act 1996* (including for the purpose of the imposition,

administration or enforcement of a fine), or

(e) with other lawful excuse.

Maximum penalty: 10 penalty units.

- (2) Information may be disclosed as referred to in subsection (1) (b1) despite anything to the contrary in the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.

### **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 an intensive correction 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 general manager of a specified correctional centre, or in the custody of the manager of a residential facility, or
- (a1) a specified person was in the custody of the designated officer within the meaning of section 38 or 249, or
- (b) a specified person was or was not the subject of a specified intensive correction order, home detention order, community service order or parole order, or
- (c) a specified intensive correction 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 intensive correction 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 general manager 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) (Repealed)
- (3) A warrant addressed to the general manager of a correctional centre may be received by the general manager 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 general manager 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.
- (6) This section applies in respect of a residential facility and a manager of a residential facility in the same way as it applies to a correctional centre and a general manager of a correctional centre.

## **262 Effect of certain warrants**

- (1) A warrant issued by the Commissioner or the Parole Authority 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 Authority 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 the 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 Corrective Services NSW or a management company, or

(b) services provided to offenders by or on behalf of Corrective Services NSW 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 Corrective Services NSW 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 Corrective Services NSW or a management company, or
  - (b) facilities administered or managed by Corrective Services NSW or a management company, or
  - (c) persons employed in, or engaged by contract to, Corrective Services NSW or a management company, or
  - (d) persons in the custody of, or supervised by, Corrective Services NSW 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) Corrective Services NSW 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 Authority**

(Section 183)

## **Part 1 Constitution**

### **1 Chairperson**

- (1) A person who is appointed as a judicial member of the Parole Authority 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 Authority, or
  - (b) the Alternate Chairperson of the Parole Authority, or
  - (c) a Deputy Chairperson of the Parole Authority.

- (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.
- (3A) The term for which a person is appointed to act in the office of a Deputy Chairperson is to be such period (not exceeding 3 years) as is specified in the relevant instrument of appointment.
- (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 a period (not exceeding 3 years) specified in the member's instrument of appointment, 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 Authority 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 Authority 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 Authority, 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 Authority), and



- (c) the Parole Authority 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 Authority 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 Authority and for the conduct of business at those meetings is to be as determined by the Chairperson.
- (2) The Parole Authority 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 Authority 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 Authority:
  - (a) are to be open to the public, unless the Parole Authority 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 Authority is not vitiated merely because of any informality or want of form.
- (6) The Parole Authority 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 Authority in any proceedings and who is in custody in New South Wales:
  - (a) must, unless the Parole Authority otherwise directs, appear before the Parole Authority by audio visual link if the place at which the person is in custody is not the place at which the Parole Authority is conducting the proceedings, and
  - (b) may give evidence or make any submission to the Parole Authority 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 Authority 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 Authority.
- (4) The Parole Authority 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 Authority by audio link or audio visual link from any place other than the place at which the Parole Authority is conducting the proceedings.
- (5) The Parole Authority 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 Authority is satisfied that the evidence or submission can more conveniently be given or made at the place at which the Parole Authority is conducting the relevant proceedings, or
  - (c) the Parole Authority is satisfied by a party opposing the making of the direction that the direction would be unfair to the party, or
  - (d) the Parole Authority 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 Authority must not make the direction unless satisfied that it is in the interests of justice to do so.
- (7) The Parole Authority 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 Authority refuses to make a direction on an application by a victim under subclause (7), the Parole Authority must give reasons in writing to the victim for the refusal.
- (9) The Parole Authority 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 Authority, 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 Authority 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 Authority.
- (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 Authority 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 Authority at which a matter relating to a serious offender is being considered.

## **13 Quorum**

The quorum for a meeting of the Parole Authority 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 Authority, not more than 2 community members may attend for the purposes of constituting the Parole Authority.
- (2) If there are more than 2 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 Authority.
- (3) Despite subclause (1), the Chairperson may convene up to 6 meetings a year of the Parole Authority at which all community members may attend.

