NORTHERN TERRITORY OF AUSTRALIA

CORRECTIONAL SERVICES ACT 2014

As in force at 25 March 2024

Table of provisions

Chapter 1 Preliminary matters

Part 1.1 Formal matters

1 Short title 1
2 Commencement 1
3 Application of Criminal Code 1

Part 1.2 Interpretation

4 Definitions 2
5 Offenders 7
6 Prisoners 8
7 Non-custodial offenders 8
8 Committal or remand into the custody of the Commissioner 9
9 Lawful custody and unlawful absence 9
10 Meaning of *General Manager* 10

Chapter 2 Correctional services administration

Part 2.1 Correctional services establishments

11 Correctional services establishments 11
12 Correctional centres 11
13 Police custody centres 11
14 Court custody centres 12
15 Community correctional facilities 12

Part 2.2 Correctional services officers

Division 1 General

16 Correctional services officers 12

Division 2 Commissioner of Correctional Services

17 Commissioner of Correctional Services 12
18 Functions of Commissioner 13
19 Powers of Commissioner 13
19A Commissioner to facilitate ICAC access 13
20 Delegation 14

Division 3 Other correctional services officers

21 General Managers of correctional centres 14
22 General Managers of police custody centres and court custody centres 15
23 Regional Managers 15
24 Correctional officers 15
25 Probation and parole officers 16

Part 2.3 Official visitors

Division 1 Appointment

26 Appointment of official visitors 16
27 Vacation of office 16
28 Termination of appointment 16

Division 2 Visiting

29 Frequency of visits 17
30 Inquiry and report by official visitor 17
31 Official visitor not to interfere 18
32 Minister's guidelines 18

Part 2.4 General matters

33 Volunteer functions 18
34 Volunteers 18
35 Correctional services dogs 19
36 Compliance with Commissioner's Directions 20
37 Alcohol and drug testing of officers and employees 20

Chapter 3 Custodial correctional facilities

Part 3.1 Management of prisoners

Division 1 Prisoners generally

Subdivision 1 General matters

38 Where prisoners to be held 21
39 Movement of prisoners 21
40 Separation of classes of prisoners 21
41 General Manager may separate prisoner 22
42 Behaviour generally 22

Subdivision 2 Prisoner's property

43 Definition 22

44 Commissioner to determine allowable items 23
45 Possession of personal items 23
46 Confiscation of prohibited things, things connected with offence 23

Subdivision 3 Searches

47 Searches of prisoners 23
48 Searches involving removal of clothing 24
49 Intimate searches 25
50 Conducting an intimate search 25

Subdivision 4 Testing

51 Alcohol and drug testing of prisoners 26
52 Buccal swabs 27
53 Identity confirmation 27

Subdivision 5 Work

54 Commissioner may direct prisoner to work 27
55 Payment for work 28
56 Commercial activity 28

Subdivision 6 Children

57 Commissioner may permit child to reside with prisoner 28
58 Child related social security benefits 29

Subdivision 7 Religion and belief systems

59 Performance of religious practices 30
60 Religious and spiritual advisors 30

Subdivision 8 Release

61 Release from custody 31
62 Early release 31
63 Transport of prisoner on release 31

Division 2 Youth

64 Transfer of youth prisoner to youth detention centre 32
65 Transfer of youth back to custodial correctional facility 32
67 Sentence continues to run 33

Division 3 Misconduct

68 Definitions 33
69 Misconduct 33

70 Charge of misconduct 34
71 Proceedings for charge of misconduct 34
72 Representation of prisoner 35
73 Decision 35
74 Prisoner may request review 35
75 Person to conduct review 36
76 Decision on review 36
77 Further review 36
78 Penalties for misconduct 37
79 Stay of imposition of penalty pending review 37
80 Restitution for damage caused by misconduct 38

Division 4 Health care for prisoners

81 Definitions 39
82 Commissioner to arrange health care 39
83 Access to and by health practitioners 39
84 Access to health information 39
85 Recommendations of health practitioner 40
86 Prisoner may be taken to health care facility 40
87 Arrangements with health care facilities 40
88 Health care generally to be provided by NT Regional Health Services 41
89 CEO Health to provide health information on request 41
90 Birth to be at health care facility 42
91 Notification of critical illness or injury or death 42
92 Provision of health care without consent 43
93 Administration of medication to prevent harm 44

Part 3.2 Visits and communication

Division 1 Visits

94 Definitions 45
95 Visit by priority visitors 45
96 Visit by prisoner's legal practitioner 46
97 Other visitors 46
98 Commissioner may prohibit visits 46
99 General Manager may refuse entry 46
100 Person may be directed to leave custodial correctional facility 47
101 Correctional officer may prevent entry or remove person 47
102 Observation and recording visits 48

Division 2 Telephone calls

103 Definitions 48
104 Prisoner may make telephone calls 48
105 Monitoring of telephone calls 49

Division 3 Mail

106 Prisoner may send and receive mail 49
107 Searches of mail 49
108 Disclosure of information to correctional officers 49

Part 3.3 Leave permits

Division 1 General matters

109 Leave permits 50
110 Duration of leave permit 50
111 Conditions on leave permit 51
112 Effect of leave permit on lawful custody 51
113 Variation or revocation of leave permit 51
114 Unlawfully absent prisoner may be returned to place authorised by permit 52
115 Liability of Territory to maintain prisoner on leave 52
116 Rules of natural justice do not apply 52
117 Decisions not reviewable 52

Division 2 General leave permits

118 Commissioner may issue general leave permit 53
119 Prisoner employed while on leave 53

Division 3 Interstate custodial leave permits

120 Definitions 53
121 Corresponding interstate laws 54
122 Issue of interstate custodial leave permit 54
123 Effect of permit 55
124 Appointment of escorts 55
125 Variation or revocation of permit 55
126 Notice to participating States and transit States 55
127 Failure to comply with conditions of interstate custodial leave permit 56
128 Effect of permit issued under corresponding law 56
129 Escape from custody of interstate prisoner 56

Division 4 Foreign legal matters leave permit

130 Commissioner may issue foreign legal matters leave permit 57

Division 5 Administrative home detention permits

131 Definition 57
132 Commissioner may issue permits 57
133 Circumstances in which permit may be issued 58

134 Duration of permit 59
135 Compulsory conditions on permit 59
136 Non-custodial offender provisions apply 59

Part 3.4 Maintaining security and good order – use of force

137 Correctional officer to maintain security and good order 59
138 Limitations of use of force 60
139 Firearms and other weapons 60
140 Commissioner to manage use of force 61
141 Arrest of unlawfully absent prisoner 61

Part 3.5 General matters about custodial correctional facilities

Division 1 Matters relating to people and things at custodial correctional facility

142 Name and address to be provided 62
143 Proof of identity 62
144 Search of persons at facility 63
145 Alcohol and drug testing of persons at facility 63
146 Correctional officer may prevent entry or remove person 64
147 Search of vehicles 64
148 Search of custodial correctional facility 65
149 Person loitering may be directed to leave vicinity 65
150 Arrest of person suspected of offence 66

Division 2 Searches, confiscation and confiscated things

151 Definitions 66
152 Conduct of searches – use of devices and dogs 68
153 Confiscation of protected/legal items 68
154 Inspection of purported protected/legal items 69
155 General Manager to deal with inspected items 69
156 Nomination of nominated examiners 70
157 Dealing with confiscated things 71
158 Dealing with seized things 71
159 Disclosure of information about unlawful or improper conduct 72

Division 3 Administrative matters

160 General Manager may declare things to be prohibited 73
161 Commissioner to maintain trust accounts 73
162 Commissioner may charge fees 74
163 Use of custodial correctional facilities to accommodate sheriff's detainees 74
164 Act etc. to be made available 74

Chapter 4 Non-custodial offenders and community correctional facilities

Part 4.1 Non-custodial offenders

165 Definitions 76
166 Non-custodial orders 77
167 Approval of rehabilitation programs and work 78
168 Approval of monitoring devices 78
169 Direction by probation and parole officer 78
170 Commissioner may direct use of monitoring device 79
171 Compliance with monitoring order 79
172 Alcohol and drug testing 79

Part 4.2 Community correctional facilities

173 Name and address to be provided 80
174 Proof of identity 80

Chapter 5 General matters

Part 5.1 Offences

Division 1 Offences relating to prisoners

175 Possession of things by prisoners 82
176 Nothing to pass to or from prisoner 82
177 Leaving things for prisoner 83
178 Communicating with prisoner 84

Division 2 Offences relating to custodial correctional facility

179 Entering custodial correctional facility without authority 84
180 Person directed to leave custodial correctional facility 84
181 Person loitering in vicinity of custodial correctional facility 85
182 Possession of things at custodial correctional facility 85
183 Removal of property from a custodial correctional facility 86
184 Unauthorised photograph or recording 86
185 Failure to provide name and address 87

Division 3 Administration related offences

186 Falsely representing to be correctional services officer 87
187 Obstruction of correctional services officer 88
188 Misleading information 88
189 Confidentiality of information 89

Division 4 Miscellaneous offences

190 Failure to provide name and address at community correctional facility 90
191 Tampering with samples for alcohol/drug tests 91
192 Name change by prisoner or parolee 91
193 Harming correctional services dog 92

Part 5.2 Miscellaneous matters

Division 1 Administrative matters

194 Approvals for identification systems 93
195 Alcohol and drug testing 93
196 Criminal history to be provided 94
197 Records to be kept 95
198 Damage to property – cost recoverable by Territory 95

Division 2 Legal matters

199 Protection from liability 96
200 Prosecutions 97
201 Evidentiary matters in relation to prescribed alcohol/drug tests 97
202 Civil proceedings 98
203 Acquisition on just terms 98

Division 3 Miscellaneous matters

204 Training in relation to dangerous drugs 98
205 Commissioner's Directions 98
206 Approved forms 99
207 Regulations 99

Chapter 6 Repeals and transitional provisions

Part 6.1 Repeal

208 Repeal 100

Part 6.2 Transitional provisions for Correctional Services Act 2014

209 Definitions 100
210 Custodial correctional facilities 100
211 Correctional services officers 100
212 Official visitors 101
213 Misconduct – existing charges 101
214 Misconduct – prior conduct may be charged under this Act 101
215 Leave 101

216 Prisoner's trust accounts 102
217 Commissioner's Directions 102
218 Regulations..... 102
219 Other statutory instruments 102
220 Continuation of ongoing things 102
221 Court orders, warrants of commitment 103
222 Definition of *prisoner*..... 103
223 Confidentiality of information 103

Schedule Repealed Acts

ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 25 March 2024

CORRECTIONAL SERVICES ACT 2014

An Act to provide for the declaration of correctional services establishments, the management and control of those establishments and offenders, and related purposes

Chapter 1 Preliminary matters

Part 1.1 Formal matters

1 Short title

This Act may be cited as the *Correctional Services Act 2014*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 3

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 1.2 Interpretation

4 Definitions

In this Act:

acting in an official capacity, in relation to a correctional services officer, means the officer is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

administrative home detention permit, see section 132.

adult prisoner means a prisoner who is not a youth prisoner.

allowable item, see section 44.

approved identification system means a system approved under section 194(1).

approved monitoring device, see section 165.

approved residence:

(a) for Part 3.3, Division 5 – see section 131; or

(b) for Part 4.1 – see section 165.

CEO Health, see section 81.

Commissioner means the Commissioner of Correctional Services appointed under section 17(1).

Commissioner's Directions means directions issued under section 205(1).

committed or remanded into the custody of the Commissioner, see section 8(1).

community based order, see section 165.

community correction order, see section 165.

community correctional facility means a facility declared under section 15(1) to be a community correctional facility.

community custody order, see section 165.

community work order, see section 165.

connected with an offence, in relation to a thing, means that the thing:

(a) was, is being, or is intended to be, used for the purpose of committing the offence; or

(b) provides evidence of the commission of the offence.

correctional centre means a place declared under section 12(1) to be a correctional centre.

correctional officer means a person appointed under section 24(1).

correctional services dog means a dog approved under section 35(1)(a) as a correctional services dog.

correctional services establishment, see section 11.

correctional services officer, see section 16.

corresponding Commissioner, see section 120.

corresponding interstate law, see section 120.

corresponding permit, see section 120.

court custody centre, see section 14.

custodial correctional facility, see section 11(1)(a).

decision maker, see section 68.

foreign legal matters leave permit, see section 130(2).

general leave permit, see section 118(1).

General Manager, see section 10.

health care, see section 81.

health practitioner means a person registered under the Health Practitioner Regulation National Law to practise in a health profession (other than as a student).

home detention order, see section 165.

immigration detainee, see section 6(2).

intensive community correction order, see section 165.

interstate custodial leave permit, see section 120.

interstate escort, see section 120.

interstate prisoner, see section 120.

intimate search, see section 49(1).

law enforcement agency means one of the following:

(a) the Police Force of the Northern Territory;

(b) the Police Force of the Commonwealth or a State;

(c) the Australian Crime Commission established by section 7 of the *Australian Crime Commission Act 2002* (Cth);

(d) a body established under a law of the Territory, the Commonwealth or a State, that performs one or more of the following functions:

(i) preventing, detecting or investigating the commission of offences;

(ii) executing or implementing a decision, direction, order or other requirement of a court, tribunal, or judicial officer (including executing warrants).

lawful custody of the Commissioner, see section 9(1).

leave permit, see section 109(1).

legal item, see section 151.

mail means a letter or parcel, sent or delivered by any means.

misconduct decision, see section 68.

misconduct proceedings, see section 71(1).

mobile communications device includes the following:

(a) a mobile phone or other device that is telecommunication-enabled or internet-enabled;

(b) any part of a mobile phone or device;

(c) any equipment or other thing used in connection with a mobile phone or device.

Note for definition ***mobile communications device***

This does not include a device that is capable of being made telecommunication-enabled or internet-enable if it is in fact not so enabled.

monitored, for Part 3.2, Division 2, see section 103.

monitoring device, see section 165.

monitoring order, see section 166(2).

nominated examiner, see section 151.

non-custodial offender, see section 7.

non-custodial order, see section 166(1).

non-custodial work order, see section 166(3).

observed, for Part 3.2, Division 1, see section 94.

offender, see section 5.

official visitor means a person appointed under section 26.

parole order means an order made by the Parole Board under section 5 of the *Parole Act 1971*.

participating State, see section 120.

police custody centre, see section 13.

prescribed alcohol/drug test means a test prescribed as mentioned under section 195(1)(a).

prescribed sampler, for a prescribed alcohol/drug test, means a person prescribed for the test as mentioned under section 195(1)(b).

priority/legal call, see section 103.

priority/legal visit, see section 94.

priority visitor, see section 94.

prisoner, see section 6.

probation and parole officer means a person appointed under section 25(1).

prohibited thing means a thing (including information) to which one or more of the following applies:

(a) it is offensive, indecent, obscene, threatening or abusive;

(b) it is a mobile communications device;

(c) it might reasonably constitute a threat to national security;

(d) it might reasonably constitute a threat to the security and good order of a custodial correctional facility or a prisoner;

(e) possession of it is unlawful under a law of the Territory, the Commonwealth or a State;

(f) it is reasonable to infer from possession of it, an intention to facilitate, incite, or use the thing in connection with, an unlawful activity;

(g) it may have a detrimental influence or effect on a prisoner;

(h) if it is written – it is in a language other than English or in code, and is not readily translatable to English;

(i) it is declared to be a prohibited thing by:

(i) the Regulations; or

(ii) the Commissioner's Directions; or

(iii) for a custodial correctional facility – the General Manager under section 160.

*Note for definition **prohibited thing***

This definition is modified by sections 175(3) and 182(3) for those sections.

protected correspondent, see section 151.

protected item, see section 151.

protected/legal item, see section 151.

recorded, for Part 3.2, Division 1, see section 94.

reasonably necessary, in relation to the use of force, see section 138(2).

Regional Manager, of a region, means a person appointed under section 23(1) for the region.

release date, for a prisoner other than an immigration detainee, means the date on which the prisoner ceases, or will cease, to be a prisoner.

reviewer, see section 68.

sentenced prisoner means a person who is a prisoner under section 6(1)(b).

