



## NORTHERN TERRITORY OF AUSTRALIA

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No. 53 of 1987

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### AN ACT

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

[Assented to 16 November, 1987]

**B**E 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 1987*.

2. COMMENCEMENT

(1) Sections 1 and 2 shall come into operation on the day on which the Administrator's assent to this Act is given.

(2) The remaining provisions of 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 omitting the definition of "Field Officer" and substituting the following:

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"'home detention order' means an order under Part IVA;";

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

"'Probation Officer' means a Probation Officer by virtue of, or appointed under, section 3B;"; and

(c) by adding at the end the following:

"'Surveillance Officer' means a Surveillance Officer appointed under section 19G."

5. **CONDITIONAL RELEASE OF OFFENDERS**

Section 5(1)(a) of the Principal Act is amended by omitting subparagraph (ii) and substituting the following:

"(ii) he will, during the period so specified comply with such conditions (if any) as the court thinks fit and specifies in the order, which may include the conditions that the offender will during the period so specified -

(A) be subject to supervision by a person, for the time being, appointed in accordance with the order;

(B) obey all the reasonable directions of a person referred to in subparagraph (ii)(A); and

(C) reside at the premises or place specified in the order (not being a prison); and"

6. **REPEAL AND SUBSTITUTION**

Section 18 of the Principal Act is repealed and the following substituted:

"18. **COMPENSATION FOR INJURY**

"The *Work Health Act* applies to and in relation to an offender performing work under an attendance order as if that offender were employed by the Territory to perform that work and, for the purposes of the application of that Act -

(a) the person shall be deemed to be a worker within the meaning of the Act; and

(b) the Territory shall be deemed to be employing that offender at a weekly salary of, where the offender is -

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- (i) employed by a person during normal working hours and was so employed during those hours immediately preceding the time he performed work under the order - the amount of his weekly salary or the amount referred to in subparagraph (ii), whichever is the greater; or
- (ii) unemployed - the amount of the average weekly earnings of all full-time adult employees employed in the Territory as last published by the Australian Statistician for the June quarter before the date on which the offender was injured."

7. NEW PART

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

"PART IVA - HOME DETENTION ORDERS

"19A. HOME DETENTION ORDER

"(1) Subject to this Part, where an offender is convicted of an offence against a law of the Territory, the court by which the offender is convicted may, if it thinks fit, by order sentence that offender to a term of imprisonment but direct that the sentence be suspended on the offender entering into a home detention order.

"(2) A home detention order may require the offender -

- (a) to reside at the premises or place for the period (not exceeding 12 months) as specified in the order;
- (b) not to leave those premises or that place except at the times and for the periods as prescribed or as otherwise permitted by the Director or a Surveillance Officer; and
- (c) to comply with such terms and conditions as are specified in the order, including a condition that the offender obey the reasonable directions of the Director.

"(3) A home detention order may require the offender to pay, on such terms and conditions as the court making the order thinks fit, such damages for injury or compensation for loss, caused by or arising out of the act or omission that constitutes the offence in respect of which the order is made, as the court thinks reasonable.

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"(4) A court by which a home detention order is made shall, forthwith after the order is made, cause the order to be reduced to writing and to be signed by the clerk or the Master, as the case may be, and the clerk or Master shall cause a copy to be -

- (a) given to the offender before the offender is entitled to leave the precincts of the court by which the order is made; and
- (b) sent to the Director.

"(5) Nothing in this section shall be construed as preventing a court which makes a home detention order in respect of an offence from, when the law permits -

- (a) imposing any disqualification on; or
- (b) cancelling or suspending a licence, permit or other authority held by,

the offender.

"19B. CIRCUMSTANCES IN WHICH HOME DETENTION ORDER MAY BE MADE

"(1) A court shall not make a home detention order unless -

- (a) it receives a report from the Director stating that -
  - (i) suitable arrangements are available for the offender to reside at the premises or place specified in the report;
  - (ii) the premises or place specified in the report is suitable for the purposes of a home detention order; and
  - (iii) the making of the home detention order is not likely to inconvenience or put at risk other persons living in those premises or at that place or the community generally; and
- (b) the offender consents to the making of the home detention order.