## **14A Attendance of official members**

- (1) For the purposes of any meeting of the Parole Authority:
  - (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 Authority.

- (2) Despite subclause (1), the Chairperson may convene up to 6 meetings a year of the Parole Authority 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 Authority.
- (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 Authority, 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 Authority 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 Authority at which a quorum is present (being votes cast by persons entitled to vote at the meeting) is the decision of the Parole Authority.
- (2) In the case of an equality of votes, the judicial member presiding at a meeting of the Parole Authority is to have the casting vote.

### **18 Record of proceedings**

- (1) The member presiding at a meeting of the Parole Authority 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**

- (1) 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 Authority on any offender to whom a parole order relates and whose case is to come before the Parole Authority for consideration, and
  - (b) disposing of routine business of the Parole Authority, other than making determinations or decisions, or preparing reasons for rejecting advice from the

Review Council, under Part 6.

- (2) The Secretary of the Parole Authority is taken to be a non-judicial member for the purposes of a committee appointed for the purpose referred to in subclause (1) (b), and may consequently be appointed as a member of such a committee.

## **20 Authentication of documents**

Any document requiring authentication by the Parole Authority is sufficiently authenticated if it is signed by:

- (a) the member who presided at the meeting of the Parole Authority 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 Authority, being a certificate that records any determination or decision of the Parole Authority 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 Authority, or
- (b) any determination, decision or recommendation of the Parole Authority, 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 Authority.

## **22A Rulings on points of law**

If either of the following questions arises at a meeting of the Parole Authority, 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 Authority**

This Part applies to a Division of the Parole Authority in the same way as it applies to the Parole Authority, 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.

- (3A) The term for which a person is appointed to act in the office of the Deputy Chairperson is to be such period (not exceeding 3 years) as is specified in the relevant instrument of appointment.
- (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 Corrective Services NSW 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 Intensive Correction Orders Management Committee**

(Section 92)

## **1 Definitions**

In this Schedule:

**Chairperson** means the Chairperson of the ICO Management Committee.

**member** means a member of the ICO Management Committee.

## **2 Deputies of members**

- (1) The Commissioner may establish a list of officers of Corrective Services NSW eligible to be nominated as the deputy of a member.
- (2) A member may from time to time nominate an eligible officer to be the deputy of the member.
- (3) The nomination of a deputy of a member under this clause may be revoked at any time by the Commissioner or the member that nominated the deputy.
- (4) 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.
- (5) In the absence of a 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.

## **3 General procedure**

- (1) Meetings of the ICO Management Committee are to be held at such times and places

as are fixed by the Chairperson.

- (2) The procedure for the convening of meetings of the ICO Management Committee and for the conduct of business at those meetings is to be as determined by the Chairperson.
- (3) The ICO Management Committee 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.

#### **4 Quorum**

The quorum for a meeting of the ICO Management Committee is a majority of its members for the time being.

#### **5 Presiding member**

The Chairperson is to preside at a meeting of the ICO Management Committee.

#### **6 Decisions**

- (1) A decision supported by a majority of the votes cast at a meeting of the ICO Management Committee at which a quorum is present is the decision of the ICO Management Committee.
- (2) In the case of an equality of votes, the Chairperson is to have the casting vote.

#### **7 Record of proceedings**

The Chairperson is to cause a record to be made of the proceedings at a meeting of the ICO Management Committee.

### **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

*Compulsory Drug Treatment Correctional Centre Act 2004* (but only 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*

*Crimes (Administration of Sentences) Amendment (Parole) Act 2004*

*Crimes (Administration of Sentences) Amendment Act 2006*

*Crimes (Administration of Sentences) Amendment Act 2007*

*Crimes (Administration of Sentences) Legislation Amendment Act 2008*

*Crimes (Administration of Sentences) Amendment Act 2008*

*Crimes (Administration of Sentences) Amendment Act 2009*

*Crimes (Administration of Sentences) Amendment Act 2010*

*Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010* (but only to the extent that it amends this Act)

*Crimes (Serious Sex Offenders) Amendment Act 2010*

- (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 Summons 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

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* and a document containing information for which there is an overriding public interest against disclosure for the purposes of the *Government Information (Public Access) Act 2009*.

