

NORTHERN TERRITORY OF AUSTRALIA
CRIMINAL LAW (CONDITIONAL RELEASE OF
OFFENDERS) AMENDMENT ACT 1990

No. 14 of 1990

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NORTHERN TERRITORY OF AUSTRALIA

No. 14 of 1990

AN ACT

to amend the *Criminal Law (Conditional Release of Offenders) Act*

[Assented to 12 April 1990]

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 *Criminal Law (Conditional Release of Offenders) Amendment Act 1990*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Criminal Law (Conditional Release of Offenders) Act* is in this Act referred to as the Principal Act.

4. DEFINITIONS

Section 3 of the Principal Act is amended -

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

"'monitoring device' or 'monitor' means any 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 an offender who has entered into a home detention order requiring the wearing or attachment of a monitor;" and

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- (b) by inserting in the definition of "Surveillance Officer", after "section 19G", the words ", and includes a Probation Officer and the Director".

5. DELEGATION

Section 3A of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(1) The Director may, by instrument in writing, delegate to a named person or to a person for the time being holding, acting in or performing the duties of a named office, designation or position any of the Director's powers, functions or authorities under this Act, except this power of delegation."

6. ATTENDANCE ORDERS

Section 9(4) of the Principal Act is amended by inserting before "shall" (last appearing) the words "or, where the Master or clerk is not immediately available, the presiding Judge or magistrate".

7. HOME DETENTION ORDER

Section 19A of the Principal Act is amended -

- (a) by omitting from subsection (2)(b) "Officer; and" and substituting "Officer;";
- (b) by inserting after subsection (2)(b) the following:
 - "(ba) to wear or have attached a monitoring device in accordance with the directions of the Director, and to allow the placing or installation in the premises or place of residence of the offender such machine, equipment or device necessary for the efficient operation of the monitor; and";
- (c) by omitting from subsection (4) "and the clerk or Master" and substituting "or, where the clerk or the Master is not immediately available, by the presiding Judge or magistrate, and the person signing".

8. BREACH OF TERMS OF ORDER

Section 19F of the Principal Act is amended -

- (a) by inserting after subsection (1)(b) the following:

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"(ba) wilfully destroys, damages or removes, or attempts to destroy, damage or remove, any part of a monitoring device or any associated machine, equipment or device;

(bb) fails to comply with a lawful request of a Surveillance Officer or member of the Police Force to undergo a breath test, breath analysis or blood test in pursuance of section 19GA;"

(b) by inserting in subsection (4) -

(i) after "Director", the words "or by any other means"; and

(ii) after "that offender", the words "and for that purpose may, by reasonable force if necessary, enter premises or a place";

(c) by omitting subsection (5) and substituting the following:

"(5) For the purposes of the application of sections 137 and 138 of the *Police Administration Act*, a breach of an order under subsection (1) shall be taken to be an offence."

(d) by inserting after subsection (6) the following:

"(6A) Where records purporting to relate to the activities of an offender, being records -

(a) generated by or through a monitoring device; or

(b) comprising the notebooks or diaries of a Surveillance Officer,

are produced to the court pursuant to a requirement referred to in subsection (6), the matter contained in the records is, as far as it is applicable, *prima facie* evidence of the activities of the offender."

(e) by inserting in subsection (7)(a), after "(b),", the expression "(ba),"; and

(f) by inserting after subsection (8) the following:

"(8A) Where an offender in respect of whom a home detention order is made is in breach of that order by virtue of subsection (1)(ba), the offender is liable to pay for the restoration or replacement of a monitoring device, or associated machine, equipment or device, destroyed or damaged in the breach of the order.

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9. SURVEILLANCE OFFICERS

Section 19G of the Principal Act is amended -

- (a) by inserting in subsection (1), after "person", the words "who is not a Probation Officer";
- (b) by inserting in subsection (2), after "Officer" (first appearing), the words "who is a Probation Officer";
- (c) by inserting after subsection (2) the following:

"(2A) 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 are delegated by the Director to that Officer pursuant to section 3A."; and

- (d) by inserting in subsection (3), after "blood", the words "or urine".

10. NEW SECTION

The Principal Act is amended by inserting after section 19G the following:

"19GA. BREATH AND BLOOD ANALYSES AND TESTS

"(1) A -

- (a) Surveillance Officer who is a Probation Officer or, if not a Probation Officer, is a delegate of the Director in that behalf, may administer a breath test (within the meaning of the *Traffic Act*); or
- (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 an offender under a home detention order, for a purpose specified in section 19G(3).

"(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 an offender under a home detention order as if the offender were a person in control of a motor vehicle:

- (a) section 20 (except for the penalties and subsections (5) and (6));

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- (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 offender 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."

11. ACTION NOT TO LIE AGAINST SURVEILLANCE OFFICERS

Section 19H of the Principal Act is amended by adding at the end the following:

"(3) Without limiting the generality of subsection (1), no action for assault shall lie against a Surveillance Officer or a person assisting a Surveillance Officer for anything done in good faith in relation to the inspection 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 such an inspection."

12. COMMUNITY SERVICE ORDERS

Section 20(4) of the Principal Act is amended by inserting, before "shall" (last appearing), the words "or, where the Master or clerk is not immediately available, the presiding Judge or magistrate".