State, see section 120.

trust account, for a prisoner, means the trust account maintained for the prisoner under section 161.

unlawfully absent, see section 9(2).

visitor means a person who is at a custodial correctional facility and who:

(a) is not a prisoner; and

(b) is not a correctional services officer, or employee of the Agency, acting in the course of his or her duties.

volunteer means a person approved under section 34(1).

youth, see section 6 of the *Youth Justice Act 2005*.

youth detainee means a detainee as defined in section 5(1) of the *Youth Justice Act*.

youth detention centre means a detention centre, as defined in section 5(1) of the *Youth Justice Act 2005*.

youth prisoner means a person who is a prisoner under section 6(1)(a) or (b) and is a youth.

Note for section 4

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

5 Offenders

Each of the following is an ***offender***:

(a) a prisoner, who may be:

(i) a youth prisoner; or

(ii) an adult prisoner;

(b) a non-custodial offender.

6 Prisoners

(1) A person is a ***prisoner*** if the person:

(a) has been committed or remanded into the custody of the Commissioner by an order that is in force; or

(b) is under a sentence of imprisonment but is not a non-custodial offender; or

(c) is a detainee under the *Serious Sex Offenders Act 2013*; or

(d) is an immigration detainee.

Examples for subsection (1)(b)

Examples of persons who are under sentence of imprisonment but are non-custodial offenders include:

(a) a person who has been released under a parole order; and

(b) a person whose sentence of imprisonment has been suspended.

(2) A person is an ***immigration detainee*** if:

(a) the person is:

(i) in immigration detention (as defined in section 5 of the *Migration Act 1958* (Cth)); and

(ii) being restrained or held by or on behalf of an officer (as defined in section 5 of that Act) who is a correctional services officer; or

(b) the person would be an immigration detainee under paragraph (a) but for the fact that the person has escaped from detention.

(3) To avoid doubt, a person mentioned in subsection (1)(a), (b) or (c) is a prisoner:

(a) whether or not a warrant of commitment has been issued; and

(b) even if the person is not at a custodial correctional facility.

7 Non-custodial offenders

A person is a ***non-custodial offender*** if the person is subject to a non-custodial order.

8 Committal or remand into the custody of the Commissioner

(1) For this Act, a person is ***committed or remanded into the custody of the Commissioner*** if a court, or a person or other body with authority to do so, orders that the person:

(a) is committed or remanded into the custody of the Commissioner; or

(b) is committed or remanded to a, or to a particular, custodial correctional facility (however described); or

(c) is committed to custody.

(2) However, subsection (1)(c) does not apply:

(a) in relation to a youth; or

(b) if the person is committed to the custody of the sheriff by a court exercising civil jurisdiction or in proceedings for contempt; or

(c) if the person is committed to custody at a specified place, or to the custody of a specified person.

Example for subsection (2)(c)

A person committed under section 43ZA(1)(a)(ii) of the Criminal Code to a place the court considers appropriate. Such a person is not committed or remanded into the custody of the Commissioner.

9 Lawful custody and unlawful absence

(1) A prisoner is in the ***lawful custody of the Commissioner*** if the prisoner:

(a) is at a custodial correctional facility; or

(b) is at a health care facility under section 86; or

(c) is attending court; or

(d) is working at a place outside a custodial correctional facility as mentioned in section 54; or

(e) is being transported to a custodial correctional facility, or between 2 places mentioned in paragraphs (a) to (d); or

(f) is absent from a custodial correctional facility as authorised by a leave permit as mentioned in section 109(2); or

(g) is absent from a custodial correctional facility under other lawful authority.

(2) A prisoner is ***unlawfully absent*** if the person is not in the lawful custody of the Commissioner.

Note for section 9

See section 63A of the Sentencing Act 1995 for the effect that being absent from a custodial correctional facility has on a prisoner's term of imprisonment.

10 Meaning of *General Manager*

(1) In this Act:

General Manager means the following:

(a) for a correctional centre – the General Manager appointed under section 21 for the correctional centre;

(b) for a police custody centre – the police officer, or correctional officer, in charge of a police custody centre;

(c) for a court custody centre – the police officer, or correctional officer, in charge of a court custody centre.

(2) A reference, in relation to a custodial correctional facility, to the General Manager, is a reference to the General Manager for that facility.

(3) A reference, in relation to a prisoner, to the General Manager is a reference to the General Manager of the custodial correctional facility at which the person is a prisoner.

Chapter 2 Correctional services administration

Part 2.1 Correctional services establishments

11 Correctional services establishments

(1) Each of the following is a ***correctional services establishment***:

(a) a ***custodial correctional facility***, which is one of the following:

(i) a correctional centre;

(ii) a court custody centre;

(iii) a police custody centre;

(b) a community correctional facility.

(2) A reference, in relation to a prisoner, to the custodial correctional facility, is a reference to the facility at which the person is a prisoner.

12 Correctional centres

(1) The Minister may, by *Gazette* notice, declare a place to be a correctional centre.

(2) The Minister may assign the correctional centre a name.

13 Police custody centres

A police station is a ***police custody centre***:

(a) if it has been declared to be a police custody centre by the Minister by *Gazette* notice; and

(b) while it is being used:

(i) for the custody of a prisoner; or

(ii) to accommodate a person who the Commissioner has agreed is to be accommodated at a custodial correctional facility under section 163.

14 Court custody centres

An area of a courthouse is a ***court custody centre***:

(a) if it has been declared to be a court custody centre by the Minister by *Gazette* notice; and

(b) while it is being used:

(i) for the custody of a prisoner; or

(ii) to accommodate a person who the Commissioner has agreed is to be accommodated at a custodial correctional facility under section 163.

15 Community correctional facilities

(1) The Commissioner may declare a place to be a community correctional facility for the management of non-custodial offenders.

(2) The Commissioner may create administrative regions for the purpose of administering community correctional facilities within each region.

Part 2.2 Correctional services officers

Division 1 General

16 Correctional services officers

Each of the following is a ***correctional services officer***:

(a) the Commissioner;

(b) the General Manager of a custodial correctional facility;

(c) the Regional Manager of a region;

(d) a correctional officer;

(e) a probation and parole officer.

Division 2 Commissioner of Correctional Services

17 Commissioner of Correctional Services

(1) The Minister may appoint a person to be the Commissioner of Correctional Services.

(2) The Commissioner holds office on the terms and conditions (including as to remuneration) determined by the Minister.

18 Functions of Commissioner

The Commissioner:

(a) is responsible for the overall control and management of:

(i) correctional services establishments; and

(ii) offenders; and

(iii) persons accommodated at custodial correctional facilities who are not prisoners; and

(b) has the other functions conferred on the Commissioner by this or any other Act.

19 Powers of Commissioner

(1) The Commissioner has the powers necessary to perform the Commissioner's functions.

(2) Without limiting subsection (1), the Commissioner may do anything the Commissioner considers appropriate in order to maintain the security and good order of correctional services establishments and offenders.

(3) The Commissioner may also exercise the powers and perform the functions of any other correctional services officer conferred by this or any other Act.

19A Commissioner to facilitate ICAC access

(1) The Commissioner must take all reasonable steps to facilitate access by an ICAC officer to:

(a) a correctional services establishment; and

(b) a person (including an offender), document or thing under the custody or control of the Commissioner.

(2) Despite section 19(2), the Commissioner may refuse to facilitate access as mentioned in subsection (1) only if the Commissioner believes on reasonable grounds that the access would compromise the security or good order of a correctional services establishment or an offender.

(3) In this section:

ICAC officer means:

(a) the ICAC; or

(b) a member of ICAC staff as defined in section 4 of the *Independent Commissioner Against Corruption Act 2017*.

20 Delegation

The Commissioner may, in writing, delegate any of the Commissioner's powers and functions under this or any other Act to a person.

Division 3 Other correctional services officers

21 General Managers of correctional centres

(1) The Commissioner may appoint a public sector employee to be the General Manager of a correctional centre.

(2) The General Manager of a correctional centre:

(a) is responsible for the day-to-day control and management of:

(i) the correctional centre; and

(ii) prisoners of the centre; and

(iii) persons accommodated at the centre who are not prisoners; and

(b) has the other functions conferred on the General Manager by this or any other Act.

(3) The General Manager has the powers necessary to perform the Manager's functions.

(4) The General Manager may also exercise the powers and perform the functions of a correctional officer conferred by this or any other Act.

(5) The General Manager may, in writing, delegate any of the Manager's powers and functions under this or any other Act to a person.

22 General Managers of police custody centres and court custody centres

(1) While a police station is a police custody centre, the police officer or correctional officer in charge of the centre is the General Manager of the police custody centre.

(2) While an area of a courthouse is a court custody centre, the police officer or correctional officer in charge of the centre is the General Manager of the court custody centre.

(3) Section 21(2) and (3) apply in relation to the General Manager of a police custody centre or a court custody centre as if it were a correctional centre.

23 Regional Managers

(1) The Commissioner may appoint a public sector employee to be the Regional Manager of community correctional facilities in a region.

(2) The Regional Manager of a region:

(a) is responsible for the day-to-day control and management of:

(i) the community correctional facilities in the region; and

(ii) the non-custodial offenders attending the facilities; and

(b) has the other functions conferred on the Regional Manager by this or any other Act.

(3) The Regional Manager has the powers necessary to perform the Manager's functions.

(4) The Regional Manager may also exercise the powers and perform the functions of a probation and parole officer conferred by this or any other Act.

(5) The Regional Manager may, in writing, delegate any of the Manager's powers and functions under this or any other Act to a person.

24 Correctional officers

(1) The Commissioner may appoint a public sector employee to be a correctional officer.

(2) A correctional officer:

(a) has the functions conferred by this or any other Act; and

(b) has the powers necessary to perform those functions.

25 Probation and parole officers

(1) The Commissioner may appoint a public sector employee to be a probation and parole officer.

(2) A probation and parole officer:

(a) has the functions conferred by this or any other Act; and

(b) has the powers necessary to perform those functions.

Part 2.3 Official visitors

Division 1 Appointment

26 Appointment of official visitors

(1) The Minister must appoint at least 3 official visitors for each custodial correctional facility.

(2) A person may be appointed as an official visitor for more than one facility.

(3) An official visitor holds office on the terms and conditions (including as to remuneration) determined by the Minister.

(4) The Minister must consult with the Commissioner before appointing or reappointing a person as an official visitor.

(5) An official visitor holds office for 3 years and may be reappointed.

27 Vacation of office

A person ceases to be an official visitor if:

(a) the person resigns by giving written notice to the Minister; or

(b) the person's term of office comes to an end and the person is not reappointed; or

(c) the person's appointment is terminated under section 28.

28 Termination of appointment

(1) The Minister may terminate the appointment of a person as an official visitor for inability, inefficiency, misbehaviour or physical or mental incapacity.

(2) The Minister must terminate the appointment of a person as an official visitor if:

(a) the person is found guilty of an offence of such a nature that it would be inappropriate for the person to continue to be an official visitor; or

(b) the person:

(i) becomes bankrupt; or

(ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with creditors or makes an assignment of the person's remuneration for their benefit.

(3) A termination of appointment must be made in writing.

Division 2 Visiting

29 Frequency of visits

The Commissioner must ensure that each custodial correctional facility is visited by an official visitor for the facility at least once every month.

30 Inquiry and report by official visitor

(1) An official visitor for a custodial correctional facility must visit the facility as necessary for the purposes of section 29.

(2) When visiting the facility, the official visitor must inquire into the treatment, behaviour and conditions of the prisoners at the facility.

(3) As soon as practicable after the visit, the official visitor must report to the Minister on the matters mentioned in subsection (2).

(4) However, if directed by the Minister to report to the Commissioner on a specific matter, the official visitor must report:

(a) to the Commissioner on that matter; and

(b) to the Minister on all other matters.

(5) A report under subsection (3) or (4) must be in writing.

31 Official visitor not to interfere

An official visitor visiting a custodial correctional facility must not interfere with, or give instructions about, the control or management of prisoners.

32 Minister's guidelines

The Minister may, by *Gazette* notice, issue guidelines for official visitors to assist them in performing their functions under this Act.

Part 2.4 General matters

33 Volunteer functions

(1) The Commissioner must determine functions that may be performed by volunteers.

(2) The functions that may be approved include the following:

(a) undertaking activities for the benefit of offenders;

(b) providing support for offenders;

(c) assisting with supervision of offenders;

(d) undertaking any other activities the Commissioner considers beneficial to offenders or correctional services establishments.

34 Volunteers

(1) The Commissioner may, in writing, approve a person to perform, in an unpaid capacity, one or more of the functions determined under section 33.

(2) A volunteer must comply with:

(a) the terms and conditions of the volunteer's approval; and

(b) the Commissioner's Directions; and

(c) any reasonable direction given by a correctional services officer.

(3) The Commissioner may reimburse a volunteer for any expenses incurred by the volunteer in performing the volunteer's functions.

35 Correctional services dogs

(1) The Commissioner may, in writing, approve:

(a) a dog as a ***correctional services dog***; and

(b) a correctional officer as a ***correctional services dog handler***.

(2) A correctional services dog handler may use a correctional services dog for the following:

(a) to assist in searching persons at, or wishing to enter, a custodial correctional facility for drugs or other prohibited things;

(b) to search correctional services establishments;

(c) to search for an offender;

(d) to restrain a prisoner;

(e) to assist in maintaining the security and good order of a custodial correctional facility;

(f) to assist a correctional officer in performing the officer's functions under this Act, if the handler considers it appropriate to do so.

(3) The handler may permit the dog to use force against a person only if:

(a) the handler could lawfully use force against the person; and

(b) the handler considers the use of force by the dog is reasonably necessary.

Note for subsection (3)

Part 3.4 makes provision in relation to the use of force.

(4) The Commissioner may:

(a) second a correctional services dog handler and a correctional services dog to another Agency for purposes similar to those mentioned in subsection (2); and

(b) second a handler and dog from another Agency for purposes mentioned in subsection (2).

36 Compliance with Commissioner's Directions

In the exercise of powers or performance of functions under this Act a correctional services officer, volunteer or employee of the Agency must comply with the Commissioner's Directions.

37 Alcohol and drug testing of officers and employees

A correctional services officer or employee of the Agency must submit to a prescribed alcohol/drug test when directed by the Commissioner to do so.

Note for section 37

Section 195 makes provisions for the carrying out of prescribed alcohol/drug tests.

Chapter 3 Custodial correctional facilities

Part 3.1 Management of prisoners

Division 1 Prisoners generally

Subdivision 1 General matters

38 Where prisoners to be held

(1) The Commissioner is to determine at which custodial correctional facility a prisoner is to be held.

(2) The Commissioner may determine that a prisoner is to be transferred to another place the Commissioner considers appropriate.

Examples for subsection (2)

Places to which a prisoner may be transferred include the following:

(a) a health care facility;

(b) for a youth being transferred under Division 2 – a youth detention centre;

(c) for an immigration detainee – an immigration detention centre.

39 Movement of prisoners

(1) The General Manager of a custodial correctional facility must arrange for a prisoner to be taken to any of the following:

(a) a custodial correctional facility or other place as directed by the Commissioner;

(b) a court before which the prisoner has been ordered to appear;

(c) a health care facility as required under Division 4.

(2) The General Manager may arrange for a prisoner to be taken to any other place as the General Manager considers appropriate.

40 Separation of classes of prisoners

The General Manager of a custodial correctional facility must ensure that, to the extent it is practicable:

(a) sentenced prisoners are kept separate from other prisoners; and

(b) male prisoners are kept separate from female prisoners; and

(c) youth prisoners are kept separate from adult prisoners.

Note for section 40

Section 163(2)(b) requires that sheriff's detainees who are being accommodated at a custodial correctional facility be kept separate from prisoners.

41 General Manager may separate prisoner

The General Manager of a custodial correctional facility may separate a prisoner from other prisoners as the General Manager considers appropriate.

Examples for section 41

Examples of grounds on which it may be appropriate to separate a prisoner include the following:

(a) the prisoner poses a threat to the safety of another person;

(b) the prisoner poses a threat to himself or herself;

(c) the prisoner's safety is under threat from another prisoner;

(d) to maintain the security and good order of the facility;

(e) an order for separation has been made under section 78(2)(b) in relation to the prisoner as a penalty for misconduct.

42 Behaviour generally

(1) A prisoner must comply with the general routine of the custodial correctional facility, or the part of the facility in which the prisoner is held.

(2) A prisoner must comply with any reasonable direction of the Commissioner, General Manager or a correctional officer.

(3) If a prisoner fails to comply with a reasonable direction, a correctional officer may use the force that is reasonably necessary to compel compliance.

Note for subsection (3)

Part 3.4 makes provision in relation to the use of force.