## 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.

## Part 10 Provisions consequent on enactment of Crimes (Administration of Sentences) Amendment (Parole) Act 2004

### 83 Definition

In this Part, **the 2004 amending Act** means the *Crimes (Administration of Sentences) Amendment (Parole) Act 2004*.

### 84 Parole Authority a continuation of former Parole Board

- (1) The Parole Authority is a continuation of, and the same legal entity as, the former Parole Board.
- (2) Each person who was a member of the Parole Board immediately before the commencement of this clause continues to hold office as a member of the Parole Authority for the residue of the term for which he or she was appointed as a member of the Parole Board.
- (3) A reference to the Parole Board in any other Act or instrument extends to the Parole Authority.

### 85 Matters pending before former Parole Board

- (1) Any matter that was pending before the former Parole Board before the commencement of Schedule 1 [19] to the 2004 amending Act, including any matter that the former Parole Board had commenced to consider under section 137, is to be continued and completed, until a final decision on the matter has been reached, as if

that Act had not been enacted.

- (2) Any matter that was pending before the former Parole Board before the commencement of Schedule 1 [26] to the 2004 amending Act, including any matter that the former Parole Board had commenced to consider under section 143, is to be continued and completed, until a final decision on the matter has been reached, as if that Act had not been enacted.

#### **86 Proceedings pending before the Court of Criminal Appeal**

Any proceedings that were pending before the Court of Criminal Appeal immediately before the commencement of Schedule 1 [36] to the 2004 amending Act are to be continued and completed as if that Act had not been enacted.

#### **87 Unexecuted arrest warrants**

The amendment to section 180 made by Schedule 1 [48] to the 2004 amending Act does not affect the validity of any warrant signed by the Secretary of the former Parole Board before the commencement of that amendment.

#### **88 Authorised persons under section 236E**

Any person who was an authorised person under section 236E immediately before the amendment to that section by Schedule 1 [66] to the 2004 amending Act is taken, on the commencement of that amendment, to be an authorised person under that section, as so amended.

### **Part 11 Provisions consequent on enactment of Crimes (Administration of Sentences) Amendment Act 2006**

#### **89 Definition**

In this Part:

**the 2006 amending Act** means the *Crimes (Administration of Sentences) Amendment Act 2006*.

#### **90 Duration of community service orders**

Section 110, as amended by the 2006 amending Act, extends to any community service order in force before the commencement of that amendment.

#### **91 Reinstatement of revoked periodic detention orders**

Section 164A, as in force immediately before it was amended by the 2006 amending Act, continues to apply to any application made before the commencement of that amendment as if that Act had not been enacted.

## 92 Rescission of revocation of certain orders

Section 175, as amended by the 2006 amending Act, extends to any periodic detention order or home detention order that had been revoked before the commencement of that amendment.

## 93 Review of revocation of certain orders

Section 175A, as inserted by the 2006 amending Act, extends to any periodic detention order, home detention order or parole order that had been revoked before the commencement of that amendment, other than an order in respect of which the offender had, before the commencement of that amendment, notified the Secretary of the Parole Authority under section 174 of the offender's intention to make submissions to the Parole Authority.

## 94 Suspension of warrants of commitment

Section 181, as amended by the 2006 amending Act, extends to any warrant issued under that section before the commencement of those amendments.

## 95 References to "governor"

On and from the date on which the 2006 amending Act substitutes references in this Act to "governor" with references to "general manager", a reference in any other Act or instrument to the governor of a correctional centre is taken to be a reference to the general manager of a correctional centre.

## Part 12 Provisions consequent on enactment of Crimes (Administration of Sentences) Amendment Act 2007

### 96 Definition

In this Part:

**the 2007 amending Act** means the *Crimes (Administration of Sentences) Amendment Act 2007*.

### 97 Inmates' money

Section 76A, as inserted by the 2007 amending Act, extends to any money that, before the commencement of that section, had been surrendered, paid or received as referred to in subsection (1) of that section.