"(2) For the purposes of making a report under subsection (1), the Director may take into account the views of those members of the community who, in the opinion of the Director, may be affected by the making of the home detention order.

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"(3) Where a court proposes to make a home detention order it shall, before making the order, explain or cause to be explained to the offender in respect of whom it is proposed the order be made, in language likely to be readily understood by that offender -

- (a) the purpose and effect of the order;
- (b) the consequences that may follow if the offender fails to comply with the order; and
- (c) that the order may be reviewed on application by the Director or the offender.

"(4) Without prejudice to any other powers it may exercise, a court may, in order to obtain a report for the purposes of subsection (1), stay the imposition of the sentence of imprisonment and -

- (a) remand the offender in prison pending the obtaining of the report; or
- (b) grant the offender bail in accordance with the *Bail Act* as if the offender were entitled to be granted, and the court were empowered to grant, bail in accordance with that Act.

"19C. WHERE MORE THAN ONE ORDER MADE

"(1) Where a court makes a home detention order in respect of 2 or more offences of which an offender has been convicted, the court shall not make an order which requires the offender in respect of whom the order is made to reside at the premises or place specified in the order for a period which, in the aggregate, exceeds 12 months.

"(2) Where a court makes a home detention order in respect of an offender and there is or are in force in respect of that offender one or more other such orders, the court shall not make a further order which requires that offender to reside at the premises or place specified in that order for a period including the periods specified in the previous order or orders which, in the aggregate, exceeds 12 months.

"19D. REVIEW OF ORDER

"(1) Where a home detention order is in force and, on the application of the Director or the offender made to the court which made the order, it appears to that court that it would be in the interests of justice to do so, having regard to circumstances which have arisen or become known since the order was made, it may -

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- (a) discharge the order and -
  - (i) confirm the sentence of imprisonment imposed on the offender for the offence in respect of which the order was made; or
  - (ii) if the court is satisfied that the circumstances so justify, order that the sentence of imprisonment previously imposed on the offender be quashed and deal with the offender as if the offender had come before the court for sentence for the offence in respect of which the home detention order was made; or
- (b) vary the terms and conditions to which the order is subject, including, subject to subsection (7), the period the order is to remain in force.

"(2) Where the Director makes an application to a court under subsection (1), the court shall summon the offender to appear before it on the hearing of the application and, if the offender does not appear in answer to the summons, may issue a warrant for the offender's arrest.

"(3) Where an offender makes an application to a court under subsection (1), the court shall cause notice of the application and of the time and place fixed for the hearing to be served on the Director.

"(4) The court in making an order under subsection (1)(a) may take into account -

- (a) the length of time the offender has complied with the home detention order; and
- (b) any report of the Director.

"(5) At a hearing of an application made to a court under subsection (1), the court may adjourn the hearing to enable it to obtain such notification, report or other information as it requires.

"(6) Where a court adjourns a hearing of an application under subsection (5), it may grant the offender to whom the application relates bail in accordance with the *Bail Act* as if the offender were entitled to be granted, and the court were empowered to grant, bail in accordance with that Act.

"(7) A variation extending the period of a home detention order shall not be made under subsection (1)(b) if the effect of that variation results in the order being extended for a period which, in the aggregate, exceeds 12 months.

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"19E. DURATION OF HOME DETENTION ORDER

"A home detention order remains in force until -

- (a) the expiration of the period specified in the order provided the offender has resided in the premises or at the place, and has complied with the terms and conditions, specified in the order;
- (b) the order is discharged under section 19D; or
- (c) the offender is imprisoned for the offence or offences in respect of which the order was made.

"19F. BREACH OF TERMS OF ORDER

"(1) For the purposes of this section and section 19G(2), an offender in respect of whom a home detention order is in force who -

- (a) fails to reside in the premises or remain at the place specified in that order;
- (b) fails to comply with a term or condition of that order;
- (c) disturbs or interferes with any other person residing in the premises or at the place specified in that order;
- (d) assaults, threatens, insults or uses abusive language to a Surveillance Officer;
- (e) commits a breach of the Regulations made under this Act; or
- (f) commits an offence against a law of the Territory or of the Commonwealth during the term of that order,

is in breach of that order.