Subdivision 2 Prisoner's property

43 Definition

In this Subdivision:

allowable item, see section 44.

44 Commissioner to determine allowable items

The Commissioner may, in the Commissioner's Directions, determine the personal items that a prisoner at a custodial correctional facility may have in the prisoner's possession (***allowable items***).

45 Possession of personal items

(1) A prisoner at a custodial correctional facility must not have in the prisoner's possession any personal property that is not an allowable item.

(2) If the prisoner has personal property in the prisoner's possession that is not an allowable item, the General Manager may direct the prisoner to:

(a) dispose of the property; or

(b) arrange for it to be removed from the facility.

(3) If the prisoner fails to comply with the direction, a correctional officer may confiscate the property.

Note for section 45

Part 3.5, Division 2 makes provision in relation to confiscation and how confiscated things are to be dealt with.

46 Confiscation of prohibited things, things connected with offence

A correctional officer may confiscate a thing in a prisoner's possession that the correctional officer reasonably believes is:

(a) a prohibited thing; or

(b) connected with an offence against this Act.

Note for section 46

Part 3.5, Division 2 makes provision in relation to confiscation and how confiscated things are to be dealt with.

Subdivision 3 Searches

47 Searches of prisoners

(1) A correctional officer may search a prisoner or a prisoner's personal property.

(2) However, a search under this section must not be an intimate search.

(3) If the prisoner does not submit to the search, the correctional officer may use the force that is reasonably necessary to carry out the search.

Note for subsection (3)

Part 3.4 makes provision in relation to the use of force.

(4) The correctional officer may confiscate a thing found during the search that the correctional officer reasonably believes is:

(a) a prohibited thing; or

(b) connected with an offence against this Act.

Note for subsection (4)

Part 3.5, Division 2 makes provision in relation to confiscation and how confiscated things are to be dealt with.

48 Searches involving removal of clothing

(1) This section applies if a search under section 47 requires the removal of all or most of the prisoner's clothing.

(2) The search must be carried out:

(a) by a correctional officer of the same sex as the prisoner; or

(b) by an appropriate health practitioner authorised by the General Manager; or

(c) if no person mentioned in paragraph (a) or (b) is available – by a person of the same sex as the prisoner who has been authorised by the General Manager to carry out the search.

(3) If the person carrying out the search is not a correctional officer and the prisoner does not submit to the search, a correctional officer (whether or not of the same sex as the prisoner) may assist the person to carry out the search.

(4) In providing the assistance, the correctional officer may use the force that is reasonably necessary.

Note for subsection (4)

Part 3.4 makes provision in relation to the use of force.

49 Intimate searches

(1) A search of a prisoner is an ***intimate search*** if it is:

(a) an internal or external examination of an intimate part of the body of the prisoner; or

(b) an internal examination of a non-intimate part of the body of a prisoner.

(2) In this section:

intimate part of the body means one of the following:

(a) the genital area;

(b) the anal area;

(c) the buttocks;

(d) if the prisoner is female – the breasts.

non-intimate part of the body means a part of the body that is not an intimate part of the body.

50 Conducting an intimate search

(1) The General Manager may authorise an appropriate health practitioner (an ***authorised examiner***) to carry out an intimate search of a prisoner if the General Manager reasonably believes there is, concealed on or in the prisoner's person, a thing that is:

(a) a prohibited thing; or

(b) connected with an offence against this Act.

(2) If the authorised examiner is not of the same sex as the prisoner, another health practitioner or a correctional officer of the same sex as the prisoner must be present while the intimate search is carried out.

(3) The authorised examiner may be assisted by another health practitioner.

(4) If the prisoner does not submit to the search, a correctional officer may assist the authorised examiner.

(5) In providing the assistance, the correctional officer may use the force that is reasonably necessary.

Note for subsection (5)

Part 3.4 makes provision in relation to the use of force.

(6) The authorised examiner may remove from the prisoner a thing found during the search if the examiner reasonably believes:

(a) that the thing is:

(i) a prohibited thing; or

(ii) connected with an offence against this Act; and

(b) that removing it is not likely to cause serious harm (as defined in section 1 of the Criminal Code) to the prisoner.

(7) As soon as practicable after removing a thing, the authorised examiner must give it to a correctional officer, who is taken to have confiscated it from the prisoner.

Note for subsection (7)

Part 3.5, Division 2 makes provision in relation to confiscation and how confiscated things are to be dealt with.

Subdivision 4 Testing

51 Alcohol and drug testing of prisoners

(1) A prisoner must submit to a prescribed alcohol/drug test if directed by the General Manager to do so.

Note for subsection (1)

Section 195 makes provisions for the carrying out of prescribed alcohol/drug tests.

(2) If the prisoner does not submit to the test as required under section 195(2):

(a) the prescribed sampler may take the required sample without the prisoner's consent; and

(b) a correctional officer may assist the prescribed sampler to obtain the required sample.

(3) In providing the assistance, the correctional officer may use the force that is reasonably necessary.

Note for subsection (3)

Part 3.4 makes provision in relation to the use of force.

52 Buccal swabs

(1) A prisoner must submit to the taking, by an approved person, of a sample of cells by buccal swab when directed by the General Manager to do so.

(2) If the prisoner does not submit to the taking of the sample, a correctional officer may assist the approved person to take the sample.

(3) In providing the assistance, the correctional officer may use the force that is reasonably necessary.

Note for subsection (3)

Part 3.4 makes provision in relation to the use of force.

(4) In this section:

approved person means a person approved by the Commissioner to take samples for this section.

53 Identity confirmation

(1) A prisoner must, when directed by the General Manager to do so:

(a) provide evidence of the prisoner's identity; or

(b) submit to the use of an approved identification system.

(2) If the prisoner does not comply with a direction under subsection (1)(b), a correctional officer may use the force that is reasonably necessary to use the system to identify the prisoner.

Note for subsection (2)

Part 3.4 makes provision in relation to the use of force.

Subdivision 5 Work

54 Commissioner may direct prisoner to work

(1) The Commissioner may direct:

(a) a sentenced prisoner to carry out work at the custodial correctional facility or elsewhere; or

(b) a prisoner who is a detainee under the *Serious Sex Offenders Act 2013* to carry out work at the custodial correctional facility.

(2) The Commissioner may give any other prisoner the opportunity to work at the custodial correctional facility or elsewhere.

(3) If a prisoner is working at a place outside a custodial correctional facility, this Act continues to apply in relation to the prisoner as if the prisoner were at a custodial correctional facility.

55 Payment for work

(1) The rates of pay for work carried out by prisoners must be fixed by the Commissioner in the Commissioner's Directions.

(2) If a prisoner carries out work, the Commissioner must:

(a) calculate the amount notionally earned by the prisoner based on the determined rates of pay; and

(b) pay that amount into the prisoner's trust account.

56 Commercial activity

A prisoner must not engage in any commercial activity without the Commissioner's written consent.

Subdivision 6 Children

57 Commissioner may permit child to reside with prisoner

(1) This section applies if:

(a) a female prisoner gives birth to a child while she is a prisoner; or

(b) at the time a female prisoner became a prisoner she has or had parental responsibility for a young child:

(i) of whom she is the mother; or

(ii) under a court order.

(2) At the request of the female prisoner, the Commissioner may consent to the child residing at a custodial correctional facility with the prisoner.

(3) The Commissioner must not consent unless the Commissioner considers that all of the following apply:

(a) it is in the best interests of the child to reside at the facility with the prisoner;

(b) the security and good order of the facility would not be threatened by the child residing at the facility;

(c) there is suitable accommodation at the facility for the child;

(d) the child is not the subject of a court order awarding custody of the child to a person other than the prisoner;

(e) the child has been immunised in accordance with the recommendations of the National Immunisation Program.

(4) The Commissioner must revoke the consent if the Commissioner considers a matter mentioned in subsection (3)(d) or (e) no longer applies.

(5) The Commissioner may revoke the consent at any time.

(6) For the purpose of determining what is in the best interests of the child:

(a) the Commissioner may make enquiries and obtain information as the Commissioner considers appropriate; and

(b) a person or organisation with relevant information about the child is authorised to disclose the information to the Commissioner.

(7) In this section:

mother means the female parent (within the meaning of section 17 of the *Care and Protection of Children Act 2007*) of a child.

parental responsibility, see section 22 of the *Care and Protection of Children Act 2007*.

young child means a child who is under the compulsory school age within the meaning of section 38(1) of the *Education Act 2015*.

58 Child related social security benefits

(1) This section applies if the Commissioner consents to a child residing at a custodial correctional facility with a prisoner.

(2) If any social security benefits are payable to the prisoner in relation to the child, the prisoner must:

(a) arrange for the benefits to be paid to the Commissioner instead of the prisoner; or

(b) if a benefit is paid to the prisoner – pay the benefit to the Commissioner within 30 days of it being received by the prisoner.

(3) If an amount is paid to the Commissioner under subsection (2), the Commissioner must pay the amount into the prisoner's trust account.

(4) If a benefit is not paid to the Commissioner as required by subsection (2)(b), the Commissioner may deduct the amount of that benefit from the prisoner's trust account.

Subdivision 7 Religion and belief systems

59 Performance of religious practices

(1) To the extent practicable, a prisoner at a custodial correctional facility may perform the usual practices associated with the prisoner's religion or belief system (including attending services or ceremonies held at the facility).

(2) Items of personal property reasonably required for the performance of those practices are allowable items for the purposes of section 45.

(3) However, if the General Manager considers it appropriate to do so in order to maintain the security and good order of the facility, or the prisoner's health or wellbeing, the General Manager may prohibit the prisoner from:

(a) performing a practice mentioned in subsection (1); or

(b) possessing an item mentioned in subsection (2).

60 Religious and spiritual advisors

The Commissioner must take reasonable measures to ensure that every prisoner has access to a religious or spiritual advisor of the prisoner's religion or belief system.

Subdivision 8 Release

61 Release from custody

(1) The Commissioner must release a prisoner, other than an immigration detainee, on the prisoner's release date.

(2) The Commissioner must release an immigration detainee when required to do so under the *Migration Act 1958* (Cth).

62 Early release

(1) The Commissioner may release a sentenced prisoner up to 7 days before the prisoner's release date if the Commissioner considers it appropriate to do so.

(2) In determining whether it is appropriate, the Commissioner must have regard to the following:

(a) the interests and wellbeing of the prisoner;

(b) the protection of the prisoner;

(c) the administration of justice;

(d) the protection of the general community;

(e) any other matter the Commissioner considers relevant.

(3) This section does not apply in relation to a prisoner who is being released subject to a parole order.

(4) If a prisoner is released early under this section, the prisoner's term of imprisonment is taken to have expired on the day on which the prisoner is released.

63 Transport of prisoner on release

(1) When a prisoner is released the General Manager may arrange for the prisoner to be transported to any of the following:

(a) the place where the prisoner:

(i) will be required to reside under a non-custodial order; or

(ii) otherwise proposes to reside;

(b) the place where the prisoner last resided before becoming a prisoner;

(c) if applicable, the place where the prisoner was arrested before becoming a prisoner;

(d) any other place the General Manager considers appropriate.

(2) However, the General Manager must not arrange transport to a place outside the Territory unless special circumstances justify doing so.

Division 2 Youth

64 Transfer of youth prisoner to youth detention centre

(1) This section applies if the Commissioner considers that:

(a) it would be in the best interests of a youth prisoner to serve all or part of the youth's remaining prisoner period at a youth detention centre instead of a custodial correctional facility; and

(b) the facilities at the youth detention centre are adequate and appropriate for the care and custody of the youth.

(2) The Commissioner may, with the consent of the superintendent of the youth detention centre, transfer the youth to the youth detention centre.

(3) For the purposes of this Act, while the youth is in a youth detention centre, the youth:

(a) is not a youth prisoner; and

(b) is a youth detainee.

(4) While the youth is a youth detainee under subsection (3)(b), the youth is taken to be a detainee under a sentence of detention, and the *Youth Justice Act 2005* applies accordingly.

(5) In this section:

remaining prisoner period, for a youth, means the remainder of the period for which the youth would, but for this section, remain a prisoner.

65 Transfer of youth back to custodial correctional facility

(1) This section applies if:

(a) a youth who was transferred to a youth detention centre is still in a youth detention centre; and

(b) the superintendent of the youth detention centre considers that returning the youth to a custodial correctional facility would be:

(i) in the best interests of the youth; or

(ii) appropriate in order to maintain the security and good order of the youth detention centre.

(2) The superintendent may, with the consent of the Commissioner, transfer the youth to a custodial correctional facility.

(3) When the youth is transferred out of the youth detention centre, the youth:

(a) again becomes a youth prisoner; and

(b) ceases to be a youth detainee.

67 Sentence continues to run

To avoid doubt, if a youth to whom section 64 or 65 applies is under sentence of imprisonment or sentence of detention, the youth's sentence continues to run regardless of whether the youth is at a custodial correctional facility or a youth detention centre.

Division 3 Misconduct

68 Definitions

In this Division:

decision maker, in relation to misconduct proceedings, means the person conducting the proceedings under section 71(1).

misconduct decision means a decision under section 73(1) (including as to the imposition of a penalty).

misconduct proceedings, see section 71(1).

reviewer, in relation to proceedings for a review of a misconduct decision, means the person conducting the proceedings under section 75(1).

69 Misconduct

(1) A prisoner must not engage in misconduct.

(2) Without limiting what constitutes misconduct, a prisoner engages in misconduct if the prisoner engages in conduct:

(a) that constitutes misconduct under a provision of this Act; or

(b) that is prescribed by regulation to constitute misconduct.

(3) Regulations may prescribe conduct that does, or does not, constitute misconduct.

70 Charge of misconduct

(1) A prisoner may be charged with engaging in misconduct.

(2) The charge must be initiated by a correctional officer.

71 Proceedings for charge of misconduct

(1) If a prisoner is charged with engaging in misconduct, the proceedings on the charge (***misconduct proceedings***) must be conducted by:

(a) the General Manager of the custodial correctional facility; or

(b) a correctional officer nominated by the General Manager.

(2) The nominated correctional officer must not be the officer who initiated the charge.

(3) The decision maker may:

(a) decide the procedures for the proceedings (subject to this Act); and

(b) inform himself or herself as the decision maker considers appropriate.

(4) The proceedings must take place in the presence of the prisoner, unless the prisoner refuses to attend.

(5) The proceedings must be conducted:

(a) with as much informality and expedition, and with as little technicality, as fairness to the prisoner permits; and

(b) in accordance with the rules of natural justice.

(6) The prisoner may do one or more of the following:

(a) give evidence;

(b) call and examine witnesses;

(c) cross-examine witnesses called in support of the charge.

(7) Evidence is not required to be given under oath and the rules of evidence do not apply.

72 Representation of prisoner

(1) In misconduct proceedings, the prisoner is to represent himself or herself.

(2) However, if the General Manager considers the prisoner is unable to adequately represent himself or herself, the General Manager may approve a person nominated by the prisoner to assist or represent the prisoner.

(3) The nominated person must be another prisoner, or a person employed, at the custodial correctional facility.

(4) The prisoner is not entitled to representation by a legal practitioner.

73 Decision

(1) At the conclusion of misconduct proceedings, the decision maker must decide:

(a) whether, on the balance of probabilities, the prisoner has engaged in misconduct; and

(b) if so, the penalty (if any) to be imposed under section 78.

(2) As soon as practicable after making the decision, the decision maker must give written notice of the decision to:

(a) the prisoner; and

(b) if the decision maker is not the General Manager – the General Manager.

(3) A correctional officer who is asked by the prisoner to explain the written decision must give the prisoner a verbal explanation of the decision and its effect.

(4) Subsection (3) does not apply if another correctional officer has already provided the prisoner with a verbal explanation.

74 Prisoner may request review

(1) A prisoner who is found to have engaged in misconduct may apply to the Commissioner for a review of the misconduct decision.

(2) The application must be made within 3 days after the prisoner is given the written notice of the decision.

75 Person to conduct review

(1) Proceedings on a review of a misconduct decision must be conducted by:

(a) if the decision maker was the General Manager – the Commissioner; or

(b) if the decision maker was a correctional officer:

(i) a more senior correctional officer nominated by the Commissioner; or

(ii) if it is not practicable to nominate a more senior correctional officer – the Commissioner.

(2) In conducting the review, the reviewer:

(a) may decide the procedures for the review; and

(b) must comply with the rules of natural justice.

