

NORTHERN TERRITORY OF AUSTRALIA
PRISONS (CORRECTIONAL SERVICES)
AMENDMENT ACT (NO. 2) 1994

No. 32 of 1994

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NORTHERN TERRITORY OF AUSTRALIA

No. 32 of 1994

AN ACT

to amend the *Prisons (Correctional Services) Act*

[Assented to 18 May 1994]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Prisons (Correctional Services) Amendment Act (No. 2) 1994*.

2. COMMENCEMENT

This Act shall come into operation on the commencement of the *Sentencing Act 1994*.

3. PRINCIPAL ACT

The *Prisons (Correctional Services) Act* is in this Act referred to as the Principal Act.

4. INTERPRETATION

Section 5 of the Principal Act is amended -

- (a) by inserting after the definition of "chaplain" the following:

"'community service order' means a community service order made under or continued in force by the *Sentencing Act*";

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- (b) by inserting after the definition of "Director" the following:

"'home detention order' means a home detention order made under or continued in force by the *Sentencing Act*;

'monitoring device' means a machine, equipment or device approved by the Director as being suitable, whether or not used with any other machine, equipment or device, for the purpose of assisting in monitoring the activity of a person who has entered into a home detention order requiring the wearing or attachment of a monitoring device;"

- (c) by inserting after the definition of "prisoner" the following:

"'probation officer' means a person appointed as a parole officer under the *Parole of Prisoners Act*"; and

- (d) by inserting after the definition of "Regulations" the following:

"'supervising officer' means a supervising officer appointed under section 94F;

'surveillance officer' means a surveillance officer appointed under section 94B and includes a probation officer and the Director;"

5. RELEASE AT END OF TERM OF IMPRISONMENT

Section 19 of the Principal Act is amended by omitting subsection (1).

6. REPEAL

Section 92 of the Principal Act is repealed.

7. REMISSIONS

Section 93 of the Principal Act is amended -

- (a) by omitting all words to and including "the Director may" and substituting "The Director may"; and

- (b) by omitting "7 days" and substituting "30 days".

8. NEW PART

The Principal Act is amended by inserting after Part XXVI the following:

"PART XXVIA - POWERS AND PROCEDURES
UNDER *SENTENCING ACT*

"Division 1 - Home Detention Orders

"94B. SURVEILLANCE OFFICERS

"(1) The Director may appoint a person who is not a probation officer to be a paid or unpaid surveillance officer for the purposes of the *Sentencing Act*.

"(2) A surveillance officer who is a probation officer may, at any time -

(a) without a warrant, enter premises or a place in or at which a person is, in accordance with a home detention order, residing and -

(i) search those premises or any building at that place, or the person, for the purposes of determining whether the person is in breach of the order; or

(ii) place, install, inspect or retrieve a monitoring device in or at those premises or that place; or

(b) require a person in respect of whom a home detention order is in force to undergo such tests as the surveillance officer thinks fit to determine whether the person is in breach of the order.

"(3) A surveillance officer appointed under subsection (1) may carry out or exercise such of the functions and powers of a surveillance officer under subsection (2) as directed, from time to time, by the Director.

"(4) A test under subsection (2)(b) may include a test to determine the presence of alcohol or any other drug in the offender's blood or urine.

"94C. BREATH AND BLOOD ANALYSES AND TESTS

"(1) A -

(a) surveillance officer who is a probation officer or, if not a probation officer, has been given a direction under section 94B(3) by the Director in that behalf, may administer a breath test (within the meaning of the *Traffic Act*); or

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- (b) member of the Police Force at the request of the Director may administer a breath test, carry out a breath analysis or arrange for the carrying out of a blood test (each within the meaning of the *Traffic Act*),

to or on a person in respect of whom a home detention order is in force, for a purpose specified in section 94B(4).

"(2) For the purpose of carrying out the tests under subsection (1), the provision of evidence as a consequence of the tests and for the protection of certain persons from liability in relation to the tests, the following provisions of the *Traffic Act*, with the necessary changes, apply to a person in respect of whom a home detention order is in force as if the person were a person in control of a motor vehicle:

- (a) section 20 (except for the penalties and subsections (5) and (6));
- (b) section 21(a);
- (c) section 22, but read as if the reference to an event were a reference to the time at which the person was first requested to undergo a breath test or, as the case may be, breath analysis;
- (d) section 23 (except subsections (1), (2), (3) and (4)); and
- (e) sections 24, 25, 26, 27, 28 and 29.

"94D. ACTIONS NOT TO LIE AGAINST SURVEILLANCE OFFICERS

"(1) An action or proceeding, whether civil or criminal, shall not be commenced or lie against a surveillance officer for or in respect of an act or thing done in good faith by the surveillance officer in his or her capacity as a surveillance officer.