"(2) Where a Justice is satisfied on reasonable grounds by an information laid before him that an offender in respect of whom a home detention order has been made is in breach of the order as specified in subsection (1), he may -

- (a) issue a summons directing the offender to appear at a court on a date and at a time specified in the summons to show cause why he should not be further dealt with under this section; or
- (b) where the information is on oath and he is satisfied that proceedings against the offender by summons might not be effective, issue a warrant for the arrest of the offender.

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"(3) Where an offender who is served with a summons issued under subsection (2)(a) fails to attend before a court as required by that subsection, that court may, on proof of service of the summons, issue a warrant for the arrest of that offender.

"(4) A member of the Police Force who on information provided by the Director has reason to suspect that an offender in respect of whom a home detention order has been made is in breach of that order, that member may, without warrant, arrest that offender.

"(5) An offender who is arrested under subsection (4) or in pursuance of a warrant issued under this section, shall, as soon as practicable, be brought before a Justice who shall commit the offender to appear before the Court of Summary Jurisdiction or the Supreme Court there to be dealt with and may remand him in custody.

"(6) Where an offender appears before a court to be dealt with in pursuance of this section and the court is satisfied, after hearing such evidence as it may require, that the offender is in breach of the home detention order made in respect of him, the court shall, except as provided for in subsection (7), revoke the order and the offender shall be imprisoned for the term suspended by the court on the making of the order as if the order had never been made and notwithstanding any period the offender may have served under the order.

"(7) A court is not required to revoke a home detention order in pursuance of subsection (6) where -

- (a) the offender is in breach of that order by virtue of subsection (1)(a), (b), (c), (d) or (e); and
- (b) the court is of the opinion that, having regard to the special circumstances of the offender or the breach, the order should continue in force.

"(8) Where a court, in accordance with subsection (7), does not revoke a home detention order, it may, in directing that the order continue in force, vary the terms and conditions of that order, including, subject to subsection (11), the period the order is to remain in force.

"(9) Where an offender in respect of whom a home detention order is made is in breach of that order by virtue of subsection (1)(f) and the offender is sentenced to a term of imprisonment for the offence referred to in that paragraph, that term shall commence at the expiration of the term of imprisonment suspended on the making of the order.



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"(10) In proceedings under subsection (6) -

- (a) an averment of the prosecutor that the offender is the person in respect of whom the relevant home detention order was made is evidence of the matter so averred; and
- (b) on the averring of the fact referred to in paragraph (a), the offender may be asked by the court before which he appears or is brought whether he was convicted of the offence or offences in respect of which the relevant order was made, and if he admits that conviction or those convictions no further proof of the conviction or convictions so admitted is necessary.

"(11) A variation extending the period of a home detention order shall not be made under subsection (8) if the effect of that variation results in the order being extended for a period which, in the aggregate, exceeds 12 months.

"19G. SURVEILLANCE OFFICERS

"(1) The Director may appoint a person to be a paid or unpaid Surveillance Officer for the purposes of this Part.

"(2) A Surveillance Officer may, at any time -

- (a) without a warrant -
  - (i) enter premises or a place in or at which an offender is, in accordance with a home detention order, residing; or
  - (ii) search those premises or any building at that place, or the offender, for the purposes of determining whether the offender is in breach of the order; or
- (b) require an offender under a home detention order to undergo such tests as the Surveillance Officer thinks fit to determine whether the offender is in breach of the order.

"(3) 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.

"19H. ACTIONS NOT TO LIE AGAINST SURVEILLANCE OFFICERS

"(1) An action or proceeding, whether civil or criminal, shall not lie against a Surveillance Officer for or in respect of any act or thing done in good faith by the Surveillance Officer in his capacity as a Surveillance Officer.

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"(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."

8. CIRCUMSTANCES IN WHICH COMMUNITY SERVICE ORDER MAY BE MADE BY DIRECTOR

Section 21A(1)(a) of the Principal Act is amended by omitting "a conviction or order" and substituting "a conviction or order (other than an order for restitution, compensation or the estreatment of bail made under a law in force in the Territory)".