76 Decision on review

(1) After reviewing the misconduct decision, the reviewer must do one of the following:

(a) affirm the misconduct decision;

(b) vary the misconduct decision;

(c) quash the misconduct decision.

(2) Section 73(2), (3) and (4) apply in relation to the decision on review as if it were a misconduct decision.

77 Further review

(1) If the reviewer was the Commissioner, no appeal or further review lies from a decision under section 76.

(2) If the reviewer was a correctional officer, the prisoner may apply to the Commissioner for a review of a decision under section 76.

(3) The application must be made within 3 days after the prisoner is given the written notice of the review decision.

(4) The further review is to be conducted by the Commissioner.

(5) Subsection (1) and sections 75(2) and 76 apply in relation to the further review as if it were a review requested under section 74(1).

78 Penalties for misconduct

(1) This section applies to a decision maker, a reviewer or the Commissioner on a further review imposing a penalty on a prisoner for engaging in misconduct.

(2) The person imposing the penalty may do one or more of the following:

(a) reprimand or caution the prisoner;

(b) order that the prisoner be separated from other prisoners for up to 7 days;

(c) order that a privilege prescribed by regulation be withdrawn from the prisoner for up to 28 days;

(d) order that the prisoner's rate of pay for work carried out be reduced for up to 28 days by not more than the amount or percentage prescribed by the Regulations;

(e) order that the prisoner not be permitted to carry out paid work for up to 28 days on which the prisoner would otherwise have been required or permitted to do so;

(f) if section 80 applies – order the prisoner to pay restitution;

(g) impose a penalty prescribed by regulation.

(3) In determining what penalty to impose, the person must comply with the Commissioner's Directions.

(4) The person may suspend the operation of a penalty for a period of up to 6 months.

(5) If a penalty is suspended for a period and the prisoner does not engage in any further misconduct during that period, the penalty is taken to be spent.

79 Stay of imposition of penalty pending review

A decision imposing a penalty for engaging in misconduct takes effect when the first of the following occurs:

(a) the prisoner waives the prisoner's right to a review of the decision;

(b) the time allowed to apply for a review of the decision has expired and no application for review has been made;

(c) if the prisoner applies for a review of the decision:

(i) if the prisoner does not have a right to apply for further review – the review is determined; or

(ii) if the prisoner does have a right to apply for further review – the first of the following occurs:

(A) the prisoner waives that right;

(B) the time allowed to apply for the further review has expired and no application for further review has been made;

(C) if the prisoner applies for further review – the further review is determined.

80 Restitution for damage caused by misconduct

(1) This section applies if a person imposing a penalty (as mentioned in section 78(1)) finds that the prisoner's misconduct destroyed or damaged property owned by a person other than the prisoner.

(2) The person may, under section 78(2)(f), order the prisoner to pay restitution to the owner of the property for the destruction or damage.

(3) The maximum amount that the prisoner may be ordered to pay is the lesser of the following for each item of destroyed or damaged property:

(a) the amount prescribed by regulation;

(b) for property that was:

(i) destroyed – the value of the property; or

(ii) damaged – the loss of value or the cost of repair, as the case may be.

(4) If the prisoner is ordered to pay restitution and has not done so within the time required by the order, the Commissioner may pay all or part of the amount ordered to the owner of the property and deduct the amount paid from the prisoner's trust account.

(5) The fact that the owner of the property has received a payment by way of restitution under this section does not affect the owner's right to seek additional damages in a civil action.

Division 4 Health care for prisoners

81 Definitions

In this Division:

CEO Health means the Chief Executive Officer of the Agency administering the *Medical Services Act 1982*.

health care means health care of any kind, including:

(a) anything that is part of a health service, as defined in section 5 of the Health Practitioner Regulation National Law; and

(b) all aspects of care, including examination, assessment, preparation of care or treatment plans, and provision of care and treatment.

82 Commissioner to arrange health care

(1) The Commissioner must arrange for the provision of appropriate health care for prisoners.

(2) The Commissioner must ensure that prisoners are provided with access to health care that is comparable with that available to persons in the general community in the same part of the Territory.

83 Access to and by health practitioners

In order to enable appropriate health care to be provided to prisoners, the Commissioner must ensure that, to the extent practicable:

(a) health practitioners are provided with access to prisoners; and

(b) prisoners are permitted to consult in person with health practitioners.

84 Access to health information

(1) The Commissioner must ensure that the information relating to the health and health care of prisoners is accessible only to persons authorised by the Commissioner.

(2) A person with access to the information must comply with the Commissioner's Directions in relation to obtaining, storing and use of the information.

Note for section 84

Improper disclosure of health information may constitute an offence under section 189.

85 Recommendations of health practitioner

(1) This section applies if a health practitioner makes a recommendation to the General Manager about health care for a prisoner (including a recommendation that the prisoner be taken to a health care facility).

(2) The General Manager must give reasonable consideration to implementing the recommendation.

86 Prisoner may be taken to health care facility

(1) The General Manager may arrange for a prisoner to be taken to a health care facility to enable appropriate health care to be provided for the prisoner.

(2) However, the General Manager must not arrange for the prisoner to be taken to a facility outside the Territory unless:

(a) an appropriate health practitioner has advised the General Manager that is it necessary to do so in order to provide appropriate health care for the prisoner; and

(b) there is no health care facility in the Territory at which:

(i) the health care can be provided; and

(ii) the prisoner can be accommodated.

87 Arrangements with health care facilities

(1) The General Manager must make arrangements with the person in charge of the facility to ensure that the prisoner:

(a) does not pose a threat to patients or staff of the facility or the general public; and

(b) is not able to leave the facility unescorted.

(2) The arrangements must be made before, or as soon as practicable after, the prisoner is taken to the facility.

88 Health care generally to be provided by NT Regional Health Services

(1) If practicable, health care for a prisoner is to be provided through NT Regional Health Services.

(2) The CEO Health must ensure that health care provided through NT Regional Health Services for a prisoner is comparable to the health care that is provided through NT Regional Health Services to persons in the general community.

(3) A prisoner may, with the agreement of the Commissioner, obtain health care from outside NT Regional Health Services at the prisoner's own cost.

(4) In this section:

NT Regional Health Services, see section 10 of the *Health Service Act 2021*.

89 CEO Health to provide health information on request

(1) The General Manager of a custodial correctional facility may request the CEO Health to give the General Manager current health information about a prisoner.

(2) As soon as practicable after receiving the request, the CEO Health must give to the General Manager all current health information about the prisoner:

(a) that is in the CEO Health's possession; or

(b) to which the CEO Health has access through an arrangement with another health care provider.

(3) The CEO Health must comply with the request:

(a) even if the information requested is sensitive information for the *Information Act 2002*; and

(b) despite any obligation the CEO Health may be under not to disclose the information.

(4) In this section:

current health information, for a prisoner, means health information about the prisoner that the General Manager might reasonably need:

(a) in order to ensure that appropriate health care is provided for the prisoner; or

(b) otherwise for the control and management of the prisoner.

health information, about a prisoner, means information about the prisoner's health and health care including:

(a) the prisoner's health conditions and health risks; and

(b) for each such health condition:

(i) the likelihood of the condition resulting in:

(A) a medical emergency; or

(B) the onset of significant health problems; and

(ii) symptoms associated with the condition; and

(c) treatment that has been or is being provided for the prisoner; and

(d) documented treatment plans for treatment that is proposed for the prisoner.

90 Birth to be at health care facility

If a prisoner is pregnant, the General Manager must ensure that the prisoner is taken to a health care facility to give birth, unless it is impracticable to do so in the circumstances.

91 Notification of critical illness or injury or death

(1) The General Manager must notify the Commissioner as soon as practicable after either of the following occurs:

(a) a prisoner becomes critically ill or injured;

(b) a prisoner dies.

(2) If the prisoner is critically ill or injured, the Commissioner must take reasonable steps to notify the prisoner's next of kin and legal practitioner, and any other person who has decision making authority for the prisoner.

Notes for section 91

1 Under section 12 of the Coroners Act 1993, the Commissioner is required to report the death of a prisoner to the Coroner. In the event of a death, the Coroner's staff notify next of kin.

2 Other persons with decision making authority might include a guardian appointed under the Guardianship of Adults Act 2016 or a decision maker under the Advance Personal Planning Act 2013.

92 Provision of health care without consent

(1) This section applies if:

(a) the General Manager of a custodial correctional facility:

(i) considers the provision of health care to a prisoner might be necessary to prevent serious harm to the prisoner; and

(ii) requests a medical practitioner to examine the prisoner and, if appropriate, provide health care; and

(b) the prisoner refuses to consent to the examination or provision of health care.

(2) The medical practitioner may, without the prisoner's consent:

(a) examine the prisoner to determine whether the provision of health care is necessary; and

(b) if the medical practitioner considers that it is necessary – provide the health care to the prisoner.

(3) If the prisoner does not submit to the examination or provision of the health care, a correctional officer may assist the medical practitioner in examining the prisoner or providing the health care.

(4) In providing the assistance, the correctional officer may use the force that is reasonably necessary.

Note for subsection (4)

Part 3.4 makes provision in relation to the use of force.

93 Administration of medication to prevent harm

(1) This section applies if the General Manager of a custodial correctional facility:

(a) considers the administration of medication to a prisoner might be necessary to prevent, or reduce the risk of, the prisoner causing serious harm to himself or herself or to another person; and

(b) requests a medical practitioner to provide advice on:

(i) whether administering medication would prevent or reduce the risk of harm; and

(ii) the health consequences for the prisoner of doing so.

(2) For the purpose of providing the advice, the medical practitioner may examine the prisoner (whether or not the prisoner consents).

(3) The General Manager may request a medical practitioner to administer the medication to the prisoner only if, after considering the medical practitioner's advice, the General Manager considers that doing so:

(a) is necessary to prevent or reduce the risk of harm; and

(b) is the least restrictive intervention available in the circumstance.

(4) The medical practitioner:

(a) may, but is not required to, comply with the request; and

(b) may administer the medication whether or not the prisoner consents.

(5) If the prisoner does not submit to the examination or administration of medication, a correctional officer may assist the medical practitioner in examining the prisoner or administering the medication.

(6) In providing the assistance, the correctional officer may use the force that is reasonably necessary.

Note for subsection (6)

Part 3.4 makes provision in relation to the use of force.

Part 3.2 Visits and communication

Division 1 Visits

94 Definitions

In this Division:

observed means observed in real time by means of an audiovisual system.

priority/legal visit means a visit to a prisoner by a priority visitor or a prisoner's legal practitioner.

priority visitor means one of the following:

(a) a person mentioned in paragraphs (a) to (k) of the definition ***protected correspondent*** in section 151;

(b) a person nominated in writing by a person mentioned in paragraphs (d) to (k) of the definition ***protected correspondent*** in section 151 as that person's delegate;

(c) a person nominated in writing by a body mentioned in paragraph (l) or (m) of the definition ***protected correspondent*** in section 151 as the body's representative;

(d) a person prescribed by regulation.

recorded means recorded by means of an audiovisual system.

95 Visit by priority visitors

(1) A priority visitor may visit a custodial correctional facility, and prisoners at the facility, at any reasonable time.

(2) The priority visitor may be accompanied by one or more other persons to provide translation, administrative or technical assistance.

(3) A priority visitor:

(a) is subject to sections 98 to 101 and 142 to 145; but

(b) may be refused entry, or directed to leave, only if the General Manager considers that doing so is reasonably necessary in order to maintain the security and good order of the facility.

96 Visit by prisoner's legal practitioner

(1) A prisoner's legal practitioner may visit the prisoner at any reasonable time by appointment with the General Manager.

(2) The legal practitioner may be accompanied by one or more other persons to provide translation, legal, administrative or technical assistance.

(3) A legal practitioner:

(a) is subject to sections 98 to 101 and 142 to 145; but

(b) may be refused entry, or directed to leave, only if the General Manager considers that doing so is reasonably necessary in order to maintain the security and good order of the facility.

97 Other visitors

Any other person may visit a custodial correctional facility or a prisoner if permitted by the General Manager, subject to section 98.

98 Commissioner may prohibit visits

The Commissioner may prohibit visits by a person or class of persons to the following:

(a) custodial correctional facilities or a particular facility;

(b) prisoners or a particular prisoner.

Notes for section 98

1 A correctional officer may use the force that is reasonably necessary to prevent entry by a person who is prohibited from visiting (see section 101).

2 Entering a custodial correctional facility without authority may constitute an offence against section 179.

99 General Manager may refuse entry

The General Manager of a custodial correctional facility may refuse entry to a person wishing to visit the facility or a prisoner if the General Manager considers it appropriate to do so.

Examples for section 99

Examples of grounds on which it may be appropriate to refuse entry by a person include the following:

(a) the visit could threaten the security and good order of the facility or a prisoner;

(b) a court order prohibits contact between a prisoner and the person;

(c) a law enforcement agency has advised that contact between a prisoner and the person could prejudice an ongoing investigation;

(d) the person has contravened this Act.

Notes for section 99

1 A correctional officer may use the force that is reasonably necessary to prevent entry by a person who has been refused entry (see section 101).

2 Entering a custodial correctional facility without authority may constitute an offence against section 179.

100 Person may be directed to leave custodial correctional facility

A correctional officer may direct a visitor at a custodial correctional facility to leave the facility if the correctional officer considers it appropriate to do so.

Examples for section 100

Examples of grounds on which it may be appropriate to direct a person to leave a facility include the following:

(a) the purpose for which the person was permitted to enter the facility has been achieved;

(b) the person has failed to comply with a reasonable direction of the General Manager or a correctional officer;

(c) the person has contravened this Act;

(d) the visit is threatening the security and good order of the facility or a prisoner.

Notes for section 100

1 A correctional officer may use the force that is reasonable necessary to remove a person who has been directed to leave (see section 101).

2 Failing to leave a custodial correctional facility when directed to do so may constitute an offence against section 180.

101 Correctional officer may prevent entry or remove person

(1) If a person who is prohibited under section 98 from visiting a custodial correctional facility, or has been refused entry under section 99, attempts to enter the facility, a correctional officer may prevent the person from entering.

(2) If a person who is directed under section 100 to leave a custodial correctional facility does not do so as quickly as practicable, a correctional officer may remove the person from the facility.

(3) For the purpose of preventing entry by, or removing, the person, the correctional officer may use the force that is reasonably necessary.

Note for subsection (3)

Part 3.4 makes provision in relation to the use of force.

102 Observation and recording visits

(1) The General Manager may require a visit that is not a priority/legal visit to be conducted in the presence of a correctional officer.

(2) The General Manager may cause a visit that is not a priority/legal visit to be visually and aurally observed or recorded.

(3) The General Manager may cause a priority/legal visit to be visually (but not aurally) observed or recorded.

(4) The General Manager must not:

(a) require a priority/legal visit to be conducted in the presence of another person; or

(b) permit a priority/legal visit to be audibly observed or recorded without the consent of the visitor.

Division 2 Telephone calls

103 Definitions

In this Division:

monitored means listened to in real time or recorded.

priority/legal call means a telephone call made:

(a) by a prisoner to a priority visitor or the prisoner's legal practitioner; or

(b) to a prisoner by a priority visitor or the prisoner's legal practitioner.

104 Prisoner may make telephone calls

(1) A prisoner may make and receive telephone calls in accordance with the Commissioner's Directions.

(2) However, the General Manager may prohibit a prisoner from making or receiving a call that is not a priority/legal call if the General Manager considers it appropriate to do so.

(3) A prisoner may be prohibited from making or receiving a priority/legal call only if the General Manager considers that doing so is reasonably necessary in order to maintain the security and good order of the custodial correctional facility.

105 Monitoring of telephone calls

(1) The General Manager may cause a call that is not a priority/legal call to be monitored.

(2) The General Manager must not permit a protected/legal call to be monitored without the consent of the priority visitor or legal practitioner.

Division 3 Mail

106 Prisoner may send and receive mail

(1) A prisoner may send and receive mail in accordance with the Commissioner's Directions.

(2) However, the General Manager may prohibit a prisoner from sending or receiving mail if the General Manager considers it appropriate to do so.

(3) A prisoner must not be prohibited from receiving mail that is a protected/legal item.

(4) A prisoner may be prohibited from sending mail that is a protected/legal item only if the intended recipient has requested, in writing, that mail not be sent to the intended recipient by the prisoner.

107 Searches of mail

Mail sent by or to a prisoner is taken to be part of the prisoner's personal possessions.