"(2) An act or thing shall be deemed to have been done in good faith by a surveillance officer if the act or thing done was not actuated by ill-will to the person affected or by any other improper motive.

"(3) Without limiting the generality of subsection (1), an action or proceedings shall not be commenced or lie against a surveillance officer or a person assisting a surveillance officer for anything done in good faith in relation to the placing, installation, inspection or retrieval of a monitoring device by the surveillance officer, and a surveillance officer may use such force and assistance as is reasonable in the circumstances to effect the placing, installation, inspection or retrieval.

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"Division 2 - Community Service Orders

"94E. MINISTER MAY ESTABLISH COMMITTEE

"(1) The Minister may establish one or more community service advisory committees for the purposes of Division 4 of Part 3 of the *Sentencing Act*.

"(2) A community service advisory committee shall consist of such persons as are appointed by the Minister to be members of the committee.

"(3) A community service advisory committee shall approve work that may be performed under a community service order and shall have such other powers and duties as are prescribed.

"(4) A person appointed as a member of a community service advisory committee holds office for 3 years and is eligible to be re-appointed.

"(5) A member of a community service advisory committee may, in writing delivered to the Minister, resign from office.

"(6) The Minister shall appoint a member of a community service advisory committee to be the Chairman of the committee.

"(7) Where the Chairman of a community service advisory committee is absent from a meeting of the committee, the members present at the meeting shall elect one of their number to preside at the meeting.

"(8) The Chairman of a community service advisory committee shall call a meeting of the committee at the request of the Director.

"(9) At a meeting of a community service advisory committee one-half of the members appointed to the committee constitutes a quorum.

"(10) Subject to this Act, the procedures at a meeting of a community service advisory committee are as determined by the members of the committee.

"94F. SUPERVISING OFFICER

"(1) The Director may appoint a person to be a paid or unpaid supervising officer for the purposes of Division 4 of Part 3 of the *Sentencing Act*.

"(2) A supervising officer shall have such powers and duties as are prescribed.

"(3) A supervising officer may, with the approval of the Director, appoint a person to act in the officer's stead on any day that the officer specifies, and the person, for the time for which the person is so appointed, shall have the powers of a supervising officer."

9. REGULATIONS

Section 101 of the Principal Act is amended by adding at the end the following:

"(3) Without limiting the generality of subsection (1), the Regulations may make provision for or with respect to -

(a) home detention orders -

- (i) prescribing the duties of surveillance officers;
- (ii) regulating the conduct of persons who are subject to home detention orders; and
- (iii) providing for the health and safety of surveillance officers; and

(b) community service orders -

- (i) prescribing the duties of probation officers, supervising officers and persons who are subject to community service orders;
- (ii) regulating the conduct of persons who are subject to community service orders;
- (iii) providing for the health and safety of probation officers, supervising officers and persons who are subject to community service orders;
- (iv) providing for travel and transport arrangements to be made for persons who are subject to community service orders;
- (v) prescribing what effect an injury to or the illness of a person who is subject to a community service order has on the order;
- (vi) prescribing the periods to be taken into account when calculating the hours during which work has been carried out under a community service order; and

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- (vii) prescribing the powers and duties of advisory committees and regulating the holding of their meetings and the procedures they are to observe at those meetings."

10. TRANSITIONAL

(1) Notwithstanding the repeal of section 92 effected by section 5 of this Act, a determination made under section 92 that was in force immediately before the commencement of this Act shall, on that commencement, continue in force in respect of a person who is a prisoner on that commencement and the Minister, in pursuance of section 92(2), may grant such a prisoner a partial remission of the sentence imposed on the prisoner as if this Act had not come into operation.

(2) A person appointed as a Surveillance Officer under section 19G of the *Criminal Law (Conditional Release of Offenders) Act* and whose appointment was in force immediately before the commencement of the *Sentencing Act*, shall, on and from that commencement be a surveillance officer under the Principal Act, as amended by this Act, as if the person was appointed under section 94B(1) of the Principal Act on that commencement.

(3) A person appointed as a Supervising Officer under section 32 of the *Criminal Law (Conditional Release of Offenders) Act* and whose appointment was in force immediately before the commencement of the *Sentencing Act*, shall, on and from that commencement, be a supervising officer under the Principal Act, as amended by this Act, as if the person was appointed under section 94F(1) of the Principal Act on that commencement.

(4) A community service advisory committee appointed under the *Criminal Law (Conditional Release of Offenders) Act* shall, on and from the commencement of the *Sentencing Act*, be deemed to be a community service advisory committee established under the Principal Act as amended by this Act and the members (including the Chairman) of the committee shall continue in office for the remainder of the term for which they were appointed.