9. REGULATIONS

Section 34 of the Principal Act is amended -

(a) by omitting from paragraph (a)(v) "under an attendance order; and" and substituting "under an attendance order;"; and

(b) by inserting after paragraph (a) the following:

"(aa) with relation to home detention orders -

(i) prescribing the duties of Surveillance Officers;

(ii) regulating the conduct of offenders; and

(iii) providing for the health and safety of Surveillance Officers; and".

10. FURTHER AMENDMENTS

The Principal Act is further amended as set out in the Schedule.

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SCHEDULE

Section 10

AMENDMENTS

Provision	Amendment	
	omit	substitute
Long title and sections 1, 2, 3, 3A, 15, 33 and 34	"Ordinance" (wherever occurring)	"Act"
Section 3		
- definition of "court"	"a court of summary jurisdiction"	"the Court of Summary Jurisdiction"
Section 3B(1)	" <i>Parole of Prisoners Ordinance</i> are by virtue of that employment Correctional Services Field Officers under this Ordinance"	" <i>Parole of Prisoners Act</i> are by virtue of that appointment Probation Officers for the purposes of this Act"
Section 3B(2)	"a Correctional Services Field Officer"	"a Probation Officer"
Sections 4(1)(a), (2), (3) and (5), 5(3), 6(5) and (6)(b), 7(1) and (2), 8(2), 15(5) and 19(1)(a) and (2)(a)	"a court of summary jurisdiction" (wherever occurring)	"the Court of Summary Jurisdiction"
Section 4(2)(b), (3)(b) and (4)(b)	"paragraph (d) of subsection (1)"	"subsection (1)(d)"
Section 4(3)	"subsection (1) of section 5"	"section 5(1)"
Section 4(4)	"paragraph (c) of subsection (1)"	"subsection (1)(c)"

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Provision	Amendment	
	omit	substitute
Section 5(6)	"sub-paragraph (iii) of paragraph (a) of sub-section (1)"	"subsection (1)(a)(iii)"
	"2,000 dollars"	"\$2,000"
	"500 dollars"	"\$500"
Sections 6(1A)(d) and (2A)(a) and 15(4)	"a court of summary jurisdiction" (first occurring)	"the Court of Summary Jurisdiction"
	"a court of summary jurisdiction" (second occurring)	"that court"
Sections 6(3)(a) and 6(9)(b)	"sub-paragraph (ii) of paragraph (a) of sub-section (1) of section 5"	"section 5(1)(a)(ii)"
Section 6(3)(d), (e), (5), (6), (8) and (9)	"sub-section (1) of section 5"	"section 5(1)"
Section 6(9)(a)	"sub-paragraph (i) of paragraph (a) of sub-section (1) of section 5"	"section 5(1)(a)(i)"
Section 6(9)(b) and (c)	"the preceding sub-sections of"	
Sections 7(1)(a), (2), (5) and (6), 16, 21(3)(c) and 26	"the Solicitor for the Northern Territory" (wherever occurring)	"the Director"
Section 8(1)	"sub-section (7) of section 6"	"section 6(7)"
Section 8(2)	"sub-section (5) of section 4 or sub-section (7) of section 6"	"section 4(5) or 6(7)"
Section 10(2)	"release the offender on bail, with or without sureties"	"grant the offender bail in accordance with the <i>Bail Act</i> "

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Provision	Amendment	
	omit	substitute
Sections 10(1), 11(1), 13(1) and (2), 15(1)(d), 21(1), 23(1) and (2) and 25(1)	"a Field Officer" (wherever occurring)	"a Probation Officer"
Section 15	"200 dollars"	"\$200"
Section 19(2)(a)	"a court of summary jurisdiction"	"that court"
Sections 6(6), 21C(2)(b) and 25(4)	"the court of summary jurisdiction"	"the Court of Summary Jurisdiction"
Section 25(6)	"a field officer"	"a Probation Officer"
Section 34	"Field Officers" (wherever occurring)	"Probation Officers"