Note for section 107

Under section 47, a correctional officer has power to search a prisoner's personal possessions. However, sections 153 and 154 limit the confiscation and inspection of protected/legal items.

108 Disclosure of information to correctional officers

(1) This section applies if mail purporting to have been sent by a protected correspondent or a prisoner's legal practitioner is inspected under section 154 and found:

(a) not to have been sent by the protected correspondent or legal practitioner; or

(b) to be, or to contain, a thing that the nominated examiner reasonably believes is a prohibited thing.

(2) The General Manager may inform correctional officers of the finding mentioned in subsection (1).

(3) However, if the mail was a protected/legal item, the General Manager must not disclose to correctional officers any information about the contents of the mail other than information about any thing that is believed to be a prohibited thing.

Part 3.3 Leave permits

Division 1 General matters

109 Leave permits

(1) The Commissioner may authorise a prisoner to be absent from a custodial correctional facility by issuing to the prisoner one of the following (a ***leave permit***):

(a) a general leave permit;

(b) an interstate custodial leave permit;

(c) a foreign legal matters leave permit;

(d) an administrative home detention permit.

(2) A leave permit authorises the prisoner to be absent from a custodial correctional facility in accordance with the terms and conditions of the permit.

(3) The Commissioner must give a copy of the permit to the Commissioner of Police.

110 Duration of leave permit

A leave permit is in force for the period specified in it (unless sooner revoked), being:

(a) for an administrative home detention permit – the period mentioned in section 134; or

(b) otherwise – a period the Commissioner considers appropriate having regard to the purposes for which the permit is issued.

111 Conditions on leave permit

A leave permit is subject to the following conditions:

(a) the prisoner must obey all reasonable directions of the Commissioner, a correctional officer or a probation and parole officer;

(b) the prisoner must not commit an offence;

(c) any conditions prescribed by regulation;

(d) any conditions specified in the permit.

112 Effect of leave permit on lawful custody

(1) A prisoner who is absent from a custodial correctional facility as authorised by a leave permit:

(a) remains a prisoner; and

(b) remains in the lawful custody of the Commissioner.

(2) The prisoner ceases to be in the lawful custody of the Commissioner if the prisoner:

(a) fails to comply with the terms and conditions of the permit; or

(b) fails to return to the custodial correctional facility before the permit ceases to be in force.

Note for section 112

If a prisoner ceases to be in the lawful custody of the Commissioner, the prisoner is unlawfully absent (see section 9(2)). If a prisoner is unlawfully absent:

(a) if the prisoner is a sentenced prisoner – the prisoner's sentence of imprisonment ceases to run (see section 63A of the Sentencing Act 1995); and

(b) the prisoner may be arrested (see section 141).

113 Variation or revocation of leave permit

(1) The Commissioner may vary or revoke a leave permit at any time.

(2) A leave permit is automatically revoked if, while the permit is in force, an event occurs that would result in the person becoming a prisoner if he or she were not already a prisoner.

Examples for subsection (2)

Examples of events that would result in a person becoming a prisoner include the following:

(a) being sentenced to another term of imprisonment;

(b) being remanded in custody after being arrested for another offence.

114 Unlawfully absent prisoner may be returned to place authorised by permit

(1) This section applies if a prisoner to whom a leave permit has been issued fails to comply with it and is arrested under section 141.

(2) For section 141(2)(b), an appropriate place includes a place at which the prisoner is authorised by the permit to be.

115 Liability of Territory to maintain prisoner on leave

(1) The Territory is not liable to maintain a prisoner who is absent from a custodial correctional facility as authorised by an administrative home detention permit.

(2) If a prisoner is absent as authorised by any other leave permit, the Territory's liability to maintain the prisoner is the same as it would be if the prisoner were at a custodial correctional facility, unless stated otherwise in the leave permit.

116 Rules of natural justice do not apply

The rules of natural justice (including any duty of procedural fairness) do not apply in relation to a decision of the Commissioner under this Part.

117 Decisions not reviewable

No appeal or review lies against a decision of the Commissioner under this Part.

Division 2 General leave permits

118 Commissioner may issue general leave permit

The Commissioner may issue a permit (a ***general leave permit***) to a prisoner that authorises the prisoner to be temporarily absent from a custodial correctional facility for a purpose the Commissioner considers appropriate.

Examples for section 118

Examples of purposes for which a permit may be issued include the following:

(a) education and training;

(b) employment;

(c) compassionate grounds;

(d) recreation;

(e) participation in community projects;

(f) reintegration into the community.

119 Prisoner employed while on leave

(1) This section applies if a prisoner is issued with a general leave permit that authorises the prisoner to engage in paid employment.

(2) The employer must pay all of the prisoner's earnings (after deducting any tax) to the Commissioner.

(3) The Commissioner must pay the amount received into the prisoner's trust account.

Division 3 Interstate custodial leave permits

120 Definitions

In this Division:

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

corresponding interstate law means a law of a State declared under section 121 to be a corresponding interstate law for this Division.

corresponding permit means a custodial leave permit (however described) issued under a corresponding interstate law.

interstate custodial leave permit means a permit issued under section 122.

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

(a) a correctional officer (however described) or a police officer of the State; or

(b) a person authorised to have the custody of an interstate prisoner under a corresponding permit; or

(c) a person appointed in writing by the corresponding Commissioner of the State to be an interstate escort for the purpose of escorting an interstate prisoner to the State.

interstate prisoner means a person who is in the Territory under the authority of a corresponding permit.

participating State means a State in which a corresponding law is in force.

State means a State or another Territory.

121 Corresponding interstate laws

The Administrator may, by *Gazette* notice, declare a law of a State to be a corresponding interstate law for this Division if satisfied that the law substantially corresponds with this Division.

122 Issue of interstate custodial leave permit

(1) The Commissioner may issue a permit (an ***interstate custodial leave permit***) to a prisoner allowing the prisoner to travel to the participating State specified in the permit:

(a) for purposes relating to the health and wellbeing of the prisoner; or

(b) if the Minister has approved the issue of the permit on the grounds that there are exceptional personal circumstances that apply to the prisoner.

(2) An interstate custodial leave permit is subject to:

(a) any conditions prescribed by regulation; and

(b) any other conditions specified in the permit.

123 Effect of permit

An interstate custodial leave permit:

(a) permits the prisoner specified in the permit to be absent from the custodial correctional facility specified in the permit in the custody of an escort for the purposes and for the period (not exceeding 10 days) specified in the permit; and

(b) authorises the escort to take and keep in custody the prisoner for:

(i) escorting the prisoner to the participating State (whether or not across another State) and within the participating State for the purpose specified in the permit; and

(ii) returning the prisoner to the custodial correctional facility.

124 Appointment of escorts

The Commissioner may, in writing, appoint as an escort for this Division any person the Commissioner considers to be appropriate.

125 Variation or revocation of permit

The Commissioner may at any time:

(a) vary the terms of an interstate custodial leave permit, including the period of absence specified in the permit and any of its conditions, including any prescribed conditions; or

(b) revoke the permit.

126 Notice to participating States and transit States

On issuing an interstate custodial leave permit, the Commissioner must give written notice of its issue and the period of absence specified in the permit to:

(a) the corresponding Commissioner and the chief officer of police in the participating State to which the prisoner is to travel; and

(b) the chief officer of police of any other State through which the prisoner is to travel by land to reach the participating State.

127 Failure to comply with conditions of interstate custodial leave permit

(1) A prisoner who is absent from a custodial correctional facility on an interstate custodial leave permit commits an offence if:

(a) the prisoner engages in conduct; and

(b) the conduct contravenes a condition of the prisoner's leave permit.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

128 Effect of permit issued under corresponding law

The interstate escort of an interstate prisoner is authorised while in the Territory:

(a) to take and keep custody of the interstate prisoner for the purposes and period set out in the applicable corresponding permit; and

(b) to take and keep custody of the interstate prisoner for returning the interstate prisoner to the participating State.

129 Escape from custody of interstate prisoner

(1) A correctional officer or police officer may arrest an interstate prisoner who has escaped the custody of an interstate escort.

(2) An interstate prisoner must be taken before a Local Court Judge if the prisoner:

(a) has been arrested under subsection (1); or

(b) attempts to escape from the custody of an interstate escort.

(3) Despite any corresponding permit issued to the interstate prisoner, the Local Court Judge may, by 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 that purpose.

(4) The interstate prisoner may be detained by the Commissioner until:

(a) the interstate prisoner is delivered into the custody of an interstate escort under the warrant; or

(b) 7 days have elapsed since the warrant's issue.

(5) If the interstate prisoner is not delivered into the custody of an interstate escort within 7 days after the warrant's issue, the warrant expires.

Division 4 Foreign legal matters leave permit

130 Commissioner may issue foreign legal matters leave permit

(1) This section applies if, under section 26 or 27 of the *Mutual Assistance in Criminal Matters Act 1987* (Cth), the Commonwealth Attorney-General makes arrangements for a prisoner to travel to a foreign country to:

(a) give evidence at a proceeding relating to a criminal matter; or

(b) give assistance in relation to an investigation relating to a criminal matter.

(2) The Commissioner may issue a permit (a ***foreign legal matters leave permit***) to a prisoner that authorises the prisoner to travel to the foreign country for that purpose.

Division 5 Administrative home detention permits

131 Definition

In this Division:

approved residence means the place specified in an administrative home detention permit as the place at which the prisoner is to reside.

132 Commissioner may issue permits

(1) The Commissioner may issue a permit (an ***administrative home detention permit***) to a qualifying prisoner that authorises the prisoner to reside at a place outside a custodial correctional facility that is specified in the permit.

(2) A prisoner is a ***qualifying prisoner*** if:

(a) the prisoner is not a disqualified prisoner; and

(b) the period from which it is proposed the permit will come into force to the prisoner's release date is 12 months or less.

(3) A prisoner is a ***disqualified prisoner*** if the prisoner:

(a) is under a sentence of imprisonment and one or more of the following applies:

(i) the sentence includes a non-parole period;

(ii) the prisoner has served less than 50% of the term of imprisonment;

(iii) Part 3, Division 6A of the *Sentencing Act 1995* applied to the sentence and the person has not yet served the minimum term of imprisonment that the sentencing court was required under that Division to impose;

(iv) the sentence is for an indefinite term of imprisonment under Part 3, Division 5, Subdivision 4 of the *Sentencing Act 1995*; or

(b) is a youth prisoner; or

(c) is a detainee under the *Serious Sex Offenders Act 2013*; or

(d) is an immigration detainee.

133 Circumstances in which permit may be issued

(1) The Commissioner must not issue an administrative home detention permit to a prisoner unless the Commissioner considers that all of the following apply:

(a) the place proposed as the approved residence is suitable as a place for the prisoner to reside;

(b) suitable arrangements have been made for the prisoner to reside at that place;

(c) authorising the prisoner to reside at the proposed approved residence is not likely to unduly inconvenience or put at risk:

(i) other persons living at the proposed approved residence; or

(ii) the community generally;

(d) the prisoner agrees to the issue of the permit on the terms and conditions proposed by the Commissioner.

(2) For subsection (1)(c), the Commissioner may take into account the views of members of the community who the Commissioner considers may be affected by the granting of the permit.

134 Duration of permit

An administrative home detention permit is in force from the date it is issued (or a later date specified in it) until the prisoner's release date.

135 Compulsory conditions on permit

The conditions specified in an administrative home detention permit under section 111(d) must include the condition that the prisoner must not leave the approved residence except at times and for periods:

(a) prescribed by regulation; or

(b) otherwise permitted by the Commissioner or a probation and parole officer.

136 Non-custodial offender provisions apply

Chapter 4 (including any regulations made for the purposes of that Chapter) and section 197(3) apply in relation to a prisoner for whom an administrative home detention permit is in force as if:

(a) the prisoner were a non-custodial offender; and

(b) the permit were a monitoring order.

Part 3.4 Maintaining security and good order – use of force

137 Correctional officer to maintain security and good order

(1) A correctional officer may take any reasonable and appropriate steps in order to maintain the security and good order of a custodial correctional facility and prisoners.

(2) For the purpose of doing so, a correctional officer may use the force that is reasonably necessary.

(3) Examples of when it may be reasonably necessary to use force include the following:

(a) if a prisoner fails to do something the prisoner is required under this Act to do – to compel the prisoner to do the thing;

(b) to prevent a prisoner engaging in misconduct;

(c) to prevent a person at the facility from:

(i) harming himself or herself or another person; or

(ii) damaging property;

(d) in self-defence or to defend someone else;

(e) to restrain persons causing a disturbance at the facility;

(f) to prevent the escape of a prisoner.

Note for section 137

There are also other provisions of this Act that provide for the use of force in specific circumstances, including the following:

(a) section 42(3) – complying with directions of correctional officers;

(b) section 47(3) – searching prisoner;

(c) sections 48(4) and 50(5) – assisting person searching prisoner;

(d) sections 51(3) and 52(3) – assisting person taking sample;

(e) section 53(2) – using approved identification system;

(f) sections 92(4) and 93(6) – assisting medical practitioner;

(g) sections 101(3) and 146(3) – preventing person entering, or removing person from, custodial correctional facility;

(h) section 147(4) – searching vehicle;

(i) section 150(3) – arresting person committing offence.

138 Limitations of use of force

(1) This section applies when a correctional officer is permitted under this Act to use force.

(2) The use of force by a correctional officer is ***reasonably necessary*** only if the correctional officer reasonably believes that:

(a) the purpose for which the force is used could not reasonably be achieved in another practicable way; and

(b) the nature and amount of force used is reasonable in the circumstances.

139 Firearms and other weapons

(1) A correctional officer lawfully using force under this Act may use an approved firearm, weapon or restraint for that purpose.

(2) A correctional officer may possess an approved firearm, weapon or restraint for the purpose of using it as permitted under subsection (1).

(3) In this section:

approved means approved by the Commissioner in the Commissioner's Directions.

140 Commissioner to manage use of force

(1) The Commissioner must ensure that:

(a) to the extent practicable, force is used under this Act only:

(i) as a last resort; and

(ii) when the use of force is reasonably necessary; and

(b) correctional officers who use force do so in accordance with this Act.

(2) The Commissioner must issue Commissioner's Directions in relation to the use of force, including as to:

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

(b) the nature of the force that may be used in those circumstances.

141 Arrest of unlawfully absent prisoner

(1) If a correctional officer or police officer reasonably believes that a prisoner is unlawfully absent from a custodial correctional facility, the officer may arrest the prisoner without warrant.

(2) As soon as practicable after making the arrest, the officer must take the prisoner (or arrange for the prisoner to be taken) to:

(a) the custodial correctional facility; or

(b) another appropriate place.

Examples for subsection (2)(b)

Examples of other places where it may be appropriate to take the prisoner include the following:

(a) another custodial correctional facility;

(b) a police station;

(c) if the prisoner is sick or injured – a health care facility.

(3) For the purpose of exercising the power under subsection (1), a correctional officer may exercise the powers, and has the immunities of, a police officer under the *Police Administration Act 1978*.

Part 3.5 General matters about custodial correctional facilities

Division 1 Matters relating to people and things at custodial correctional facility

142 Name and address to be provided

(1) A correctional officer or employee of the Agency may direct a person who is at, or in the vicinity of, a custodial correctional facility (other than a prisoner) to give the person's name and residential address.

(2) If a person fails to comply with the direction, the General Manager may refuse entry to the person or, if the person is at a facility, direct the person to leave the facility.

(3) When giving the direction, the officer or employee must tell the person that failure to comply with the direction is an offence.

Notes for section 142

1 This section applies to priority visitors and legal practitioners, but subject to sections 95(3) and 96(3).

2 A correctional officer may use the force that is reasonably necessary to prevent entry or remove a person from a facility (see section 146).

3 Failing to give a name or address may constitute an offence against section 185. Entering a facility without authority, or failing to leave when directed to do so, may constitute an offence against section 179 or 180.

143 Proof of identity

(1) The General Manager of a custodial correctional facility may direct a person at, or wishing to enter, the facility (other than a prisoner) to do either or both of the following:

(a) provide evidence of the person's identity;

(b) submit to the use of an approved identification system.

(2) If the person fails to comply with the direction, the General Manager may refuse entry to the person or direct the person to leave the facility.

(3) The Commissioner may keep details, or a copy, of any thing (including a photograph or biometric material (as defined in section 194)) provided by, or taken from, a person for the purpose of this section.