### 98 Compliance and monitoring officers

Any appointment as a compliance and monitoring officer that was in force under section 235G immediately before its substitution by the 2007 amending Act is taken to have been made under the new section 235G.

## **Part 13 Provisions consequent on enactment of Crimes (Administration of Sentences) Legislation Amendment Act 2008**

### **99 Definition**

In this Part:

**the 2008 amending Act** means the *Crimes (Administration of Sentences) Legislation Amendment Act 2008*.

### **100 Official Visitors**

Any person who was an Official Visitor immediately before the commencement of the 2008 amending Act is taken to have been appointed as such under section 228, as substituted by that Act.

## **Part 14 Provisions consequent on enactment of Crimes (Administration of Sentences) Amendment Act 2008**

### **101 Definition**

In this Part, **amending Act** means the *Crimes (Administration of Sentences) Amendment Act 2008*.

### **102 Community service orders**

An amendment made to Subdivision 1 or 3 of Division 1 of Part 5 of this Act by the amending Act extends to a community service order made before the commencement of the amendment but does not extend to an application for an extension of the relevant maximum period made before the commencement of the amendment.

### **103 Parole orders**

An amendment made to Subdivision 2 or 3 of Division 2 of Part 6 of this Act by the amending Act applies only to an order made by the Parole Authority on or after the commencement of the amendment.

### **104 Term of office for appointed members of Parole Authority**

An appointed member who was appointed before, and who held office immediately before, the commencement of the amendment made to clause 4 of Schedule 1 by the amending Act, is taken to have been appointed for a period of 3 years from the date of the member's original appointment (or most recent re-appointment, if applicable).

### **105 Delegation of Review Council functions**

Any delegation made under section 197 (3) that was in force immediately before the repeal of that subsection by the amending Act, is taken, on that repeal, to be a delegation made under section 197A (3), as inserted by the amending Act.

## **Part 15 Provisions consequent on enactment of [Public Sector Restructure \(Miscellaneous Acts Amendments\) Act 2009](#)**

### **106 Construction of references to Department of Corrective Services**

A reference in any Act (other than this Act) or statutory instrument, or any other instrument, or any contract or agreement, to the Department of Corrective Services (required by clause 20 of the [Public Sector Employment and Management \(Departmental Amalgamations\) Order 2009](#) to be construed as a reference to the Department of Justice and Attorney General), or to an office of Corrective Services, is to be construed as a reference to Corrective Services NSW.

## **Part 16 Provision consequent on enactment of [Crimes \(Administration of Sentences\) Amendment Act 2010](#)**

### **107 Validation of acts and omissions relating to Norfolk Island prisoners**

Anything done or omitted by or on behalf of the Parole Authority or the Probation and Parole Service in respect of an offender within the meaning of Division 4A of Part 6 (as inserted by the [Crimes \(Administration of Sentences\) Amendment Act 2010](#)), and that would have been valid had that Division been in force when the thing was done or omitted, is taken to be (and always to have been) validly done or omitted.

## **Part 17 Provisions consequent on enactment of [Crimes \(Sentencing Legislation\) Amendment \(Intensive Correction Orders\) Act 2010](#)**

### **108 Savings for periodic detention**

- (1) This Act (and the regulations under this Act) continue to apply to and in respect of the following as if the [Crimes \(Sentencing Legislation\) Amendment \(Intensive Correction Orders\) Act 2010](#) had not been enacted:
  - (a) a periodic detention order made before the repeal of section 6 (Periodic detention) of the [Crimes \(Sentencing Procedure\) Act 1999](#),
  - (b) a person subject to such an order,
  - (c) the revocation or reinstatement of such an order,
  - (d) a correctional centre that was a periodic detention centre immediately before the repeal of section 6 of the [Crimes \(Sentencing Procedure\) Act 1999](#).
- (2) Section 226 (Periodic detention centres) continues to apply (despite its repeal) for the purposes of the application of this Act and the regulations under this Act pursuant to this clause.