Notes for section 143

1 This section applies to priority visitors and legal practitioners, but subject to sections 95(3) and 96(3).

2 A correctional officer may use the force that is reasonably necessary to prevent entry or remove a person from a facility (see section 146).

3 Entering a facility without authority, or failing to leave when directed to do so, may constitute an offence against section 179 or 180.

144 Search of persons at facility

(1) The General Manager of a custodial correctional facility may direct a person at, or wishing to enter, the facility (other than a prisoner) to submit to a search of the person's clothing and personal possessions.

(2) If a person fails to submit to the search, the General Manager may refuse entry to the person or direct the person to leave the facility.

(3) A correctional officer may confiscate a thing found during the search that the correctional officer reasonably believes is:

(a) a prohibited thing; or

(b) connected with an offence against this Act.

Notes for section 144

1 This section applies to priority visitors and legal practitioners, but subject to sections 95(3) and 96(3).

2 A correctional officer may use the force that is reasonably necessary to prevent entry or remove a person from a facility (see section 146).

3 Entering a facility without authority, or failing to leave when directed to do so, may constitute an offence against section 179 or 180.

4 Part 3.5, Division 2 makes provision in relation to confiscation and how confiscated things are to be dealt with.

145 Alcohol and drug testing of persons at facility

(1) The General Manager of a custodial correctional facility may direct a person at, or wishing to enter, the facility (other than a prisoner) to submit to a prescribed alcohol/drug test.

(2) If a person fails to submit to the test, or the test reveals the presence of alcohol or a drug, the General Manager may refuse entry to the person or direct the person to leave the facility.

Notes for section 145

1 This section applies to priority visitors and legal practitioners, but subject to sections 95(3) and 96(3).

2 A correctional officer may use the force that is reasonably necessary to prevent entry or remove a person from a facility (see section 146).

3 Entering a facility without authority, or failing to leave when directed to do so, may constitute an offence against section 179 or 180.

4 Section 195 makes provisions for the carrying out of prescribed alcohol/drug tests.

146 Correctional officer may prevent entry or remove person

(1) If a person who has been refused entry to a custodial correctional facility under sections 142 to 145 attempts to enter the facility, a correctional officer may prevent the person from entering.

(2) If a person who is directed under sections 142 to 145 to leave a custodial correctional facility does not do so as quickly as practicable, a correctional officer may remove the person from the facility.

(3) For the purpose of preventing entry by, or removing, the person, the correctional officer may use the force that is reasonably necessary.

Note for subsection (3)

Part 3.4 makes provision in relation to the use of force.

147 Search of vehicles

(1) A correctional services officer may search a vehicle at a custodial correctional facility if the correctional officer reasonably believes that the vehicle contains something that is:

(a) a prohibited thing; or

(b) connected with an offence against this Act.

(2) For the purpose of the search, the correctional officer may do one or more of the following:

(a) stop the vehicle;

(b) detain the vehicle for as long as reasonably necessary;

(c) if the vehicle is locked – direct a person who has the means to do so to unlock it;

(d) if there is a person in or on the vehicle – direct the person to get out or off it.

(3) If a person fails to comply with a direction under subsection (2)(c) or (d), the officer may do one or more of the following:

(a) open the vehicle;

(b) remove the person from the vehicle.

(4) For the purposes of subsection (3), the officer may use the force that is reasonably necessary.

Note for subsection (4)

Part 3.4 makes provision in relation to the use of force.

(5) The correctional officer may confiscate a thing found during the search that the correctional officer reasonably believes is:

(a) a prohibited thing; or

(b) connected with an offence against this Act.

Note for subsection (5)

Part 3.5, Division 2 makes provision in relation to confiscation and how confiscated things are to be dealt with.

148 Search of custodial correctional facility

(1) A correctional officer may search any part of a custodial correctional facility, including a prisoner's cell.

(2) The correctional officer may confiscate a thing found during the search that the correctional officer reasonably believes is:

(a) a prohibited thing; or

(b) connected with an offence against this Act.

Note for subsection (2)

Part 3.5, Division 2 makes provision in relation to confiscation and how confiscated things are to be dealt with.

149 Person loitering may be directed to leave vicinity

(1) A correctional officer may direct a person who is loitering in the vicinity of a custodial correctional facility to leave the vicinity if the correctional officer considers it is appropriate to do so in order to maintain the security and good order of the facility.

(2) When giving the direction, the officer must tell the person that failure to comply with the direction is an offence.

Note for section 149

Failing to leave the vicinity of a custodial correctional facility when directed to do so may constitute an offence against section 181.

150 Arrest of person suspected of offence

(1) This section applies if a correctional officer reasonably believes that a person is committing, has committed, or will if not arrested commit:

(a) if the person is at a custodial correctional facility – an offence against this or any other Act; or

(b) if a person is in the vicinity of a custodial correctional facility – an offence against this Act.

Note for subsection (1)

An offence against another Act includes the offence against section 112 of the Criminal Code of escaping from lawful custody.

(2) The correctional officer may arrest the person.

(3) The correctional officer may use the force that is reasonably necessary to do so.

Note for subsection (3)

Part 3.4 makes provision in relation to the use of force.

(4) If a person is arrested, the General Manager:

(a) must deliver the person to a police officer as soon practicable after the arrest; and

(b) may detain the person at the facility until the person is delivered to a police officer.

Division 2 Searches, confiscation and confiscated things

151 Definitions

In this Division:

legal item means an item of mail, document or other thing that:

(a) has been, is being, or is intended to be, given:

(i) by a prisoner to the prisoner's legal practitioner; or

(ii) to a prisoner by the prisoner's legal practitioner; and

(b) is subject to client legal privilege.

nominated examiner means:

(a) for a protected item – a person nominated under section 156(1); or

(b) for a legal item – a person nominated under section 156(2).

protected correspondent means one of the following:

(a) for a custodial correctional facility – an official visitor for that facility;

(b) a Supreme Court Judge or Local Court Judge;

(c) a member of the Legislative Assembly;

(d) the Ombudsman;

(e) the Children's Commissioner;

(f) the Commissioner for Health and Community Services Complaints;

(g) the Anti-Discrimination Commissioner;

(h) the Information Commissioner;

(i) the ICAC;

(j) the Commissioner of Police;

(k) the Director of Public Prosecutions;

(l) Australian Human Rights Commission established by section 7 of the *Australian Human Rights Act 1986* (Cth);

(m) Australian Crime Commission established by section 7 of the *Australian Crime Commission Act 2002* (Cth);

(n) for a prisoner – a health practitioner of whom the prisoner is a patient;

(o) a person or entity prescribed by regulation.

protected item means an item of mail, document or other thing that:

(a) has been, is being, or is intended to be, given:

(i) by a prisoner to a protected correspondent; or

(ii) to a prisoner by a protected correspondent; and

(b) relates to the performance by the protected correspondent of the correspondent's official functions.

protected/legal item means a protected item or a legal item.

152 Conduct of searches – use of devices and dogs

For the purposes of conducting a search under this Act, a correctional officer may make use of either or both of the following:

(a) an electronic or other screening or scanning device;

(b) a correctional services dog.

153 Confiscation of protected/legal items

(1) This section applies if a correctional officer conducting a search under this Act finds a thing that purports to be a protected/legal item.

(2) The correctional officer:

(a) must not open or inspect the thing; and

(b) may confiscate the thing only if the correctional officer reasonably believes that:

(i) it is not a thing that has been, is being, or is intended to be, given:

(A) by a prisoner to a protected correspondent or the prisoner's legal practitioner; or

(B) to a prisoner by a protected correspondent or the prisoner's legal practitioner; or

(ii) it is, or contains a thing that is, a prohibited thing.

(3) If a correctional officer confiscates a thing that purports to be a protected/legal item, the correctional officer must, as soon as practicable, give it to:

(a) if it purports to be a protected item – a nominated examiner; or

(b) if it purports to be a legal item – the General Manager.

(4) As soon as practicable after being given a confiscated thing under subsection (3)(b), the General Manager must give it to a nominated examiner.

154 Inspection of purported protected/legal items

(1) This section applies if a thing that purports to be a protected/legal item is given to a nominated examiner.

(2) The nominated examiner must open (if required) and inspect the thing to the extent reasonably necessary to determine whether:

(a) it is a protected/legal item; and

(b) whether it, or something in it, is a thing that the examiner reasonably believes is a prohibited thing.

(3) As soon as practicable after being given the thing, the nominated examiner must:

(a) advise the General Manager, in writing, of the examiner's findings on inspecting the thing; and

(b) give the thing to the General Manager to be dealt with under section 155.

(4) As soon as practicable after receiving the advice from the nominated examiner, the General Manager must advise the Commissioner, in writing, of the following:

(a) the fact that the thing was confiscated;

(b) the grounds for the belief mentioned in section 153(2)(b);

(c) the findings of the nominated examiner on inspecting the thing;

(d) how the thing was dealt with under section 155.

155 General Manager to deal with inspected items

(1) This section applies if a thing that purports to be a protected/legal item is given to the General Manager under section 154(3)(b).

(2) If the nominated examiner found that the thing was not a protected/legal item, the General Manager must deal with it under section 157(3) as a confiscated thing.

(3) If the nominated examiner found that the thing was a protected/legal item, subject to subsections (4) and (5), the General Manager must:

(a) if the protected/legal item was confiscated from a person – return it to that person; or

(b) if the protected/legal item was mail:

(i) if it was sent to a prisoner – give it to the prisoner; or

(ii) otherwise – send it to the addressee.

(4) If the General Manager reasonably believes that the protected/legal item is a prohibited thing, the General Manager may deal with it under section 157(3).

(5) If the General Manager reasonably believes that the protected/legal item contains a thing that is a prohibited thing, the General Manager:

(a) may remove the thing and deal with it under section 157(3); and

(b) must deal with the rest of the protected/legal item under subsection (3).

(6) However, if the protected/legal item is a document and only part of it is a prohibited thing, the General Manager may redact that part of the document and deal with the document under subsection (3).

156 Nomination of nominated examiners

(1) The General Manager of a custodial correctional facility may nominate a correctional officer, an employee of the Agency, or himself or herself, to be a nominated examiner for protected items.

(1A) Despite subsection (1), for protected items where the protected correspondent is the ICAC, the nominated examiner is:

(a) the Inspector; or

(b) a person agreed by the Commissioner and the ICAC.

(2) The Minister must nominate a legal practitioner to be a nominated examiner for legal items.

(3) In this section:

Inspector, see section 4 of the *Independent Commissioner Against Corruption Act 2017*.

157 Dealing with confiscated things

(1) This section applies if a correctional officer confiscates a thing under this Act, unless section 153(3) applies.

(2) As soon as practicable after confiscating it, the correctional officer must give the thing to the General Manager.

(3) The General Manager must do one of the following with the thing:

(a) if it was confiscated from a person at, or wishing to enter, the facility:

(i) give it back to the person; or

(ii) hold it and return it to the person when the person leaves the facility;

(b) if it was confiscated from mail being sent into or out of the facility:

(i) return it to the sender; or

(ii) allow it to be delivered to the addressee;

(c) seize it and give it to the Commissioner to deal with under section 158.

(4) If the General Manager is holding a thing under subsection (3)(a), the General Manager may later seize it under subsection (3)(c).

158 Dealing with seized things

(1) This section applies if a thing (the ***seized thing***) is given to the Commissioner under section 157(3)(c).

(2) The Commissioner may do one of the following with the seized thing:

(a) give it to an appropriate law enforcement agency;

(b) give it to:

(i) the person from whom it was confiscated; or

(ii) a person the Commissioner reasonably believes owns, or is lawfully entitled to possession of, the thing;

(c) retain it for forensic or evidentiary purposes in relation to an offence against this Act;

(d) dispose of it (including by selling it or destroying it).

(3) If the Commissioner receives any money from the sale of a seized thing, the Commissioner must:

(a) if it was owned by a prisoner – pay the amount received into the prisoner's trust account; or

(b) pay the amount received to a person the Commissioner reasonably believes owned, or was lawfully entitled to possession of, the thing.

159 Disclosure of information about unlawful or improper conduct

(1) This section applies if a nominated examiner, the General Manager of a custodial correctional facility or the Commissioner (a ***relevant person***):

(a) obtains information as a result of the inspection of a thing that purports to be a protected/legal item; and

(b) the relevant person reasonably believes that the information discloses conduct by another person that:

(i) is unlawful; or

(ii) constitutes professional misconduct under an Act applicable to the other person.

(2) The relevant person may disclose the information to:

(a) a relevant law enforcement agency;

(b) a relevant Minister;

(c) for professional misconduct – the person or body responsible for taking action in relation to misconduct of that kind;

(d) if the other person is a member of the staff of, or an agent or other representative of, a protected correspondent – the protected correspondent;

(e) if the relevant person is not the Commissioner – the Commissioner.

Division 3 Administrative matters

160 General Manager may declare things to be prohibited

(1) The General Manager of a custodial correctional facility may, in writing, declare a thing to be a prohibited thing for the facility.

(2) The declaration has effect only while a notice is prominently displayed at each entrance to the facility identifying the thing as a prohibited thing.

161 Commissioner to maintain trust accounts

(1) The Commissioner must maintain a trust account for a prisoner.

(2) The Commissioner must pay the following into the account:

(a) any amount that the Commissioner is required under this Act to pay into the account;

(b) any amount paid to the Commissioner (by the prisoner or another person) for payment into the prisoner's account.

(3) The Commissioner may deduct the following from the account:

(a) any amounts that the Commissioner is permitted under this Act to deduct from the account;

(b) any amounts that the prisoner requests the Commissioner to pay out of the account.

Examples for subsection (3)(b)

Examples of amounts that a prisoner might request the Commissioner to pay include the following:

(a) educational expenses;

(b) a fine or other amount that the prisoner has been ordered to pay as a result of a conviction for an offence;

(c) an amount for the purchase of an allowable item.

(4) When a person ceases to be a prisoner the Commissioner must:

(a) if the balance of the account:

(i) is positive – pay an amount equal to the balance to the person; or

(ii) is negative – write off the amount of the balance; and

(b) close the prisoner's trust account.

162 Commissioner may charge fees

(1) The Commissioner may charge a prisoner a fee:

(a) to recover costs incurred by the Territory in relation to the prisoner; or

(b) for providing a service or thing to the prisoner.

(2) The amount of fees that may be charged is to be fixed by the Commissioner in the Commissioner's Directions.

(3) The amount fixed for a fee to be charged under:

(a) subsection (1)(a) – must not exceed the amount of costs reasonably incurred; or

(b) subsection (1)(b) – must be reasonable and proportionate having regard to the cost of providing the service or thing.

(4) If the Commissioner charges a prisoner a fee, the Commissioner may deduct the amount of the fee from the prisoner's trust account.

163 Use of custodial correctional facilities to accommodate sheriff's detainees

(1) The Commissioner may, in accordance with an arrangement with the sheriff under section 12A of the *Sheriff Act 1962*, agree to accommodate a person who is in the custody of the sheriff at a custodial correctional facility.

(2) A person accommodated under this section:

(a) is not a prisoner; and

(b) to the extent practicable, must be kept separate from prisoners.

164 Act etc. to be made available

(1) The General Manager of a custodial correctional facility must ensure that copies of the following are available for inspection by prisoners:

(a) this Act;

(b) the Regulations;

(c) the Commissioner's Directions, so far as they relate to the conduct and entitlements of prisoners.

(2) Subsection (1) does not apply to provisions of the Regulations or Commissioner's Directions that relate to the maintenance of security and good order of a custodial correctional facility or prisoners.

Chapter 4 Non-custodial offenders and community correctional facilities

Notes for Chapter 4

1 Section 136 extends the operation of this Chapter to prisoners who are absent from a custodial correctional facility under an administrative home detention permit.

2 Section 27B of the Bail Act 1983 also extends the operation of this Chapter to certain accused persons who are released on bail under that Act.

3 Section 64 of the Serious Sex Offenders Act 2013 extends the operation of some provisions of this Chapter to persons who are subject to supervision orders under that Act.

Part 4.1 Non-custodial offenders

165 Definitions

In this Part:

approved monitoring device means a monitoring device approved under section 168.

approved residence, for an offender who is subject to a monitoring order, means the place at which the offender is required under the order to reside.

community based order means a community based order made under the *Sentencing Act 1995* as in force before the commencement of Part 2 of the *Sentencing and Other Legislation Amendment Act 2022*.

community correction order, see section 3(1) of the *Sentencing Act 1995*.

community custody order means a community custody order made under the *Sentencing Act 1995* as in force before the commencement of Part 2 of the *Sentencing and Other Legislation Amendment Act 2022*.

community work order means a community work order made under the *Sentencing Act 1995* as in force before the commencement of Part 2 of the *Sentencing and Other Legislation Amendment Act 2022*.

home detention order means a home detention order made under the *Sentencing Act 1995* as in force before the commencement of Part 2 of the *Sentencing and Other Legislation Amendment Act 2022*.

intensive community correction order, see section 3(1) of the *Sentencing Act 1995*.

monitoring device means one of the following:

(a) an electronic device attached to, or worn by, a person for one or more of the following purposes:

(i) to monitor a person's compliance with a non-custodial order;

(ii) to monitor a person's compliance with this Act;

(iii) a purpose prescribed by regulation;

(iv) to enable electronic reporting of the results of the matters mentioned in subparagraphs (i) to (iii);

(b) a voice recognition system that is designed to:

(i) verify the voice of a particular person; and

(ii) enable the person's geographical location to be monitored.

166 Non-custodial orders

(1) Each of the following is a ***non-custodial order***:

(a) a monitoring order;

(b) a community correction order;

(c) a community work order.

(2) Each of the following is a ***monitoring order***:

(a) an intensive community correction order;

(b) if the order is subject to a condition of a type that requires the Commissioner (or a probation and parole officer) to monitor compliance with the condition – one of the following orders:

(i) a community correction order;

(ii) an order made under section 40 of the *Sentencing Act 1995*;

(iii) an order made under section 11 or 13 of the *Sentencing Act 1995* as in force before the commencement of Part 2 of the *Sentencing and Other Legislation Amendment Act 2022*;

(c) a home detention order;

(d) a community custody order;

(e) a community based order;

(f) a parole order.

(3) Each of the following is a ***non-custodial work order***:

(a) a community correction order with a condition to participate in an approved project imposed under section 34(1)(a) of the *Sentencing Act 1995*;

(b) an intensive community correction order with a condition to participate in an approved project imposed under section 48(1)(b) of the *Sentencing Act 1995*;

(c) a community custody order;

(d) a community work order;

(e) a community based order with a condition to perform community work imposed under section 39G(1) of the *Sentencing Act 1995* as in force before the commencement of Part 2 of the *Sentencing and Other Legislation Amendment Act 2022*.

167 Approval of rehabilitation programs and work

For the definition of ***approved project*** in section 3 of the *Sentencing Act 1995*, the Commissioner may approve a rehabilitation program or work or both as an approved project.

168 Approval of monitoring devices

The Commissioner may approve a monitoring device for use to monitor the location and activities of non-custodial offenders who are subject to monitoring orders.

169 Direction by probation and parole officer

(1) A probation and parole officer may give a non-custodial offender any reasonable direction that the officer considers appropriate.

(2) A direction under subsection (1) may be about a matter dealt with in the offender's non-custodial order, but the direction must not contradict the order.

(3) A failure by a non-custodial offender to comply with the direction is taken to be a breach of the conditions of the non-custodial order.

170 Commissioner may direct use of monitoring device

The Commissioner may direct a non-custodial offender who is subject to a monitoring order to submit to the use of an approved monitoring device (including its attachment to the offender) to monitor the offender's compliance with the order.

171 Compliance with monitoring order

(1) This section applies in relation to a non-custodial offender who is subject to a monitoring order.

(2) A probation and parole officer may do one or more of the following:

(a) enter the approved residence;

(b) search the approved residence;

(c) search the non-custodial offender;

(d) place on, or attach to, the non-custodial offender an approved monitoring device;

(e) at the approved residence, do either or both of the following:

(i) install an approved monitoring device and related equipment;

(ii) inspect or remove any installed device or equipment.

(3) A probation and parole officer may exercise the power mentioned in subsection (2)(e)(ii) after the order has expired in order to remove a device or related equipment.

(4) In this section:

related equipment means a thing used in connection with the effective operation of an approved monitoring device.

172 Alcohol and drug testing

(1) A probation and parole officer may direct a non-custodial offender to submit to a prescribed alcohol/drug test.

(2) If the offender does not submit to the test as required under section 195(2):

(a) the prescribed sampler may take the required sample without the offender's consent; and

(b) a correctional officer or police officer may assist to enable the test to be conducted, including by doing either or both of the following:

(i) taking the offender to a place where the required sample can be taken;

(ii) assisting a prescribed sampler to obtain the required sample.

(3) In providing the assistance, the officer may use the force that is reasonably necessary.

Notes for section 172

1 Part 3.4 makes provision in relation to the use of force by a correctional officer.

2 Section 195 makes provisions for the carrying out of prescribed alcohol/drug tests.

Part 4.2 Community correctional facilities

173 Name and address to be provided

(1) An employee of the Agency may direct a person who is at, or in the vicinity of, a community correctional facility to give the person's name and residential address.

(2) When giving the direction, the employee must tell the person that failure to comply with the direction is an offence.

Note for section 173

Failing to give a name or address may constitute an offence against section 190.

174 Proof of identity

(1) The employee of the Agency who is in charge of a community correctional facility may direct a person at, or wishing to enter, the facility to do either or both of the following:

(a) provide evidence of the person's identity;

(b) submit to the use of an approved identification system.

(2) If the person fails to comply with the direction, the employee in charge may refuse entry to the person or direct the person to leave the facility.

(3) The Commissioner may keep details, or a copy, of any thing (including a photograph or biometric material (as defined in section 194)) provided by, or taken from, a person for the purpose of this section.

Chapter 5 General matters

Part 5.1 Offences

Division 1 Offences relating to prisoners

175 Possession of things by prisoners

(1) A prisoner commits an offence if:

(a) the prisoner is in possession of a thing; and

(b) the thing is a prohibited thing.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Subsection (1) does not apply if the prisoner has the consent of the General Manager to be in possession of the thing.

(3) In this section:

prohibited thing does not include a thing that is a prohibited thing under the definition of that term in section 4 only because of paragraph (g) or (h) of the definition.

Note for section 175

This section applies to a prisoner wherever the prisoner is. It is not limited to a prisoner who is at a custodial correctional facility.

176 Nothing to pass to or from prisoner

(1) A person commits an offence if the person:

(a) is a visitor at a custodial correctional facility; and

(b) gives a thing to a prisoner; and

(c) does not have the consent of the General Manager to do so.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) A prisoner commits an offence if the prisoner:

(a) is at a custodial correctional facility; and

(b) gives a thing to another person; and

(c) does not have the consent of the General Manager to do so.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(3) Strict liability applies to subsections (1)(a) and (2)(a).

(4) Subsections (1) and (2) do not apply if:

(a) the person is a priority visitor and the thing is a protected item; or

(b) the person is the prisoner's legal practitioner and the thing is a legal item.

177 Leaving things for prisoner

(1) A person commits an offence if:

(a) the person leaves a thing at a place; and

(b) the place:

(i) is at a custodial correctional facility; or

(ii) is in the vicinity of a custodial correctional facility; and

(c) the person does so with the intention that the thing may come into the possession of a prisoner; and

(d) the person does not have the consent of the General Manager to leave the thing.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Strict liability applies to subsection (1)(b)(i).

(3) Subsection (1) does not apply if:

(a) the person is a priority visitor and the thing is a protected item; or

(b) the person is the prisoner's legal practitioner and the thing is a legal item.

(4) For subsection (1), it is immaterial whether the thing in fact comes into the possession of a prisoner.

178 Communicating with prisoner

(1) A person commits an offence if the person:

(a) is a visitor at a custodial correctional facility; and

(b) communicates with a prisoner; and

(c) does not have the consent of the General Manager to do so.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Strict liability applies to subsection (1)(a).

(3) Subsection (1) does not apply if:

(a) the person is a priority visitor and the communication relates to the performance by the visitor of the visitor's official functions; or

(b) the person is the prisoner's legal practitioner and the communication is subject to client legal privilege.

Division 2 Offences relating to custodial correctional facility

179 Entering custodial correctional facility without authority

(1) A person commits an offence if:

(a) the person enters a place; and

(b) the place is a custodial correctional facility; and

(c) the person does not have authority to enter the facility.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Strict liability applies to subsection (1)(b).

180 Person directed to leave custodial correctional facility

(1) A person commits an offence if the person:

(a) is at a custodial correctional facility; and

(b) has been directed to leave the facility:

(i) by a correctional officer under section 100; or

(ii) by the General Manager under sections 142 to 145; and

(c) engages in conduct that results in a failure to comply with the direction.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

(2) Strict liability applies to subsection (1)(a).

181 Person loitering in vicinity of custodial correctional facility

(1) A person commits an offence if:

(a) the person is loitering at a place; and

(b) the place is in the vicinity of a custodial correctional facility; and

(c) the person has been directed to leave the vicinity by a correctional officer under section 149; and

(d) the person engages in conduct that results in a failure to comply with the direction.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

(2) Subsection (1) does not apply unless, when giving the direction, the correctional officer tells the person that failure to comply with the direction is an offence.

182 Possession of things at custodial correctional facility

(1) A person, other than a prisoner, commits an offence if:

(a) the person is at a custodial correctional facility; and

(b) the person is in possession of a thing; and

(c) the thing is a prohibited thing; and

(d) the person does not have the consent of the General Manager to possess the thing at the facility.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Strict liability applies to subsection (1)(a).

(3) In this section:

prohibited thing does not include a thing that is a prohibited thing under the definition of that term in section 4 only because of paragraph (g) or (h) of the definition.

183 Removal of property from a custodial correctional facility

A person commits an offence if the person:

(a) removes a thing from a custodial correctional facility; and

(b) is not the owner, or otherwise lawfully entitled to be in possession of, the thing; and

(c) does not have the consent of the General Manager to remove the thing.

Maximum penalty: 50 penalty units.

184 Unauthorised photograph or recording

(1) A person commits an offence if the person:

(a) is:

(i) at a custodial correctional facility; or

(ii) in the vicinity of a custodial correctional facility; and

(b) takes a photograph or makes a video or audio recording; and

(c) does so for a purpose related to the facility or a prisoner; and

(d) does not have the consent of the General Manager to do so.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Strict liability applies to:

(a) subsection (1)(a)(i); and

(b) if the person is at a custodial correctional facility – subsection (1)(c).

(3) Subsection (1) does not apply if:

(a) the person is a priority visitor and the photograph or recording relates to the performance by the visitor of the visitor's official functions; or

(b) the person is a prisoner's legal practitioner and the photograph or recording is subject to client legal privilege.

185 Failure to provide name and address

(1) A person commits an offence if:

(a) the person is:

(i) at a custodial correctional facility; or

(ii) in the vicinity of a custodial correctional facility; and

(b) a correctional officer or employee of the Agency has directed the person to give the person's name and address under section 142; and

(c) the person engages in conduct that results in a failure to comply with the direction.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

(2) Subsection (1) does not apply unless, when giving the direction, the officer or employee tells the person that a failure to comply with the direction is an offence.

(3) It is a defence to a prosecution for an offence against subsection (1), in the circumstance mentioned in subsection (1)(a)(ii), if the defendant establishes a reasonable excuse.

Division 3 Administration related offences

186 Falsely representing to be correctional services officer

A person commits an offence if the person:

(a) represents, by words or conduct, that the person or another person is a correctional services officer; and

(b) knows the representation is false.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

187 Obstruction of correctional services officer

(1) A person commits an offence if:

(a) the person obstructs another person; and

(b) the other person is a correctional services officer; and

(c) the person knows the officer is acting in an official capacity.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Strict liability applies to subsection (1)(b).

(3) In this section:

obstruct includes hinder and resist.

188 Misleading information

(1) A person commits an offence if:

(a) the person gives information to another person; and

(b) the other person is a correctional services officer; and

(c) the person knows the information is misleading; and

(d) the person knows the officer is acting in an official capacity.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) A person commits an offence if:

(a) the person gives a document to another person; and

(b) the other person is a correctional services officer; and

(c) the person knows the document contains misleading information; and

(d) the person knows the officer is acting in an official capacity.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(3) Strict liability applies to subsections (1)(b) and (2)(b).

(4) Subsection (2) does not apply if the person, when giving the document:

(a) draws the misleading aspect of the document to the correctional services officer's attention; and

(b) to the extent that the person can reasonably do so – gives the officer the information necessary to remedy the misleading aspect of the document.

(5) In this section:

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

189 Confidentiality of information

(1) A person commits an offence if the person:

(a) obtains information in the course of performing functions connected with the administration of this Act; and

(b) engages in conduct that results in the disclosure of the information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Strict liability applies to subsection (1)(a).

(3) Subsection (1) does not apply if:

(a) the person discloses the information:

(i) for the administration of this Act; or

(ii) for legal proceedings arising out of the operation of this Act; or

(b) for information that identifies or otherwise relates to a person (***person A***) – one of the following applies:

(i) person A has consented to the disclosure;

(ii) the information is disclosed in a statistical form that does not identify person A;

(iii) the disclosure does no more than:

(A) identify the custodial correctional facility at which person A is a prisoner; or

(B) identify person A as being subject to a non-custodial order or a leave permit; or

(c) the Commissioner has authorised the disclosure of the information under subsection (4); or

(d) the information is otherwise available to the public.

Note for subsection (3)

In addition to the circumstances mentioned in subsection (3), a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

(4) The Commissioner may, in writing, authorise the disclosure of information if the Commissioner considers that:

(a) not disclosing it might reasonably be expected to put a person's life or physical safety at risk; or

(b) it is otherwise in the public interest.

Division 4 Miscellaneous offences

190 Failure to provide name and address at community correctional facility

(1) A person commits an offence if:

(a) the person is at, or in the vicinity of, a community correctional facility; and

(b) an employee of the Agency has directed the person to give the person's name and address under section 173; and

(c) the person engages in conduct that results in a failure to comply with the direction.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

(2) Subsection (1) does not apply unless, when giving the direction, the employee tells the person that failure to comply with the direction is an offence.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

191 Tampering with samples for alcohol/drug tests

A person commits an offence if the person tampers with a sample of breath or a bodily substance given or taken for the purposes of a prescribed alcohol/drug test.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

192 Name change by prisoner or parolee

(1) A person (***person A***) commits an offence if:

(a) person A applies under a name registration Act to register a change of the person's own name or the name for another person; and

(b) the person whose name it is sought to change (***named person***) is:

(i) a prisoner; or

(ii) a non-custodial offender who is subject to a parole order; and

(c) person A does not have the consent of the Commissioner to make the application.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

(2) If person A is the named person, strict liability applies to subsection (1)(b).

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

(4) For subsection (1)(c), in deciding whether to give consent, the Commissioner must have regard to each of the following:

(a) the nature of the offence committed by the named person;

(b) the named person's criminal history;

(c) whether the proposed name change could be used to further an unlawful activity or purpose;

(d) whether the proposed name change could be considered offensive to victims, or the families of victims, of offences committed by the named person.

(5) As a secondary consideration, the Commissioner may have regard to the interests of the named person.

(6) In this section:

name registration Act means:

(a) the *Births, Deaths and Marriages Registration Act 1996*; or

(b) an Act of another jurisdiction that permits a person to register a change of the person's name.

193 Harming correctional services dog

(1) A person commits an offence if the person:

(a) engages in conduct that results in harm to, or the death of, a dog; and

(b) the person knows the dog is a correctional services dog.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

(3) A court that finds a person guilty of an offence against subsection (1) may, in addition to any other penalty that may be imposed, order the person to pay restitution to the Territory.

(4) The amount the person may be ordered to pay is the reasonable cost of either or both of the following:

(a) the treatment, care, rehabilitation and retraining of the dog;

(b) if it is necessary to replace the dog – the acquisition and training of its replacement.

Part 5.2 Miscellaneous matters

Division 1 Administrative matters

194 Approvals for identification systems

(1) The Commissioner may approve an identification system for the purposes of any of the following:

(a) identifying prisoners under section 53;

(ab) identifying persons under section 143;

(b) identifying persons under section 174.

(2) In this section:

biometric information includes fingerprints, hand and palm geometry, face recognition and retinal scans.

identification system means a system for establishing or confirming a person's identity, whether through the use of biometric information or otherwise.

195 Alcohol and drug testing

(1) Regulations may prescribe one or more of the following:

(a) alcohol/drug tests for use under this Act;

(b) persons who are prescribed samplers for a prescribed alcohol/drug test;

(c) matters in relation to the carrying out of a prescribed alcohol/drug test.

(2) If a person is required under this Act to submit to a prescribed alcohol/drug test, the person must:

(a) give to a prescribed sampler, or allow a prescribed sampler to take, (as the case requires) a sample of breath or a bodily substance that is sufficient for the purposes of the test; and

(b) comply with any reasonable direction of the prescribed sampler.

Note for subsection (2)

Tampering with a sample may constitute an offence against section 191.

(3) A sample of breath or a bodily substance given or taken for a prescribed alcohol/drug test is the property of the Territory.

(4) In this section:

alcohol/drug test means a test under which a sample of a person's breath, blood, saliva, urine or another bodily substance is tested or analysed to detect the presence, or ascertain the concentration of, alcohol or a drug.

196 Criminal history to be provided

(1) The Commissioner may request that the Commissioner of Police provide a report on the criminal history of the following:

(a) an offender;

(b) a correctional services officer;

(c) a person employed in the Agency;

(d) a volunteer;

(e) a person about whom the Minister is consulting the Commissioner under section 26(4);

(f) a person applying to become a person mentioned in paragraph (b), (c) or (d).

(2) The Commissioner of Police must provide the report as soon as practicable.

(3) To the extent reasonably necessary for the control and management of an offender, the Commissioner may disclose information from the report about the offender to a person having the control or management of the offender.

Example for subsection (3)

An offender's employer under a community work program.

(4) In this section:

criminal history includes details of any spent records, as defined in section 3(1) of the *Criminal Records (Spent Convictions) Act 1992*.

197 Records to be kept

(1) The Commissioner must keep records in relation to correctional services establishments and offenders that are sufficient for the proper control and management of the establishments and offenders.

(2) Without limiting subsection (1), the records must include the following information for each prisoner:

(a) the prisoner's identity;

(b) the order or other authority under which the prisoner is a prisoner;

(c) details of every occasion on which force is used by a correctional officer in relation to the prisoner;

(d) details of all leave permits issued to the offender;

(e) details of all property confiscated from the prisoner (including how it was dealt with);

(f) details of all protected/legal items relating to the prisoner inspected under section 154 (including how they were dealt with).

(3) Without limiting subsection (1), the records must include the following information for each non-custodial offender:

(a) the offender's identity;

(b) the offender's non-custodial order;

(c) for an offender who is subject to a non-custodial work order – details of work carried out under the order;

(d) for an offender who is subject to a monitoring order – details of occasions on which an approved monitoring device is used in relation to the offender.

198 Damage to property – cost recoverable by Territory

(1) An offender who damages correctional services property is liable to pay restitution to the Territory for the reasonable costs of repairing or replacing the property.

(2) The Territory may recover restitution payable under subsection (1) as a debt due to the Territory.

(3) In this section:

correctional services property means:

(a) a thing at a correctional services establishment that is owned or used by the Territory; and

(b) approved monitoring devices and related equipment (as defined in section 171(4)).

Division 2 Legal matters

199 Protection from liability

(1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:

(a) a correctional services officer;

(b) an official visitor;

(c) a volunteer;

(d) an authorised person.

(2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

(3) An authorised person who performs a relevant function that the person is authorised to perform, is taken, for all purposes, to have done so with the consent of the person in respect of whom the function is performed.

(4) In this section:

authorised person means a health practitioner or other person authorised to perform a relevant function.

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

relevant function means one of the following:

(a) examining a prisoner under section 92 or 93;

(b) providing health care under section 92;

(c) administering medication under section 93;

(d) carrying out a search under section 48 or 50;

(e) doing any of the following in relation to a prescribed alcohol/drug test or buccal swab under section 52:

(i) taking a sample;

(ii) carrying out a test;

(iii) analysing a sample;

(f) a function prescribed by regulation.

200 Prosecutions

(1) Proceedings for an offence against this Act may be started only by:

(a) the Commissioner; or

(b) a person authorised by the Minister.

(2) The proceedings must be started within 6 months after the date on which the Commissioner first became aware of the commission of the offence.

201 Evidentiary matters in relation to prescribed alcohol/drug tests

(1) This section applies for the purposes of legal proceedings arising out of the operation of this Act in which the carrying out or results of a prescribed alcohol/drug test are relevant.

(2) If a prescribed alcohol/drug test detects:

(a) the presence of alcohol in a sample of a person's breath; or

(b) the presence of alcohol or a drug in a person's body;

the person is taken to have consumed or used alcohol or the drug, unless the contrary is proved.

Note for subsection (2)

In criminal proceedings, the defendant has a legal burden of proof in relation to proving to the contrary (see section 43BV(c) of the Criminal Code).

(3) A certificate signed by a prescribed certifier stating matters relating to a certifiable matter is evidence of the matters stated in the certificate and the facts on which they are based.

(4) In this section:

certifiable matter, for a prescribed certifier, means a matter relating to a prescribed alcohol/drug test that is specified in the regulations as a matter in relation to which the certifier may issue an evidentiary certificate.

prescribed certifier means a person prescribed by regulation as a person who may issue an evidentiary certificate.

202 Civil proceedings

(1) Civil proceedings in relation to an act done or omitted to be done by a person under this Act must be started within 6 months after the act was done or omitted to be done.

(2) However, subsection (1) does not prevent a court exercising its jurisdiction under section 44 of the *Limitation Act 1981*.

203 Acquisition on just terms

If the operation of this Act would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:

(a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and

(b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

Division 3 Miscellaneous matters

204 Training in relation to dangerous drugs

For Part VIA of the *Police Administration Act 1978*, a correctional officer who is attending police training in relation to dangerous drugs is taken to be a police officer.

205 Commissioner's Directions

(1) The Commissioner may issue written directions in relation to the following:

(a) the internal management of correctional services establishments;

(b) the maintenance of security and good order of correctional services establishments and offenders;

(c) anything required or permitted by this Act to be provided for in the Commissioner's Directions;

(d) the exercise of powers and performance of functions under this Act by correctional services officers, volunteers and employees of the Agency.

(2) The Commissioner's Directions must not conflict with the Act or the Regulations.

(3) The Commissioner must publish the Directions as the Commissioner considers appropriate.

206 Approved forms

The Commissioner may approve forms for use under this Act.

207 Regulations

(1) The Administrator may make regulations under this Act.

(2) Without limiting subsection (1), regulations may make provision in relation to the following:

(a) the control and management of correctional services establishments, including practices and procedures to be followed in relation to those establishments;

(b) the control and management of offenders, including practices and procedures to be followed by, or in relation to, offenders;

(c) the exercise of powers and performance of functions under this Act (including limitations on when and how correctional services officers may exercise powers and performance functions);

(d) the making of awards to persons for conduct relating to correctional services.

Chapter 6 Repeals and transitional provisions

Part 6.1 Repeal

208 Repeal

The Acts specified in the Schedule are repealed.

Note for section 208

Some of the Regulations in force under the Prisons (Correctional Services) Act 1980 immediately before the commencement of this Act are not repealed and become regulations under this Act (see section 218).

Part 6.2 Transitional provisions for Correctional Services Act 2014

209 Definitions

In this Part:

commencement means the commencement of section 208.

repealed Act means the *Prisons (Correctional Services) Act* as in force before the commencement.

210 Custodial correctional facilities

(1) On the commencement, each place, premises or institution that was a prison under the repealed Act immediately before the commencement becomes a correctional centre under section 12.

(2) On the commencement, each place, premises or institution that was a police prison under the repealed Act immediately before the commencement becomes a police custody centre under section 13.

211 Correctional services officers

(1) On the commencement, the person who was the Director of Correctional Services under the repealed Act immediately before the commencement becomes the Commissioner under section 17.

(2) On the commencement, the person who was the officer in charge of a prison under the repealed Act immediately before the commencement becomes the General Manager of the corresponding correctional centre under section 21.

(3) On the commencement, each person who was a prison officer under the repealed Act immediately before the commencement becomes a correctional officer under section 24.

(4) On the commencement, each person who was a surveillance officer under the repealed Act or a parole officer under the *Parole of Prisoners Act 1971* immediately before the commencement becomes a probation and parole officer under section 25.

212 Official visitors

On the commencement, a person who was an official visitor for a prison under the repealed Act immediately before the commencement becomes an official visitor for the corresponding custodial correctional centre under section 26.

213 Misconduct – existing charges

(1) This section applies if, before the commencement, a charge of prison misconduct had been brought against a prisoner and, as at the commencement, the charge had not been finally determined.

(2) The proceedings for the charge (including any review or appeal) are to be continued and completed in accordance with the repealed Act as if this Act had not commenced.

214 Misconduct – prior conduct may be charged under this Act

In Part 3.1, Division 3, a reference to conduct engaged in by a prisoner includes a reference to conduct engaged in before the commencement (unless a charge of misconduct had been made in relation to the conduct under the repealed Act).

215 Leave

(1) On the commencement, any leave of absence under section 63 of the repealed Act that was in force immediately before the commencement becomes a general leave permit under section 118.

(2) On the commencement, a supervised custodial interstate permit under the repealed Act that was in force immediately before the commencement becomes an interstate custodial leave permit under section 122.

(3) On the commencement, any leave of absence under section 65L of the repealed Act that was in force immediately before the commencement becomes a foreign legal matters leave permit under section 130.

216 Prisoner's trust accounts

If, immediately before the commencement, the Director held an amount of money on behalf of a person who was a prisoner, on the commencement that amount constitutes the balance of the prisoner's trust account under section 161.

217 Commissioner's Directions

On the commencement, any Director's determinations under the repealed Act that were in force immediately before the commencement become Commissioner's Directions under section 205.

218 Regulations

(1) On the commencement, the *Prisons (Correctional Services) (Community Orders) Regulations* that were in force immediately before the commencement become regulations under this Act.

(2) Those regulations expire on 1 July 2016 (if not sooner repealed).

219 Other statutory instruments

(1) This section applies if:

(a) a provision of the repealed Act provided for statutory instruments to be made for a purpose; and

(b) a provision of this Act provides for statutory instruments to be made for the same or a substantially similar purpose; and

(c) a statutory instrument made under the provision of the repealed Act was in force immediately before the commencement.

(2) On the commencement, the statutory instrument becomes a statutory instrument under the provision of this Act.

(3) The instrument applies with the necessary changes.

(4) All statutory instruments to which this section applies expire on 1 July 2016 (if not sooner revoked).

220 Continuation of ongoing things

(1) This section applies if:

(a) a provision of the repealed Act conferred a power or function on a person (***person A***); and

(b) a provision of this Act confers the same or a substantially similar power or function on a person (***person B***); and

(c) as at the commencement, something that was done by, or in relation to, person A in or for the exercise of the power or performance of the function under the repealed Act had ongoing effect.

(2) On the commencement, the thing becomes a thing having the same effect under this Act as if it had been done by, or in relation to, person B in the exercise of the power or performance of the function under this Act.

(3) This section does not apply in relation to something in respect of which provision is made by another section in this Part.

221 Court orders, warrants of commitment

An order of a court or other person or body, or a warrant of commitment, conferring authority on an officer in charge of a prison to hold an offender in custody that was in force immediately before the commencement, is taken to confer authority on the Commissioner to hold the offender in custody on the same terms and conditions.

222 Definition of *prisoner*

For section 6, it is immaterial whether the person was committed, remanded or detained, the order was made, or the sentence was imposed, before or after the commencement.

223 Confidentiality of information

In section 189:

(a) a reference to this Act includes a reference to the repealed Act; and

(b) a reference to a person obtaining information includes a reference to a person having obtained information before the commencement.

Schedule Repealed Acts

section 208

Prisons (Correctional Services) Act 1980	Act No. 49 of 1980
Prisons (Correctional Services) (Criminal Code) Amendment Act 1983	Act No. 64 of 1983
Prisons (Correctional Services) Amendment Act 1985	Act No. 39 of 1985
Prisons (Correctional Services) Amendment Act 1993	Act No. 39 of 1993
Prisons (Correctional Services) Amendment Act 1994	Act No. 21 of 1994
Prisons (Correctional Services) Amendment Act (No.2) 1994	Act No. 32 of 1994
Prisons (Correctional Services) Amendment Act 1996	Act No. 41 of 1996
Prisons (Correctional Services) Amendment Act (No. 2) 1996	Act No. 63 of 1996
Prisons (Correctional Services) Amendment Act 1998	Act No. 60 of 1998
Prisons (Correctional Services) Amendment Act (No. 2) 1998	Act No. 88 of 1998
Prisons (Correctional Services) Amendment Act 2000	Act No. 22 of 2000
Prisons (Correctional Services) Amendment Act (No. 2) 2000	Act No. 53 of 2000
Prisons (Correctional Services) Amendment Act 2002	Act No. 27 of 2002

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz* = *Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

***Correctional Services Act 2014* (Act No. 26, 2014)**
Assent date 4 September 2014
Commenced 9 September 2014 (*Gaz* S80, 9 September 2014, p 1)

***Education Act 2015* (Act No. 28, 2015)**
Assent date 10 December 2015
Commenced pt 6, divs 2 and 4 and pt 7: 1 April 2016; pt 3: 1 July 2016; rem: 1 January 2016 (s 2)

***Local Court (Related Amendments) Act 2016* (Act No. 8, 2016)**
Assent date 6 April 2016
Commenced 1 May 2016 (s 2, s 2 *Local Court (Repeals and Related Amendments) Act 2016* (Act No. 9, 2016) and *Gaz* S34, 29 April 2016)

***Guardianship of Adults Act 2016* (Act No. 15, 2016)**
Assent date 7 June 2016
Commenced 28 July 2016 (*Gaz* S74, 27 July 2016, p 1)

***Statute Law Revision Act 2017* (Act No. 4, 2017)**
Assent date 10 March 2017
Commenced 12 April 2017 (*Gaz* G15, 12 April 2017, p 3)

***Youth Justice Legislation Amendment Act 2017* (Act No. 19, 2017)**
Assent date 30 October 2017
Commenced 5 January 2018 (*Gaz* G51, 20 December 2017, p 4)

***Independent Commissioner Against Corruption (Consequential and Related Amendments) Act 2018* (Act No. 3, 2018)**
Assent date 21 February 2018
Commenced 30 November 2018 (s 2, s 2 *Independent Commissioner Against Corruption Act 2017* (Act No. 23, 2017) and *Gaz* S94, 30 November 2018)

Statute Law Amendment Act 2018 **(Act No. 10, 2018)**

Assent date	23 May 2018
Commenced	20 June 2018 (*Gaz* S41, 20 June 2018)

Health Service Act 2021 **(Act No. 10, 2021)**

Assent date	20 May 2021
Commenced	1 July 2021 (s 2)

Justice and Other Legislation Amendment Act 2024 **(Act No. 4, 2024)**

Assent date	14 March 2024
Commenced	pt 5, div 1: 30 October 2023 (s 2(2)); pt 3, div 2: 25 March 2024 (s 2(3), s 2 *Sentencing and Other Legislation Amendment Act 2022* (Act No. 28, 2022) and *Gaz* S19, 22 March 2024); pt 4: 25 March 2024 (s 2(4), s 2 *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023* (Act No. 20, 2023) and *Gaz* S20, 22 March 2024); rem: 15 March 2024 (s 2(1))

3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22 of 2018) to: ss 1, 4, 6, 9, 19A, 54, 57, 64, 81, 88, 89, 91, 112, 132, 141, 156, 163, 165, 166, 167, 192, 196, 202, 204 and 211.

4 LIST OF AMENDMENTS

s 4	amd No. 8, 2016, s 45; No. 19, 2017, s 28; No. 4, 2024, s 23
s 13	amd No. 19, 2017, s 29
s 14	amd No. 19, 2017, s 30
s 19A	ins No. 3, 2018, s 4
s 40	amd No. 19, 2017, s 31
s 57	amd No. 28, 2015, s 195
s 65	amd No. 19, 2017, s 32
s 66	rep No. 19, 2017, s 33
s 67	amd No. 19, 2017, s 34
s 77	amd No. 10, 2018, s 6
s 88	amd No. 10, 2021, s 44
s 91	amd No. 15, 2016, s 117
s 129	amd No. 8, 2016, s 45
s 151	amd No. 8, 2016, s 45; No. 3, 2018, s 5
s 156	amd No. 3, 2018, s 6
s 165	amd No. 4, 2024, s 24
s 166	sub No. 4, 2024, s 25
s 194	amd No. 4, 2017, s 34
s 224	exp No. 26, 2014, s 224(5)